

# ENFORCEMENT OF CONSUMER PROTECTION LAWS IN NIGERIA: AN APPRAISAL

BY

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## INTRODUCTION

Various laws have been passed in Nigeria aimed at protecting the Nigerian consumer but despite all those laws, our markets and shops are still replete with fake, adulterated and substandard goods while most of the time, services rendered to consumers are not commensurate with the price they pay for them. The result therefore is that, consumers' in Nigeria are daily exploited by manufacturers, importers, middlemen, sellers and service agencies to such extent that sometimes consumers' health are jeopardized and sometimes there are losses of lives, limbs and property.

In this work effort is made to look at some of these laws and the nature of their enforcement with a view to identifying some of the problems which make their enforcement difficult. Recommendations are made which if followed will make the Nigeria consumer feel the impact of these laws.

The nature and extent of consumer protection regulation in a modern society says a great deal about that society, about its social and economic development, about its legal values, its sense of justice, about its political sophistication and maturity".<sup>1</sup>

The practice in many parts of the world is to protect the consumer from the harmful consequences which the production and marketing activities of the manufacturers occasionally generate. In Nigeria, there are a host of marketing and consumer protection laws meant to regulate the activities of the various marketing concerns in the country and invariably to protect the consumers. Therefore, the need for effective regulatory activities and quality of consumer goods by relevant regulatory agencies through the implementation of applicable laws is crucial to the regime of sustainable consumer protection. This is against the backdrop that the consumer's bargaining power is perpetually weakened by a number of factors among which is the fact that manufacturers and other key players in the chain of distribution, in their unabated quest for avariciousness consciously and deliberately put in the overt market potentially dangerous and shoddy consumer products, unwholesome and adulterated food, fake and substandard drugs with the least consideration for, and to the detriment of consumer's health and safety, all these informed the choice of this paper. Part of the challenges confronting the effectiveness of the law has to do with the attitude of the enforcement agencies, lack of proper information/awareness on the part of consumer and the predominance of illiteracy in our society, inadequate publicity and public enlightenment by appropriate regulatory agencies.

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<sup>1</sup> Bello Baba O.E. as cited by Kanyip, B.B., "Overview of Consumer protection Policy within the Framework of Social and the Political Process", A paper presented at the roundtable on Consumer Protection, Economic Development and the Political Process Organised by NIAL Lagos and which held from June 15-26, 1999. P2.

A product is appreciated if it conforms with the prescribed laws and regulation especially when it gets to the final consumer. Harmful product will in turn become double punishment for consumer, money is used to buy it, yet the product becomes harmful to the people. The essence of buying a product is to maximize the profit and enjoy the products, when all these are not there, the consumer is cheated therefore the need for protection on the part of consumer.

In doing this, some framework has been institutionalised to address these consumer problems. These take the form of administrative interventions that regulate the activities of manufacturers and suppliers of goods and providers of services based on best practices. Furthermore, the courts are there to enforce consumer legislation and award appropriate remedies to aggrieved consumers and punishment to the erring manufacturers and suppliers.

## **WHO THEN IS A CONSUMER?**

A consumer is broadly defined as a person who buys or uses goods and services<sup>2</sup>. This definition imports contractual nexus into the concept of consumer. It presupposes that the consumer retains his freedom; freedom to choose what and where to buy and freedom to choose to use or not to use a particular product or service. Ralph Nader an expert in consumerism says, a consumer should be equated with a citizen and as such consumer protection is an aspect of the protection of civil rights<sup>3</sup>. This view seem however to fall in line with that of the United nations General Assembly which in its resolution 39/248 of April 1985, unanimously adopted Guidelines for Consumer Protection which it translated as the right of the consumer. These rights include the rights to choose, right to consumer education, right to safety, right to be informed, right to be heard, right to redress, right to a healthy environment and right not to be exploited.<sup>4</sup> The consumer is therefore someone who acts freely and is not in any way coerced or forced into the relation. The pertinent question is whether the consumer needs to be protected from his own ignorance and failure to exercise due diligence in freely exercising his right of choice to purchase and, or use a product or service. Put differently, should the consumer be protected when freely exercising his right of choice, what interest of his should be protected, how and against what is he protected?

Consumers rely more on government to protect them<sup>3</sup>. Since, various governments have initiated different forms of consumer protection, but in spite of the existence and commendable efforts of some of these agencies, it would seem that Nigerian consumers are still not adequately protected against producers and marketers. This study is considered important because forty years after the first consumer protection agency was established in Nigeria; there has not been proper investigation to appraise the development of consumerism.

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<sup>2</sup> Ukweze, F. O. Protection of Consumers of Financial Service in Nigeria: A Review. (2)1, 108 *Consumer Journal*. (2006)

<sup>3</sup> Oughton, D.W as cited by Kanyip, B.B. "Reflections on Consumer Protection Law in Nigeria" Law Justice and the Nigerian Society (NAIL: Lagos 1995) p. 3.

<sup>4</sup> The Consumer, a journal of the Consumer education and Protection Council of Nigeria (Now called Consumer Protection Council-CPC) Oct-Dec. 1992. P.8.

The enforcement of consumer rights is a serious problem in Nigeria. Consumers are often reluctant to enforce their rights for a variety of reasons, including ignorance of their rights, poverty, and the judiciary's rigid adherence to strict legal rules that make it very difficult for consumers to prevail. Consumer protection consists of laws and organizations designed to ensure the rights of consumers as well as fair trade competition and the free flow of truthful information in the marketplace. The laws are designed to prevent businesses that engage in fraud or specified unfair practices from gaining an advantage over competitors and may provide additional protection for the weak and those unable to take care of themselves. Consumer protection laws are a form of government regulation, which aim to protect the rights of consumers. For example, a government may require businesses to disclose detailed information about products particularly in areas where safety or public health is an issue, such as food. Consumer protection is linked to the idea of "consumer rights" (that consumers have various rights as consumers), and to the formation of consumer organizations, which help consumers make better choices in the marketplace and get help with consumer complaints. In sum, this study attempts to investigate why consumer rights are perceived as not adequately protected notwithstanding the role of the various protection agencies. The specific objectives of this study are to assess the performance of the various agencies from observed practices as well as the standpoint of the consumers; juxtapose the practices of organisations with what the laws provide; and examine the prospects of the movement.

According to Nwokoye,<sup>4</sup> in a free enterprise economy, marketing and consumer protection legislation usually has three broad objectives, which are:

- a. to further national economic goals such as curbing inflation, stimulating the national economy and improving the foreign trade balance;
- b. to enhance competition by firms; and
- c. to protect consumers from unscrupulous operators who may sell unsafe, impure or shoddy products or who may otherwise cheat and unfairly exploit the consumers.

The areas (scope) usually covered by the marketing and consumer protection legislation according to Monye<sup>5</sup> and Akande<sup>6</sup> are as follows:

1. Product-quantity produced, quality grade levels, safety features of packaging and package labeling;
2. Price-wholesale and retail price levels, discount structures, etc.;
3. Distribution-location of outlet for producer-retailer relationship;
4. Promotion-truth in advertising, sales promotion tactics, salesman-buyer relationships.

The term consumerism was defined by Kotler<sup>7</sup> as a social movement seeking to augment

<sup>3</sup> Al-Ghamdi, S. M., Sohail, M. S. and Al Khaldi, A. (2007), "Measuring Consumer Satisfaction with Consumer Protection Agencies: Some Insights from Saudi Arabia", *Journal of Consumer Marketing*, 24/2, pp. 71-79.

<sup>4</sup> See G.N. Nwokoye, *Modern Marketing for Nigeria* (London: Macmillan Press, 1981), p.26.

<sup>5</sup> F. Monye, *Law of Consumer Protection* (2003), p.20.

<sup>6</sup> J. Akande, "Consumer Protection" (1986) 4 *Journal of Current Legal Problems* 26.

<sup>7</sup> Kotler, P. "What Consumerism Means for Marketers", *Harvard Business Review*, Vol. 50, May/June, 1972. pp. 48-57.

the rights and powers of buyers in relation to sellers. Similarly, Kotler et al<sup>8</sup> see it as an organized movement of consumers whose aim is to improve the rights and powers of buyers in relation to sellers. Maynes<sup>9</sup> on his part suggests that it represents the voice of consumer discontent and subsequent corrective actions. The conceptualization of the term keeps expanding as evident in Kotler and Keller<sup>10</sup> where they presented it as an organized movement of citizens and government to strengthen the rights and powers of buyers in relation to sellers. In essence, consumerism is all about ensuring a shift in power from producers to consumers, which could be organized by the citizens themselves for their own protection or where necessary, by the government through legislation.

The need to protect consumers is largely due to discontent which they would experience from time to time in the course of buying products and services. Studies conducted by Jones and Gardner<sup>11</sup> in the United States of America attributed the causes of consumer discontent in developed countries to two reasons: first, higher expectations of a better lifestyle as a result of increasing incomes and sociological changes; and second, due to negligence on the part of business and government to protect the interest of consumers. Similarly, Andreasen and Best<sup>12</sup> found that consumer discontent arise for reasons such as: incompetence; reluctance by marketers to resolve complaints; and the government being more pro-business thereby failing to rise up and defend the interest of consumers effectively.

The position in Nigeria, as in most other African countries, is that most people are not aware of their rights as consumers. This makes it impossible to appreciate the needs for such protection.

## THE NEED FOR CONSUMER PROTECTION

In the simple transaction of the market place, no doubt the consumer is his own guide. When he buys a pound of tomatoes, he has himself to blame if they are unripe. Yet even in medieval times, the law stepped in to protect the buyer of adulterated wine or mouldy bread. Now with an erroneous variety of goods available for purchase, many of them prepacked or mechanical or of intricate workmanship, so that any deficiencies are inevitably hidden far greater protection is called for.<sup>13</sup>

Consumer protection can be seen in terms of putting in place necessary protection devices in favour of the consuming public by government so as to forestall or reduce the incidences of misleading and deceptive business practices, dangerous and inferior goods or

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<sup>8</sup> Kotler, P. et al, *Marketing*, Sydney: Prentice-Hall, 1998.

<sup>9</sup> Maynes, S. E., *The Future of Consumerism: Guardians of the Marketplace*, Boston, MA: Twayne Publishers, 1998). P.78

<sup>10</sup> Kotler, P. and Keller, K. L., *Marketing Management*, New Jersey: Pearson Prentice-Hall, 2009. P. 23.

<sup>11</sup> Jones, M. G. and Gardner, D. M., *Consumerism: A New Force in Society*, Lexington, MA: D. C. Heath 1976.

<sup>12</sup> Andreasen, A. and Best, A., "Consumers' Complaints: Does Business Respond?", *Harvard Business Review*, Vol. 55, July/August, 1977. pp. 319-324.

<sup>13</sup> Borrie, G and Diamond, A.L., *The Consumer, Society and the Law* (Aylesbury Bucks: Hazel Watson and Viney Ltd., 1964) p. 9.

services as well as fraudulent and other unfair business practices being perpetuated by manufacturers, importers, exporters, sellers etc. reasons abound why the government must have to step in so as to protect the consumers some of which are as follows:

In the first place, we know that life is the very basis upon which we can enjoy all the benefits which life opportunities offer. It is only when there is life that one can talk of enjoying fundamental human rights as provided for under the law. The first need consumer protection is to ensure the preservation of life because food, drugs, cosmetics etc are needed for the normal and effective functioning of the human body. There is a very serious need to ensure that they are neither hazardous, contaminated, fake, adulterated nor unwholesome in order not to produce harmful effect on the body like mental or physical impairment and in extreme cases, death.

According to Aremu J.A<sup>14</sup>, a consumer protection is a very crucial guarantee that fundamental human rights are not intentionally trampled upon. By ensuring that a consumer injured by the acts of a manufacturer; importer or seller is accorded adequate criminal and civil redress by means of legislation, the individual fundamental human rights can be said to have been protected by the government.

Also, it is necessary to ensure that the consumers are not unduly exploited by the manufacturers, producers, importers and other related intermediaries before the final consumers. This is because the consumers are usually faced with a variety of choices and subjected to all manners of representation from businessmen and services. Against such powerful traders and their sophisticated mass marketing techniques seek to attract consumers to their products and services. Against such powerful traders and their sophisticated products and services, the individual consumer is often uninformed, weak and powerless. Komolafe<sup>15</sup> succinctly puts it thus: “the vast majority of them are handicapped in terms of limited or no formal education. Most of them do not know their rights and even when they do; it is usually too much problem asserting them” according to Kanyip<sup>16</sup>, consumers are exploited at three fundamental levels:

- (i) There is a disparity of bargaining power between the supplier of goods and services and the consumers to whom they are offered
- (ii) There is a total disparity of knowledge concerning the characteristics and technical components of the goods and services.
- (iii) A disparity in resources between the consumer and the producer which results in the formers difficulty to obtain redress unaided for a legitimate grievance against the latter.

The above disparities are manifested in a wide range of factual complaints by consumer such as fake and adulterated products, deceptive and inherently dangerous goods, and malfunctioning and poor quality products, foreign particles in especially drinks as well as extortionate and inflationary prices. These can be resolved in favour of the consumers by means of effective protection laws.

<sup>14</sup> Aremu J.A., “Consumer Protection as a Strategy for Socio-Economic Growth and Development”, a paper presented at the Roundtable on Consumer protection etc NAILS, Lagos, June 15-16, 1999. P.2

<sup>15</sup> Komolafe, O. “Approach to Effective Management of Consumer Indifference” *Business Times* (December2, 1980). P.24.

<sup>16</sup> Kanyi, Op Cit p. 12.

Furthermore, the economic development of any country is very necessary and as such must be protected. This protection of the economy can only be achieved by the means of a very strong and workable consumer protection policy. It is known fact that goods and services produced in a country must be consumed by both citizens and others in order to enable further production of these goods and services. This can only be bought if there is consumer confidence on the products. Consumer protection laws will also discourage dumping of goods and services into the country since the enabling laws are active and effective thereby discourages fake and adulterated goods.

## **LEGAL FRAMEWORK FOR THE PROTECTION OF CONSUMER IN NIGERIA**

The Consumer Protection Council established by the Consumer Protection Council Act<sup>17</sup> is the most direct consumer administrative agency in Nigeria, others are the National Agency for Food and Drugs Administration and Control<sup>18</sup> to control and standardise the manufacture, importation, sale, advertisement of regulated products such as food and drugs, the Standard Organisation of Nigeria<sup>19</sup> to safeguard product standards, and the Nigerian Communications Commission<sup>20</sup> set up to carter for the interests of consumers of telecommunication services, the Utilities Charges Commission<sup>21</sup> to guard against the exploitation of consumers in the rates charged for public utilities, the National Insurance Commission<sup>22</sup> set up to carter for consumer insurance interests, and the Nigerian Tourism Development Corporation<sup>23</sup> set up to encourage the provision and management of tourism amenities including the development, regulation, registration, classification of hotels, and hospitality enterprises<sup>24</sup>.

Though there are laws in existence, but the awareness is lacking, obviously, the effectiveness of any legislation lies in its implementation, there should be an avenue for the creation of public awareness.

The agencies are conferred with extensive functions relating to setting of standard, control of quality, and investigation of consumer complaints<sup>25</sup>. Their mandates

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<sup>17</sup> This Act was promulgated in Nigeria by Decree No. 66 of 1992, and signed into law on November 23, now the Consumer Protection Council Act Cap. C25 LFN 2004, hereinafter referred to as the Act.

<sup>18</sup> Established by Decree No. 15 of 1993, now the National Agency for Food and Drugs Administration and Control Act Cap. N1 Laws of the Federation of Nigeria, 2004.

<sup>19</sup> It was established by the Standards Organisation of Nigeria Decree No. 56 of 1971, now the Standards Organisation of Nigeria Act Cap. S9 Laws of the Federation of Nigeria, 2004, hereinafter referred to as the SON Act.

<sup>20</sup> Set up by Decree No. 75 of 1992, now the Nigerian Communications Commission Act Cap. No. 97 Laws of the Federation of Nigeria, 2004.

<sup>21</sup> Set up by Decree No. 104 of 1992, now the Utilities Charges Commission Act Cap. U17 Laws of the Federation of Nigeria, 2004.

<sup>22</sup> Set up by Decree No. 1 of 1997, now the National Insurance Commission Act Cap. N53 Laws of the Federation of Nigeria, 2004.

<sup>23</sup> Established by the Nigerian Tourism Development Corporation Act Cap. N137 Laws of the Federation of Nigeria, 2004.

<sup>24</sup> See s. 4 of the Nigerian Tourism Development Corporation Act. By s. 7 of the Act State Tourism Boards are established for the states of the federation with corresponding functions. Pursuant to this section there is for instance the Akwalbom State Hotels and Tourism Board, with a Tourism Board Law, Cap. 132 Law of Akwa Ibom state 2000 in place for the day to day running of the Board.

<sup>25</sup> Boma, at p. 179.

are basically administrative in nature, they seek to regulate the production, supply and provision of goods and services. The Consumer Protection Council being the most direct consumer protection agency in Nigeria merits some detailed comments here. The Council was established perhaps to fall in line with the United Nations Guidelines on Consumer Protection<sup>26</sup>. The mandate of the Council covers both goods and services and its functions<sup>27</sup> include providing speedy redress to consumer complaints through negotiations, mediation and conciliation; eliminating hazardous products from the market, and causing offenders to replace defective products with safer and more appropriate alternatives; publishing from time to time list of products whose consumption and sale have been banned, withdrawn, restricted or not approved within or outside the country; issue guidelines to manufacturers, importers, dealers and wholesalers in relation to their obligation under the Act; encourage trade industry and professional associations to develop and enforce in their various fields quality standards designed to safeguard the interest of the consumer and encourage the formation of voluntary consumer groups or associations for consumer well being.

The Council is charged with the administrative responsibility of ensuring that consumers' interests receive due consideration at appropriate forum and providing redress in cases of unscrupulous exploitation of consumers by producers and service providers<sup>28</sup>. The Council is empowered to apply to court to prevent the circulation of products which constitute imminent public hazard; compel a manufacturer to certify that all safety standards are met in their products; cause quality test to be conducted on consumer products; demand production of label showing date and place of manufacture of a product and certification of compliance; compel manufacturers, dealers or service providers to give public notice of health hazards inherent in their products; and ban the sale, distribution and advertisement of products which do not comply with safety or health regulations.

The mandate of the Council focuses on the health and safety of consumers by empowering the Council to eliminate oppressive trade practices, through unfair bargains, consumer education and information, and adequate compensation and relief for consumers who have suffered injuries from defective goods and services. By section 4 of the Act, State Committees are established to assist the Council in realisation of its mandate. There is a consensus by writers<sup>29</sup> that the Council and the State Committees are administrative bodies that discharge her mandate by the instrumentality of the criminal law process<sup>30</sup>. Monye, has queried whether an aggrieved consumer who has obtained

<sup>26</sup> The UN General Assembly adopted these Guidelines in 1985 by Resolution 39/248 of April 1985. There is much similarity between the goals of the Act and those of the UN Guidelines on Consumer Protection, and to those spelt out in the Model Law for Consumer Protection in Africa which was adopted at a conference held at Harare, Zimbabwe from April 28- May 2, 1996.

<sup>27</sup> See ss. 2 and 3 of the Act.

<sup>28</sup> S. 2(i) of the Act

<sup>29</sup> Ibid; see also Agbale, E. A., "Regulatory Schemes and Consumer Protection: A Critique" (1993) 7 JBLs p. 24; Monye, "Enforcement of Consumer Protection Laws in Nigerian" (2007) 3 No. 1 Delta State University Law Review, p.89; Monye, F. N. (2003). Law of Consumer Protection, (Ibadan: Spectrum Books Ltd. Ukwueze F. O. (2008). Consumer Protection through Criminal Law in Nigeria" *Nigerian Journal of Public Law*, vol. 1, No. 1, p.123.

<sup>30</sup> For example s. 12 of the Act criminalises the sell, offer to sale any hazardous goods, or the provision of any service or any advertisement which cause injury or loss to a consumer, and prescribes punishment of N50,000 or a term of five years imprisonment or both to anyone found guilty of the offence.

redress through the Council or State Committee may maintain a civil action against the offending producer or service provider<sup>31</sup>. She contends that to allow the consumer maintain such a civil action in addition to the action taken by the Council or State Committee will weaken the position of the Council or State Committee, which took pains to investigate the complaint with a view to securing appropriate remedy for the consumer, and further raises the issue of double jeopardy against the accused person<sup>32</sup>.

Monye concludes that the better approach was to give the consumer the option to seek redress either through the Council or State Committee, or to institute a civil action to enforce his right<sup>33</sup>. This position, though probably premised on the desire to encourage the Council in actualising its mandate and in securing the right of the accused producer, appears not to be supported by law. Firstly, there is nothing in the Act or any other law in Nigeria that bars a consumer who has been injured or otherwise affected by defect in goods or services supplied to him from enforcing his civil claims against such a producer or provider of services, by reason only that he has lodged a complaint against the said producer or service provider to the Council or State Committee.

Secondly, while the Act empowers the Council to investigate cases of unfair trade practices and enforce compliance against unscrupulous traders, the Constitution guarantees the consumer's right to institute an action against anyone who infringes or threatens to infringe his constitutionally guaranteed rights. Thirdly, besides lodging a complaint to the Council or State Committee, it does not seem that the consumer is empowered by the Act to compel the Council or Committee to prosecute or take any action at all against the producer or provider of services

complaint about. The consumer does not have any authority to direct the Council or Committee in the discharge of its duties before, during, or after its investigation of the complaint.

## **FACTORS MILITATING AGAINST THE ENFORCEMENT OF CONSUMER PROTECTION LAWS IN NIGERIA**

Having x-rayed the institutional framework for the protection of and enforcement of consumer protection in Nigeria, there are other factors affecting the implementation of the laws which shall be analysed in this section of this paper. Consumers in Nigeria are still exposed to enormous hardship and injuries as a result of the practices of some unscrupulous manufacturers, importers and other middlemen who circumvent the law in one way or the other to bring in or produce those goods that measure below standard in the country, this has pose a major constraint to the realization of effective consumer protection laws in Nigeria.

The net effect of the such situation which leads to ill-health, physical injuries and other negative impact for example, was experienced on the Plateau in 1991 where about 109 children died as a result of consumption of locally made paracetamol elixir which was manufactured using wrong substances<sup>34</sup>.

Despite the existence of laws designed to regulate the manufacture, importation and sale of drugs in the country, Nigeria has become a dumping ground for adulterated and

<sup>31</sup> Monye, "Enforcement of Consumer Protection Laws in Nigerian", at p. 95.

<sup>32</sup> She contends further that to so allow will impose additional burden on the accused person who would be required to defend himself both before the Council or State Committee and the Court.

<sup>33</sup> Monye, "Enforcement of Consumer Protection Laws in Nigerian", at p. 95.<sup>34</sup> *This Day*, Sunday August 5, 2000, p. 15.

<sup>34</sup> *This Day*, Sunday August 5, 2000, p. 15.



substandard drugs and pharmaceutical products. At a point, drugs were selling openly without much control by non medical person, unapproved stores and expired drugs also marketed in the public places. This view was supported with statistics obtained from the Pharmacist Council of Nigeria and the Pharmaceutical Society of Nigeria that some places like Idumota in Lagos were occupied with fake drugs accounting for 87% in that place<sup>35</sup>.

Another factor is on the part of the consumer called illiteracy. Illiteracy and ignorance constitute a major problem to the consumer since majority of them are largely illiterate who could not read or write. Therefore even when the prescription is written on what they are buying they could not read to ascertain if the product is good, up to date or expired but they only buy and consume not minding the repercussion of it.

Poverty too is not allowing the effectiveness of the law; people are so poor that they do not bother to go for what seem to be the correct thing they are meant to buy or use, this makes them to buy products are harmful to their health.

## CONCLUSION

For consumer to be adequately protected in Nigeria there is need for the laws guiding the agencies to be amended to meet up with the current indices of consumer protection, the grey areas in each of the laws should be amended. One of the purposes of law is that law must solve the changing problems of the society. It can be seen from this study that the present institutional framework in place in Nigeria is far from meeting the needs of the consumer unless it is amended. However the study recommend among others that: officers implementing the laws must be trained and monitored to see that the laws are carried out without fear or favour; government must increase its commitment to make sure laws are carried out to the letter, the low level of education of the average Nigerian consumer; poor and inexperienced leaders of some of the agencies: and the rigid judicial system which is over protective of the manufacturers and marketers, corruption must be handled very well to that the officers will not be carried away by bribes and other inducements for effective consumer protection in Nigeria. If all of these can be addressed, then consumers in Nigeria will be confident like those in the developed world.

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<sup>35</sup> Auduson I., 'Consumer Seek Divine Intervention' *Daily Trust*, July 14, 1988. P.12.