

SCRUTINY OF THE LEGAL AND REGULATORY FRAMEWORK OF E-COMMERCE IN NIGERIA¹²

ABSTRACT

Technology has contributed significantly to the way business is conducted. Transactions are now being conducted electronically; contracts can now be signed without in-person meetings and payments can be made using internet/electronic gadgets. Inferring from this, there are laws, regulations, and regulatory agencies that govern the electronic commerce space and its many different aspects. In Nigeria, not enough laws are being passed and implemented to regulate and accommodate current technological and commercial realities. This has led to perceived insecurity and uncertainty in the Nigerian cyberspace. The research is carried out using the doctrinal research methodology, involving the use of Nigerian statutes and case laws, journals, online articles, and internet resources. As technology has largely impacted the way electronic commerce is conducted, the different laws which regulate such use of technology in Nigeria are explored. It is the finding of this research that there exist plethora of laws and regulations in Nigeria that can be applied to e-commerce. However, these laws are not adequate, they are not contemporary and the many different laws can be confusing. It is recommended that relevant centralised e-commerce laws be passed while ensuring that adequate infrastructure is provided for the implementation and enforcement of these laws.

Keywords- E-Commerce, Laws, Technology, Data protection

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1.0 INTRODUCTION

E-commerce is fast taking over the commercial sector of the world including Nigeria. Most business transactions is carried out through the internet. Nigeria is recorded to be the 39th largest e-commerce market for e-commerce with a projected revenue of \$7 billion by 2023.³ This necessitates an examination of the legal foundation upon which e-commerce is administered in Nigeria. In this context, the legal framework refers to the set of guidelines, regulations, and laws that every corporate entity must follow to operate legally.⁴ In the e-commerce industry, such a framework is critical for providing legal guidance and protection to online enterprises, that is, for regulating unique characteristics of the business such as taxation, e-contracts, dispute resolution, electronic evidence, and so on.⁵

Although there are laws in Nigeria that govern general commercial operations, there is no specific legislation that addresses e-commerce. However, Nigeria's legal and regulatory framework for e-commerce today represents a major improvement over a few years ago.⁶

This paper identifies and analyses the numerous laws currently in place in Nigeria, including regulations and regulatory agencies, that contain provisions relating to various aspects of e-commerce and the role they play in regulating online businesses and transactions.

2.0 CONCEPTUAL CLARIFICATION- ELECTRONIC COMMERCE (E-COMMERCE)

In simple terms, electronic commerce which is also known as 'e-commerce', is the conduct of business over the internet. The Oxford Learner's Dictionary defines e-commerce as 'business transactions conducted on the

³ eCommerce DB, 'eCommerce Market in Nigeria' <<https://www.ecommercedb.com/markets/ng/all>> accessed 21 May 2023.

⁴ De Stefano, Valerio, Aloisi & Antonio, 'European Legal Framework for 'Digital Labour Platforms' European Commission 2018.

⁵ Omoola Sodiq, 'Towards an Effective Legal Framework for Online Dispute Resolution in E-Commerce Transactions: Trends, Traditions, and Transitions' 24 (1) 2016 IIUMLJ 257 - 281.

⁶ Olaniwun Ajayi LP, 'Regulating eCommerce in Nigeria' (*Techpoint Africa*, 23 July 2015) <<https://www.techpoint.africa/2015/07/23/regulating-ecommerce-in-nigeria/>> accessed 25 May 2023.

internet.’ According to Shopify, an all-in-one e-commerce platform, e-commerce:

‘Refers to the buying and selling of goods or services using the internet, and the transfer of money and data to execute these transactions.’⁷

This definition is narrow yet broad at the same time. It is narrow in the sense that it covers the basics of general commerce which is buying and selling and broad in the sense that it includes the systems that work together to execute online transactions.

Moving further, Tech Target defines e-commerce as the purchasing and selling of goods and services, or the sending of money or data, over an electronic network, typically the internet.⁸ Without a doubt, e-commerce is the electronic version of commerce with several more complexities added to the former. It has made it easier to trade and has become a gold mine of endless opportunities for stakeholders, especially business owners.

Since e-commerce is carried out over the internet, there are many components involved in making sure an electronic commercial transaction is successful. Though these components exist in offline commerce, they are more complex in online commerce because of internet intricacies. Some of these components include blockchain, online payment systems, cybersecurity, social media, software, and so on.

The concept of e-commerce should not be taken lightly, given the different definitions that have been evaluated above and how quickly technology is developing. E-commerce is an industry that needs to be regulated from the beginning before it grows too large to manage, particularly in a developing nation like Nigeria.

⁷ Shopify Staff, ‘What is Ecommerce? Definition and Guide’ (15 November 2022) <<https://www.shopify.com/blog/what-is-ecommerce>> accessed 23 May 2022.

⁸ Ben Lutkevich, ‘E-commerce’ <<https://www.techtarget.com/searchcio/definition/e-commerce>> accessed 24 May 2023.

2.1 Nature of E-Commerce: How Does It Work?

As a customer place an order, the customer's web browser will communicate back and forth with the server hosting the e-commerce website.⁹ The order manager, a central computer, will receive information about the order. It will then be sent to databases that control inventory levels, a merchant system that controls payment data using tools like PayPal and Paystack, a bank computer, and a merchant system.¹⁰ Finally, it will return to the order manager. This is done to ensure that there is enough stock in the store and money in the customer's account to fulfil the order.¹¹

The order manager will alert the store's web server once the order has been confirmed. The customer will see a notice stating that their order has been successfully handled.¹² The order manager will then notify the warehouse or fulfilment department that the product or service can be delivered to the customer by sending order data to those departments. A customer may receive actual or digital goods at this moment, or access to a service may be granted.¹³

Online marketplaces where sellers register, like Amazon and Jumia, software as a service (SaaS) tool that let users "rent" online store infrastructures like Shopify and Selar, or open-source tools that businesses run using their in-house developers are some examples of platforms that host e-commerce transactions.¹⁴

E-commerce utilizes technologies like mobile commerce, electronic funds transfer, supply chain management, internet marketing, online transaction processing, electronic data interchange (EDI), inventory management systems, and automated data collection systems.¹⁵ It consists of an integration of various

⁹Timothy Ifedayo Akomolede & Micheal Sunday Afolayan, 'Socio-Legal Analysis of Electronic Commercial Transactions in Nigeria' (2020) 11 Nnamdi Azikiwe U J Int'l L & Juris 20.

¹⁰*Ibid.*

¹¹Eze Uzoamaka Gladys, 'Legal Framework for the Protection of Online Products Consumers in Nigeria' (2018) 21 Nigerian LJ 24.

¹²*ibid.*

¹³*ibid.*

¹⁴ *Ibid.*

¹⁵.Xiaolin Lin, Xuequn Wang & Nick Hajli, 'Building E-Commerce Satisfaction and Boosting Sales: The Role of Social Commerce Trust and Its Antecedents' International Journal of Electronic Commerce, 2019 23 (3)328.

networks without which e-commerce transactions will not be carried out successfully. From the moment the buyer places an order to the moment he receives the ordered item, the aforementioned technologies run throughout the day to ensure a seamless experience for the consumer.

E-commerce is the merging of computing and communications technology to conduct business. That is, the formation and administration of business relationships between customers and sellers are made possible by a widespread, interactive electronic medium.¹⁶

In Nigeria, e-commerce has become even more popular following the 2020 COVID-19 pandemic. Hundreds of Software as a Service (SaaS) start-ups that provide the technological infrastructure for the Nigerian e-commerce space have been founded over the past decade. More are still being founded and funded. Brick-and-mortar businesses are now shifting towards the use of technology to grow their businesses. Sellers do not need to rent space before starting their businesses. Starting a business and buying from a business has never been easier.

Given this, the government should get involved in the growth of e-commerce in Nigeria. For the advantage of the customer, seller, service provider, and the nation's economy, regulations and infrastructure must be established, carried out, and maintained.

2.2 Importance of Utilizing E-Commerce in a Digital Age

According to ProGuide, there were 92.3 million internet users in Nigeria and it has been predicted that the number will rise to 187.8 million in 2023.¹⁷

Based on these growing numbers, it is clear that e-commerce has come to stay and revolutionize the conventional way we do business. The importance of utilizing e-commerce and its technologies in the e-century we live in will be divided into three categories (importance to customers, businesses, and governments) and discussed subsequently.

¹⁶*ibid.*

¹⁷ Wisdom Enang, 'History of E-Commerce in Nigeria' (2021) <<https://www.proguide.ng/history-e-commerce-nigeria/>> accessed 30 May 2023.

2.3.1 Advantages to Businesses

i. Global reach

The integration of e-commerce enables businesses to expand their market to national and international markets at a low cost. Instead of being limited to the few thousand that can only access the physical store, e-commerce opens the opportunity for businesses to reach billions of active internet users.

ii. Simplification of business processes

Business processes like instant transactions, paperwork, customer services, and recurring payments are made easy and more efficient through e-commerce, thus, increasing the business' productivity.¹⁸

iii. Reduced costs

By digitizing information, the cost of creating, processing, distributing, retrieving, and managing paper-based information is reduced. For instance, an individual can easily run a one-man-show business as a result of this advantage since salaries, shop rent, and operational expenses will not be that much of a burden.¹⁹

2.3.2 Advantages to Customers

i. Convenience

Advanced filter options have made it possible for customers to easily find what they intend to buy whenever and wherever they want. Also, customers can conduct transactions online anytime they want at the click of a button as online stores are open 24 hours a day, 7 days a week, and 365 days a year. Home delivery is another convenient aspect of e-commerce for customers as they can now order an item online and have it delivered to their homes within a week instead of going through the hassle of physical shopping.

¹⁸ 'E-Commerce Advantages' available at <https://www.tutorialspoint.com/e_commerce/e_commerce_advantages.htm#> accessed 2 January 2023.

¹⁹ T Gadha, 'E-Commerce: Advantages and Limitations' (2021) 11 IJARAFMS 153.

ii. More sale options

E-commerce has allowed businesses to showcase many options to customers at one time. Not only this, but customers get to see various options spanning different sellers of the same product(s) or service(s) and choose the best of them. This is unlike traditional marketing where one can only see limited stock of one brand.

iii. Access to more quality information

Because it utilizes the internet, e-commerce compiles tons of data based on the customer's last purchases and online store visits. With this data, customers can compare products and their prices without leaving their homes or office.

2.3.3 Advantages to the Government

i. Economic development

Because of its sustainability and scalability, business organizations can attract international customers which results in increased revenue, expansion in national income, and eventually acceleration of economic growth.

ii. Effective delivery of public services

It aids the government in delivering public services. For instance, payment of taxes and electronic bills are easily made with the application of e-commerce technologies.

2.4 CHALLENGES OF E-COMMERCE

The disadvantages of e-commerce will be discussed broadly:

a. Complexity in regulations and taxation

Since e-commerce is an online endeavour, challenges with the implementation of e-commerce regulations have surfaced. Online stores must adhere not only to the rules of their own country but also to all the other countries that their

products are being shipped to.²⁰ Taxation of online businesses also proves to be a hassle, especially as regards who (personal income tax) and what (value added tax and company income tax) to tax.

b. Security issues

Regardless of all the efforts put in to ensure the safety of customers' data, hackers and scammers are still out there desperately breaking into sites. These issues cause customers to be extra-cautious when entering their details online and sometimes neglect of purchase.

c. Unstable internet access

It is an indisputable fact that the internet is the external foundation of most things that exist online. As such, one must have access to the internet to conduct e-commerce transactions. Unstable internet access or no access at all or even no technological device like a mobile phone or laptop limits e-commerce.

d. Lack of personal touch

E-commerce does not allow the customer to feel the product physically, he can only feel the product through the screen with his eyes. This may lead to many mistakes as the delivered product might not meet the customer's standards with which he had judged the product in the first instance.

3.0 LEGAL AND REGULATORY FRAMEWORK OF E-COMMERCE IN NIGERIA

The laws and regulations in Nigeria that govern commercial transaction which can be applied to e-commerce in Nigeria will be considered in this section

3.1 Companies and Allied Matters Act 2020

On August 7, 2020, the Companies and Allied Matters Act, 2020 (CAMA 2020), which repeals and replaces the Companies and Allied Matters Act,

²⁰ DR Agrawal et al, 'Taxes in an E-Commerce Generation' 2016 24 ITPF 903; Majed Al Tamer, 'The Advantages and Limitations of E-Commerce to Both Customers and Businesses' BAU Journal – Creative Sustainable Development(2021) 2.

1990 (the "Repealed Act"), was signed into law by President Muhammadu Buhari. This new development is viewed as an important addition to Nigeria's commercial and economic climate.²¹ However, it made little improvements to e-commerce.

Since the CAMA 2020 was enacted at a time when the COVID-19 epidemic was causing electronic transactions to surge, provisions like section 176(1) which provides for the electronic transfer of shares, section 240(2) which provides that private companies can hold virtual meetings and section 860(1) which provides for electronic filing of documents with the Corporate Affairs Commission (CAC) were included in the Act.

Furthermore, in an effort to make doing business in Nigeria easier, section 18(2) which allows one person to form a private company, and sections 330(1) and 402 which exempt small companies from appointing a company secretary or auditor.

Regardless of how beneficial these new laws are for small businesses; they majorly focused on physical businesses but overlooked online businesses. Concepts such as domain name and social media username registration, online business rules, and the terms and conditions agreement that would be displayed on the firm website were not covered.

It is significant to note, however, that the majority of CAMA's rules can still apply to online businesses. One example is section 18(2) of CAMA 2020 which allows one person to start a private company. Other examples include section 20 which makes provision for the capacity of an individual to form a company, sections 41 and 42 which contain provisions for registration and effects of registration respectively, section 101 which recognises and accepts the use of electronic signatures for documents requiring authentication by a company amongst several others.

²¹Banwo & Ighodalo, 'Companies and Allied Matters Act 2020: Reforming Provisions That Impact the Nigerian Business Community' (*Banwo & Ighodalo*, 10 August 2020) <<https://banwo-ighodalo.com/assets/resources/6565188f7a3a023deee90fb4ab919e01.pdf>> accessed 29 May 2023; Jennifer Halim-Ubahakwe, the Head of Legal, Compliance and Governance at Advans Lafayette Microfinance Bank Limited at the time described the new CAMA as 'Nigeria's most significant business legislation in three decades.'

3.1.1 Corporate Affairs Commission

The Corporate Affairs Commission (CAC) is a Nigerian government agency in charge of overseeing and administering all companies functioning in the country.²² It was established by CAMA which was promulgated in 1990 and its provision is contained in Part A of CAMA 2020.²³

In accordance with the provisions of section 8 of CAMA 2020, some functions of CAC include ensuring the compliance of companies with the provisions of CAMA, administering CAMA by registering, regulating and supervising the formation, incorporation, management and winding up of companies, and establishing and maintaining a company's registry and office in each state of the federation.

Without a doubt, albeit not expressly stated, CAC can use its rights over registered online businesses, whether as a business name or as a private company, the two primary corporate structures available to e-commerce enterprises.

3.2 Sale of Goods Act 1893

The Sale of Goods Act (SGA), passed in 1893, is a Statute of General Application (SOGA) in Nigeria with the primary goal of governing contracts of sale of goods. Though archaic, it contains several aspects that can be applied to online businesses to some extent. One of such section is section 29(2) of SGA which imposes the duty of delivering the product within a reasonable time on the seller where no sending time is fixed. This section is significant to e-commerce in the sense that many e-commerce transactions are done under the assumption that products and services must be delivered within a reasonable time frame.

Moreover, section 34 of SGA which grants the buyers the right of examining the goods allows online buyers to confirm that the goods they bought conform

²²U.J. Idem & ES Olarinde, 'Assessing the Adequacy of the Legal Framework in Facilitating E-Commerce in Nigeria' *2022 International Conference on Data Analytics for Business and Industry (ICDABI)*, Sakhir, Bahrain, 2022 412-417.

²³ Corporate Affairs Commission, 'Nigeria's Corporate Registry' <<https://www.cac.gov.ng/about/>> accessed 29May 2023.

with the contract.²⁴ Still within the e-commerce context, section 27 of SGA imposes the duty of delivering the goods on the seller and the duty of accepting and paying for the goods on the buyer. As a result, once a buyer pays for the items displayed online, the seller is required to deliver the goods in excellent shape and in accordance with the contract within a reasonable time frame.

The SGA also makes provisions for ascertaining price, conditions and warranties, and remedies available to any party when the other party commits a breach all of which can be applied to e-commerce.

Regardless of how many sections in SGA can be applied to modern e-commerce, the archaic nature of the Sales of Goods Act remains, and such archaic regulations do not have the power to govern e-commerce in its totality. It would be tremendously beneficial to Nigeria's economic status if SGA were modified to reflect 21st-century norms.

3.3 ELECTRONIC AND COMPUTER-GENERATED EVIDENCE

3.3.1 Evidence Act 2011

Since e-commerce transactions are conducted online, it is not surprising that when a dispute arises, any evidence to be generated will be generated through technological means. Electronic evidence contrasts with paper-based evidence, which is commonly expressed in words and numbers and typically authenticated by signatures. As a result, such transactions cannot be altered without modifying the face of the document.²⁵

Before the adoption of the new Evidence Act (EA) in 2011, Nigerian courts had significant challenges surrounding the acceptance of computer-generated evidence because the old EA did not allow for it at the time. Though, the Supreme Court held in the case of *Eso W.A. v Oyegbola* that computer print-outs are admissible.²⁶

²⁴Lawpadi, 'Your Rights When Shopping Online in Nigeria' <<https://www.lawpadi.com/rights-shopping-online-nigeria/>> accessed 29 May 2023.

²⁵ TI Akomolede, 'Contemporary Legal Issues in Electronic Commerce in Nigeria' 2008 11(3) PER/PELJ.

²⁶ (1969) NMLR 194; WEKREA8, 'The Impact of the Supreme Court Decision in *Kubor v Dickson* (2014) 4 NWLR (Part 1345) 534-594 on the Development of E-commerce in Nigeria:

The introduction and growing popularity of e-commerce created important evidentiary issues, particularly with regard to documenting of online transactions.²⁷ These peculiar issues emphasized the necessity to update the EA to deal with the deluge of electronically created evidence that is a feature of electronic commercial operations.²⁸

With the enactment of the new EA in 2011, the admissibility of computer-generated evidence is no longer an issue in contention. Section 84(1) of the new EA states: *'In any proceeding, a statement contained in a document produced by a computer shall be admissible as evidence of any fact stated in it...'*

Due to the introduction of this clause in the new EA, the pace with which justice is administered is increased by eliminating the debate around the admissibility of electronic evidence.²⁹

In addition to the admissibility of computer-generated evidence, section 93(2) of the new EA provides for the admissibility of electronic signatures as proof of the existence, authenticity, and valid acceptance of documents and contracts. Sections 17 and 101 of the Cybercrimes Act 2015 and CAMA 2020, respectively, recognize the use of electronic signatures in Nigeria as secure for use in regular business and admissible in court.³⁰

The implementation of electronic evidence provision to e-commerce have led financial institutions and businesses in Nigeria to using Information and Communication Technology (ICT) to deliver and provide

Issues and Prospects' (14 September 2020) <<https://www.sgssolicitors.com/2020/09/14/the-impact-of-supreme-court-decision-in-kubor-v-dickson-2014-4-nwlr-part-1345-534-594-on-the-development-of-e-commerce-in-nigeria-issues-and-prospects>> accessed 29 May 2023.

²⁷ WEKREA8, 'The Impact of the Supreme Court Decision in Kubor v Dickson (2014) 4 NWLR (Part 1345) 534-594 on the Development of E-commerce in Nigeria: Issues and Prospects' (2020) <<https://www.sgssolicitors.com/2020/09/14/the-impact-of-supreme-court-decision-in-kubor-v-dickson-2014-4-nwlr-part-1345-534-594-on-the-development-of-e-commerce-in-nigeria-issues-and-prospects>> accessed 29 May 2023.

²⁸ *ibid.*

²⁹ *ibid.*

³⁰ Onwuchekwa Agwu, 'The Legality of Electronic Signature in Transactions in Nigeria' (*LinkedIn*, 3 August 2021) <<https://www.linkedin.com/pulse/legality-electronic-signature-transactions-nigeria-agwu>> accessed 27 May 2023.

services.³¹ Automated Teller Machines (ATM) and Point of Sale (POS) devices are now essential tools for financial transactions. Ledgers no longer contain transaction records; instead, computers and other storage devices do.

3.4 CYBERSECURITY, DATA PROTECTION, AND CONSUMER PROTECTION

3.4.1. Cybercrime Act 2015

ICT has revolutionized the way people do business, acquire goods and services, send and receive money, communicate, trade information, engage in social contact, and develop relationships.³² As the internet, technology, and our lives become more interwoven, so does the intricacy of information and its vulnerability to hacking, ransomware, and other crimes.³³ The rise of internet scams gradually has eroded people's confidence and trust in cyberspace, increasing the security risk.³⁴ Cybersecurity protects against data theft, information leakage, and damage to the computer system and network's hardware, software, or electronic data.³⁵

The law that protects Nigerian cyberspace is the Cybercrimes (Prohibition and Prevention) Act 2015. It establishes a comprehensive legal, governmental, and institutional framework in Nigeria for cybercrime prevention, detection, prosecution, and punishment.³⁶

The Act provides a legislative framework for fighting Nigeria's growing cybercrime problem, it criminalized a range of cybercrimes, including unauthorized access to computer systems, cyberstalking (section 24), identity

³¹ WEKREA8, 'The Impact of the Supreme Court Decision in Kubor v Dickson (2014) 4 NWLR (Part 1345) 534-594 on the Development of E-commerce in Nigeria: Issues and Prospects' (14 September 2020) <<https://www.sgssolicitors.com/2020/09/14/the-impact-of-supreme-court-decision-in-kubor-v-dickson-2014-4-nwlr-part-1345-534-594-on-the-development-of-e-commerce-in-nigeria-issues-and-prospects>> accessed 2 February 2023.

³² *ibid.*

³³ Chaman Law Firm, 'Cyber Law and the Role of Cyber Lawyer in Nigeria' (20 May 2022) <<https://www.chamanlawfirm.com/cyber-law-and-the-role-of-cyber-lawyer-in-nigeria>> accessed 26 May 2023.

³⁴ S.C. Ogham, 'Cyber Security Laws in Nigeria in the Era of Internet Scams' (22 June 2022) <<https://sabilaw.org/cyber-security-laws-in-nigeria-in-the-era-of-internet-scams/#>> accessed 26 May 2023.

³⁵ *ibid.*

³⁶ *ibid.*

theft (section 22), online fraud, and the publication of child pornography (section 23).³⁷

Given how reliant Nigeria's e-commerce business is on technology and electronic transactions, it is impossible to overstate the significance of the Act. For instance, Part III of the Act criminalizes internet fraud, including phishing (section 32), electronic card-related fraud (section 33), and other popular online schemes in the e-commerce sector. The offence carries a maximum sentence of 3 years in jail for violators.

Another relevant aspect is Section 6 of the Act, which makes unauthorized access to computer systems, including e-commerce websites, illegal. This clause is critical for protecting against cyberattacks and hacking efforts that could compromise client data and financial transactions on e-commerce platforms.

Several court cases involving cybercrime and e-commerce in Nigeria have previously used the Act. For instance, last year, Justice Muhammed Sani of the Federal High Court sitting in Ilorin on Monday, March 14, convicted six persons over offences bordering on cybercrime, personation, and other internet-related fraud.³⁸

As such, the Nigerian Cybercrime Act of 2015 is an important piece of legislation with enormous implications for the Nigerian e-commerce sector. By criminalizing cybercrime and providing victims with legal remedies, the Act helps to enhance customer confidence, trust, and security in the e-commerce sector.

3.4.2 The 1999 Constitution of the Federal Republic of Nigeria

The Nigerian Constitution of 1999 has various clauses that protect the rights of Nigerian consumers, especially those who engage in e-commerce. These

³⁷ S.C. Ogham, 'Cyber Security Laws in Nigeria in the Era of Internet Scams' (22 June 2022) <<https://sabilaw.org/cyber-security-laws-in-nigeria-in-the-era-of-internet-scams/#>> accessed 26 May 2023.

³⁸ Layi Olanrewaju, 'Six Convicted for Cybercrime in Ilorin' *The Sun* (Ilorin, 14 March 2022) <<https://www.sunnewsonline.com/six-convicted-for-cybercrimer-in-ilorin/>> accessed 29 May 2023.

clauses are principally found in Chapter IV of the Nigerian Constitution, which contains the Nigerian Declaration of Rights.

One of the fundamental rights guaranteed by the Nigerian Constitution is the right to dignity of the human person which is contained in section 34 of the Constitution. This right applies to all Nigerian customers, including those who engage in e-commerce. It means that consumers have the right to be treated with dignity and not to be exploited or abused by businesses, particularly online businesses.

Another right guaranteed by the Nigerian Constitution that is relevant to e-commerce is the right to freedom of expression as contained in section 39. This right guarantees that consumers are free to share their opinions, especially those about the quality of goods and services offered by online businesses, without fear of retribution.

Furthermore, Section 36 of the Nigerian Constitution protects the right to a fair hearing, which ensures that consumers have the opportunity to be heard before any decisions that affect their rights or interests are made. This privilege is especially important in e-commerce, because consumers may have disagreements with online enterprises that require legal resolution.

The Nigerian Constitution protects consumers' rights by ensuring their dignity, freedom of expression, and fair hearing. It also safeguards customers from unfair trade practices, such as those experienced in e-commerce transactions.

3.4.3 The Nigerian Data Protection Regulation

The National Information Technology Development Agency (NITDA) introduced the Nigerian Data Protection Regulation (NDPR) in 2019.³⁹NITDA basic function is to oversee the management of personal data in Nigeria, NDPR specifies the responsibilities of data controllers and processors in Nigeria and provides a framework for personal data protection.

The NDPR applies to all Nigerian companies that process personal data, including those engaged in e-commerce. According to the regulation, data controllers and processors must implement appropriate organizational and

³⁹ Abiodun Odusote, 'Data Misuse, Data Theft and Data Protection in Nigeria: A Call for a More Robust and More Effective Legislation' (2021) 12 BLR.

technical safeguards to protect personal data against unauthorized access, modification, or disclosure.⁴⁰ People are also granted rights under the NDPR, such as the right to see, update, and delete their data, as well as the right to object to the processing of their data in certain instances.⁴¹

One of the important requirements of the NDPR is that data controllers and processors get individuals' authorization before processing their personal data.⁴² In addition, the NDPR requires data controllers and processors to take efforts to verify that personal data is correct, relevant, and not excessive in relation to the purpose for which it is being processed.⁴³ Non-compliance with the NDPR can result in severe fines and other punishments, including criminal prosecution.⁴⁴

3.4.3.1. National Information Technology Development Agency (NITDA)

The National Information Technology Development Agency (NITDA) plays a crucial role in ensuring customer data security in Nigeria's e-commerce sector by being responsible for the development and regulation of information technology in Nigeria. It has taken steps to ensure that personal data is secured by creating the Nigerian Data Protection Regulation (NDPR).⁴⁵

The NDPR was implemented in 2019 to establish a framework for the protection of personal data and to spell out the obligations of data controllers and processors in Nigeria.⁴⁶ It applies to all firms in Nigeria that handle personal data, including those engaged in e-commerce. In *Emerging Market Telecommunication Services v. Barr Godfrey Nya Eneye*,⁴⁷ the claimant, a legal practitioner sued the operators of Etisalat mobile line for exposing his

⁴⁰ Nigeria Data Protection Regulation 2019 (NDPR 2019), ord.2.1.

⁴¹ *ibid.*, ord.2.8 & 3.1.

⁴² *ibid.*, ord.2.3.

⁴³ Abiodun Odusote, 'Data Misuse, Data Theft and Data Protection in Nigeria: A Call for a More Robust and More Effective Legislation' (2021) 12 BLR.

⁴⁴ NDPR 2019, ord.2.10.

⁴⁵ Mubarak Umar, 'Data Privacy Day: Celebrating Citizen's Right to Privacy and Protection in Nigeria' (14 March 2022) <<https://nitda.gov.ng/data-privacy-day-celebrating-citizens-right-to-privacy-and-protection-in-nigeria-2/5485/>> accessed 29 May 2023.

⁴⁶ Abiodun Odusote, 'Data Misuse, Data Theft and Data Protection in Nigeria: A Call for a More Robust and More Effective Legislation' (2021) 12 BLR <https://www.scirp.org/pdf/blr_2021122815570558.pdf> accessed 17 February 2023.

⁴⁷ (2018) LPELR-46193.

phone number to persons or companies that sent him unsolicited text messages in violation of section 37 of the Nigerian constitution. He was awarded damages by the Federal High Court, and on appeal, the Court of Appeal upheld this decision.

The law requires data controllers and processors to implement appropriate organizational and technical protections to ensure personal data security and prevent unauthorized access, alteration, or disclosure.⁴⁸

To achieve compliance with the NDPR, NITDA has published guidelines and standards to equip businesses with best practices for data protection. The NDPR Implementation Framework, which gives a step-by-step strategy for implementing the NDPR regulations, and the NDPR Certification Framework, which provides a means for enterprises to certify NDPR compliance, are examples of this.⁴⁹

NITDA has also developed the Nigeria Data Protection Compliance Organization (DPCO) initiative, which is intended to facilitate NDPR compliance by providing businesses with the resources and support they require to comply with the regulation.⁵⁰ The program includes a certification process for organizations that meet the standards of the NDPR, as well as a complaint system for individuals who believe their data protection rights have been breached.

NITDA is critical to maintaining customer data privacy in the Nigerian e-commerce industry as it offers a regulatory framework for the protection of personal data through the NDPR and related guidelines and frameworks, as well as defining the obligations of data controllers and processors. NITDA also offers organizations assistance and tools to help them comply with the

⁴⁸ O.M. Atoyebi and Love Ebekhile, 'E-Commerce in Nigeria: Contemporary Prospects and Challenges' *Omaplex* <<https://omaplex.com.ng/e-commerce-in-nigeria-contemporary-prospects-and-challenges/>> accessed 29 May 2023.

⁴⁹ Ridwan Oloyede, 'Highlight of the NDPR Implementation Framework' (*LinkedIn*, 7 December 2023) <<https://www.linkedin.com/pulse/highlight-ndpr-implementation-framework-ridwan-oloyede->> accessed 29 May 2023.

⁵⁰ Francis Oluluo, 'Understanding Nigerian Data Protection Compliance Requirements and Managing Breach' (*Mondaq*, 15 September 2020) <<https://www.mondaq.com/nigeria/data-protection/984628/understanding-nigerian-data-protection-compliance-requirements-and-managing-breach>> accessed 29 May 2023.

rule, and it guarantees that individuals have a way to report data protection infractions.

3.4.5 Federal Competition and Consumer Protection Act

To promote fair competition and protect consumers' rights in Nigeria, the Federal Competition and Consumer Protection Act (FCCPA) was enacted in January 2019. FCCPA replaced the Consumer Protection Council Act.⁵¹

FCCPA strives to promote economic efficiency and innovation by regulating anti-competitive practices such as price fixing, abuse of dominance, and mergers and acquisitions that would severely reduce competition in a market.⁵² The Federal Competition and Consumer Protection Commission (FCCPC) and the Competition and Consumer Protection Tribunal (CCPT), which are in charge of upholding the law, are established under the legal framework provided by the Act.

FCCPC is the principal organization in charge of implementing the FCCPA. It is in charge of investigating and prosecuting anti-competitive practices, as well as defending consumer rights and encouraging fair competition in the Nigerian market.⁵³ Businesses that engage in anti-competitive conduct might face punishment from the Commission, including fines and other penalties.⁵⁴

The CCPT is a specialized court established by the FCCPA to hear and decide cases arising from the Act's implementation.⁵⁵ The Tribunal has the authority to levy fines and other punishments, including the prohibition of anti-competitive acts and the divestiture of assets in appropriate cases.

⁵¹ Wole Obayomi, 'Federal Competition and Consumer Protection' Issue 3.3 (*KPMG*, March 2019) <https://assets.kpmg.com/content/dam/kpmg/ng/pdf/tax/ng-Federal-Competition-and-Consumer-Protection-Act.pdf> accessed 29 May 2023.

⁵² Enyinnaya C. Uwadi, 'The Nigerian Federal Competition and Competition Protection Act 2019: Lessons from South Africa' (*Afronomics*, 25 September 2019) <<https://www.afronomicslaw.org/2019/09/25/the-nigerian-federal-competition-and-competition-protection-act-2019-lessons-from-south-africa>> accessed 29 May 2023.

⁵³ Oreoluwa Adebayo, 'Legal Regime for Consumer Protection and Competition in Nigeria' *SPA Ajibade* <<https://spajibade.com/1534-2/>> accessed 29 May 2023.

⁵⁴ *ibid.*

⁵⁵ Federal Competition and Consumer Protection Act 2019, s.39.

In addition, the FCCPA provides rules to protect consumers from unfair trade practices such as deceptive and misleading advertising, product counterfeiting, and price gouging. It empowers FCCPC to conduct investigations, collect evidence, and bring legal action against firms that engage in such abuses.

The Federal Competition and Consumer Protection Act of Nigeria is a critical piece of legislation that promotes competition, protects consumers, and stimulates innovation in the Nigerian market. Its provisions and enforcement procedures establish a legal framework for businesses to operate fairly and transparently while also protecting consumers' rights.

3.5 OTHER LEGISLATIONS

In addition to the well-known and frequently discussed regulations and laws that govern cyberspace and consumer protection in the Nigerian e-commerce industry such as the Cybercrime Act, Federal Competition and Consumer Protection Act, and the Nigeria Data Protection Regulation, there are a number of lesser-known laws and regulations that are relevant to e-commerce in Nigeria. These include the Nigerian Communications Commission (NCC) Guidelines, National Office for Technology Acquisition and Promotion (NOTAP) Guidelines, and National Insurance Commission (NAICOM) Guidelines, among others.

3.6 ELECTRONIC CONTRACTS

Due to the advent of e-commerce, electronic contracts have become increasingly common in Nigeria resulting in speedier methods of executing commercial transactions as opposed to paper transactions.⁵⁶

In contrast to paper contracts, e-contracts are contracts that are executed and enacted by a software system in which the "seller and buyer" or "provider and customer" do not meet in person to construct, negotiate, and execute the terms of their contract.⁵⁷ Purchasing insurance, signing real estate contracts,

⁵⁶Judith E. Jessah, *E-Commerce in Nigeria: Liability for Loss or Damage to Goods Supplied by a Seller Pursuant to an Electronic Contract*, 1 IJOCLLEP 105 (2019).

⁵⁷*ibid.*

using credit cards, and entering into financial agreements are all examples of electronic transactions or contracts.⁵⁸

An e-contract, like its paper counterpart, is created on the same basic principles of contract as its paper counterpart: the presence of an offer, acceptance, consideration, and the intention to create legal relations.⁵⁹ The "offeror or supplier" must make an offer to the "offeree or consumer," and the acceptance must be conveyed back to the offeror.⁶⁰

The goods which are the subject of the contract will subsequently be physically delivered or, in the case of electronically disseminated products, delivered straight to the processor's computer.⁶¹ An invitation to treat is the initial step in negotiations and may not result in a definite offer.

In most circumstances, a contract can be formed through conduct, such as when online content is supplied and a user downloads it, which results in the formation of a contract without the need for a written agreement.⁶² With regards to the debate over the validity of some offers and computer acceptance in specific scenarios, such as when there is no human involvement, in the case of *State Farm Mutual Auto. Ins. Co. v. Bockhurst*,⁶³ The court determined that the computer only functions in accordance with the knowledge and orders provided by its programmers, implying that there is human intent to create legal relations in computer transactions. As a result, if parties establish an agreement and form an electronic contract based on the agreement, the contract will be deemed legal because human intent is present.

Addressing the validity of electronic contracts, the Nigerian government has not passed any legislation specifically governing them, albeit the Electronic Transactions Bill, which will be covered subsequently, is still being

⁵⁸ STA Law Firm, 'Overview; Electronic Contracting Law in E-commerce' (24 October 2021) <<https://www.stalawfirm.com/en/blogs/view/electronic-contracting-law-in-e-commerce.html>> accessed 25 May 2023.

⁵⁹ All Answers Ltd, 'E commerce and E Contracts' (*Lawteacher.net*, 7 August 2019) <<https://www.lawteacher.net/free-law-essays/commercial-law/e-commerce-and-e-contracts-commercial-law-essay.php?vref=1>> accessed 25 May 2023.

⁶⁰ *ibid.*

⁶¹ Edwin O. Ezike, 'Online Contracts in Nigeria – An Overview' 2011 11 NJR 57.

⁶² *ibid.*; *Attorney General of Kaduna State v Victor Bassey Atta & Ors.* (1986) 4 NWLR (Pt. 38) 785.

⁶³ 453 F. 2d 533 (10th Cir. 1972).

considered by the National Assembly and has not yet been passed into law. Furthermore, section 92(3) of the Evidence Act of 2011, section 17 of the Cybercrimes Act of 2015, and section 101 of CAMA 2020 which allow for the validity of electronic signatures contain provisions pointing to the legality of electronic contracts.⁶⁴

3.6.1 The Electronic Transactions Bill

The Electronic Transactions Bill 2017 was first addressed in the Nigerian Senate to establish a legal framework for electronic transactions. The goal of the Electronic Transactions Bill is to create a legal and regulatory framework for electronic transactions, make electronic contracts enforceable, protect consumer rights while making online purchases, and facilitate electronic commerce in Nigeria.⁶⁵

The Bill governs the use of information in the form of electronic or other media in conjunction with commercial or other transactions or interactions between parties.⁶⁶As a result, no information shall be denied legal effect, validity, or enforcement solely because of the medium or technology used to express, make, or disseminate it.⁶⁷However, the provisions of the Bill do not apply to any statute that requires writing or signature in any of the following transactions:⁶⁸

- a. Creation or execution of a Will
- b. Execution of negotiable instruments
- c. Creation, performance, or enforcement of an indenture, declaration of trust or power of attorney with the exception of constructive and resulting trusts
- d. Any contract for the sale or disposition of immovable property, or any interest in such property

⁶⁴Tonbofa LP, 'Legality on the Use of Electronic Signatures' (29 April 2020)

<<https://tonbofa.com/legality-on-the-use-of-electronic-signatures/>> accessed 25 May 2023.

⁶⁵ 'Creating a Legal Framework for Electronic Transactions to Protect Nigerians – Looking Back at the Achievements of the 8th Senate of Nigeria' (*All Africa*, 13 June 2019)

<<https://allafrica.com/stories/201906130322.html>> accessed 19 February 2023.

⁶⁶ Anthonia Igba, 'An Overview of the Electronic Transactions Bill 2017' (30 October 2018)

<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3275075> accessed 26 May 2023.

⁶⁷*ibid.*

⁶⁸ Electronic Transactions Bill, s.2.

- e. Conveyance of immovable property or the transfer of any interest in immovable property
- f. Document of title for movable or immovable property; and
- g. Where such application would involve a construction of a rule of law that is clearly inconsistent with the manifest intent of the law-making body or repugnant to the context of the same rule of law;

Although, if the bill is not altered to repeal the Statute of Frauds, the position of the Statute of Frauds, which requires that certain instruments be in writing, will be contested in the future.⁶⁹The Bill's provisions are important in this day and age of e-commerce, especially as the usage of social media for the selling of items and services grows, resulting in cases of fraudulent and misleading online vendors.

E-contracts are an important aspect of e-commerce and have become more common in the digital age. They must follow many rules and regulations, such as contract law, electronic signatures, and consumer protection laws. Yet, a lack of adequate laws and regulations in Nigeria is a significant hindrance to the growth and development of e-commerce. To comply with worldwide best practices and create investor trust in the Nigerian e-commerce sector, Nigeria must update and unify its laws and regulations.

3.7 TAXATION

Tax can be defined as a mandatory payment or charge collected by local, state, and national governments from individuals or businesses to cover the costs of general government services, goods, and activities.⁷⁰ Taxation, on the other hand, refers to the process by which a government or taxation authority imposes or levies a tax on its citizens and business entities.⁷¹

The subject of e-commerce taxation as a concern for tax authorities is not new, particularly given the unexpected surge in existing online firms as a result of the coronavirus pandemic. With the increase in popularity of internet purchases, a rising number of businesses are now operating online, providing

⁶⁹ Statute of Frauds 1677, s.4.

⁷⁰ Tax Foundation, 'Tax' <<https://taxfoundation.org/tax-basics/tax/>> accessed 26 May 2023.

⁷¹ Clear Tax, 'Taxation' <<https://cleartax.in/g/terms/taxation>> accessed 26 May 2023.

new challenges to taxation systems around the world.⁷² Nigeria, like many other countries, has fallen behind in terms of e-commerce taxation. The tax structure in Nigeria is insufficient for both traditional and online businesses. This has resulted in a disparity in e-commerce taxation, potentially resulting in revenue loss for the government.⁷³

Tax administrators in Nigeria are being presented with myriads of challenges and difficulty adapting to the new information technology, "digitalization".⁷⁴ The challenges faced by tax authorities that result in poor tax revenue in Nigeria include: a lack of technological facilities for increased accuracy in computation, delay in form filing, lack of comprehensive taxpayers database leading to poor tax compliance, increasing tax evasions, ineffective tax assessment and returns, high level of professional incompetence and unskilled tax administrators, reported unethical sharp practices and corruption cases.⁷⁵

3.7.1 Company Income Tax Act

The Company Income Tax Act (CITA), enacted in 2007, is one of the regulations that govern the taxation of both resident and non-resident firms in Nigeria. The Federal Government collects company tax for both domestic and foreign companies doing business in Nigeria through the Federal Inland Revenue Service.⁷⁶

Companies based in Nigeria (resident companies) must pay corporate income tax on their worldwide income, whilst non-resident companies must pay company income tax on income generated in Nigeria.⁷⁷ CITA was created for

⁷² Meshach Umunweke and Ginikachi Onyenukporo, 'An Examination of the Legal Framework for Electronic Commerce Taxation in Nigeria: The Finance Act 2019 in Perspective' 2020 2(1) IJOCLLEP 1.

⁷³ N. Chijioke, A. Leonard, O. Bossco, & C. Amaefule, 'Impact of E-Taxation on Nigeria's Revenue and Economic Growth: A Pre-Post Analysis' 2018 7 IJFA 19-26.

⁷⁴ Ruth A. Panle and Arinzechukwu J. Okpara, 'The Nigerian Tax Policy on E-Commerce on Social Media: A Study of E-Informal Sector' 2021 9 OJBM 2225.

⁷⁵ O. Ojo and B. Oluwatayo, 'Entrepreneurship as Drivers of Growth, Wealth Creation and Sustainable Development in Nigeria' (2015) 4(8) SJTPSD.

⁷⁶ O. M. Atoyebi and EzinneNnnadi, 'Taxation in Electronic Commerce' *Omaplex* <<https://omaplex.com.ng/wp-content/uploads/2021/12/taxation-in-e-commerce.pdf>> accessed 26 January 2023.

⁷⁷ PWC, 'Corporate - Taxes on Corporate Income' <<https://taxsummaries.pwc.com/nigeria/corporate/taxes-on-corporate-income>> accessed 3 March 2023.

businesses with physical addresses (brick-and-mortar), not for businesses that only operate online. This is why there have been various challenges with administering taxes on online businesses. Only through the assistance of the taxing authorities and NITDA can this type of business be brought into the tax net or better yet, a change to CITA that allows for the administration of tax on online enterprises.⁷⁸

A person in Nigeria can easily start an online business by obtaining a domain name and hosting a website, all of which do not necessitate a physical location.⁷⁹ The tax implication is that the tax authority is unaware of the number of taxable transactions that occur and hence they escape taxation.⁸⁰ Tax identification of this business and individual is only achievable at this stage with the assistance of the National Information Development Agency.⁸¹ This agency is permitted by its Act to register domain names, after which a tax identification number can be issued for the website, facilitating tracking of the amount of e-commerce carried out thereon and assisting in taxation.⁸²

3.7.2 Personal Income Tax Act

The Personal Income Tax Act (PITA) was enacted for the purpose of regulating tax payable by taxable individuals, communities, and trusts.⁸³ Section 3 of the Act, which is the charging provision, provides for the taxation of all taxable persons' income, including profits from any business, salary, rent, dividend, or interest, and pension.

No section of the PITA specifically addresses e-commerce income or profit. Regardless, gains or profits made in trade or business by an individual, whether through traditional trade methods or e-commerce, are still subject to personal income tax.⁸⁴

⁷⁸ Meshach Umunweke and Ginikachi Onyenukporo, 'An Examination of the Legal Framework for Electronic Commerce Taxation in Nigeria: The Finance Act 2019 in Perspective' 2020 2(1) IJOCLLEP 1.

⁷⁹*ibid.*

⁸⁰*ibid.*

⁸¹*ibid.*

⁸²*ibid.*

⁸³ Personal Income Tax Act (PITA), s.1.

⁸⁴*ibid.*, s.3(1)(a).

3.7.3 Value Added Tax Act

Value Added Tax (VAT) is a consumption tax payable on all goods and services consumed by any person, whether government agencies, business organizations, or individuals, except those exempted under the VAT Act.⁸⁵ It is a multi-tiered tax that ultimately falls on the final consumer of such goods and services.⁸⁶ It is currently calculated at a rate of 7.5%.⁸⁷

In *Vodacom v FIRS*,⁸⁸ Vodacom received bandwidth capacities from a Netherlands-based company, and Vodacom claimed that it was not required to pay VAT on the service because they received the services via transponders which conducted the bandwidth from orbit without any physical presence. The Judge dismissed their argument, holding that, under Sections 2 and 10 of the VAT Act, "supplied in Nigeria" does not only refer to physical presence but can also refer to circumstances in which the supply is made in Nigeria without physical presence. Section 30 of the Finance Act 2021, which amended Section 10 of the VAT Act, supports this decision.

3.8 DISPUTE RESOLUTION

When making online purchases, consumers are occasionally required to make payments in advance even if they cannot determine the condition or quality of the goods ordered.⁸⁹ In addition, because payments on these platforms are made electronically, either by bank transfer or by inputting a card number on the internet, consumer information is typically highly exposed to the constant possibilities of civil and criminal frauds, as there is no exact assurance that the

⁸⁵ Meshach Umunweke and Ginikachi Onyenukporo, 'An Examination of the Legal Framework for Electronic Commerce Taxation in Nigeria: The Finance Act 2019 in Perspective' 2020 2(1) IJOCLLEP 1.

⁸⁶ Taxation Law Team, 'Value Added Tax in Nigeria' (*Resolution Law Firm*) <<https://www.resolutionlawng.com/value-added-tax-in-nigeria/>> accessed 27 May 2023.

⁸⁷ S. Timi-Koleolu and F. Akinyanmi, 'Payment of Value Added Tax in Nigeria: New Collection Agents' (*Monday*, 29 November 2022) <<https://www.mondaq.com/nigeria/sales-taxes-vat-gst/1255670/payment-of-value-added-tax-in-nigeria-new-collection-agents#>> accessed 27 May 2023.

⁸⁸ (Appeal No. CA/L.556/2018).

⁸⁹ O. M. Atoyebi, 'Analysing Online Dispute Resolution of E-Commerce Disputes in Nigeria' (*The Nigeria Lawyers*, 19 August 2022) <<https://thenigerialawyer.com/analysing-online-dispute-resolution-of-e-commerce-disputes-in-nigeria/>> accessed 27 May 2023.

ordered goods which have been supplied are not defective, or that they might be delivered at all.⁹⁰

In light of the foregoing, the ever-increasing presence of e-commerce suggests the possibility of disputes between parties to the transaction, that is, the consumer and the seller, which will necessitate informal settlement or dispute resolution through conservative methods or the use of the online medium.⁹¹

To ensure that all parties involved feel safe participating in e-commerce transactions, it is critical that e-disputes are adequately resolved because uncertainty about the legal framework may discourage both consumers from purchasing products or services over the internet and businesses from entering the digital marketplace.⁹² When the e-dispute is cross-border, the issues get even more complicated. As a result, it has been recognised that Alternative Dispute Resolution (ADR) methods will be a valuable tool in resolving the increasing number of e-disputes.⁹³ In many circumstances, ADR will be significantly more efficient and flexible than traditional conflict resolution approaches, which frequently involve lengthy and costly legal proceedings.⁹⁴

ADR is regulated by the **Arbitration and Conciliation Act (ACA)**, applicable to the whole federation. The Constitution of the Federal Republic of Nigeria 1999 (as amended) also gives constitutional backing to ADR in **Section 19(d)**, which provides for the settlement of international disputes by arbitration, mediation, conciliation, negotiation, and adjudication. In *Mekwunye v. Lotus Capital Ltd & Ors*,⁹⁵ it was held that ADR procedures are generally binding and that the court will allow proceedings to be initiated in violation of an arbitration agreement.⁹⁶

⁹⁰*ibid.*

⁹¹*ibid.*

⁹² Esther van den Heuvel, 'Online Dispute Resolution as a Solution to Cross-Border E-Disputes' (2000) <<https://www.oecd.org/digital/consumer/1878940.pdf>> accessed 27 May 2023.

⁹³*ibid.*

⁹⁴*ibid.*

⁹⁵ (2018) LPELR-45546 (CA).

⁹⁶ Abimbola Akeredolu and Chinedum Umeche, 'Litigation & Dispute Resolution Laws and Regulations Nigeria 2022-2023' (*ICLG*, 10 February 2022) <<https://www.iclg.com/practice->

Arbitration, mediation, conciliation, and negotiation are the conflict resolution techniques available to an aggrieved party. The arbitration and conciliation methods are both governed by the Arbitration and Conciliation Act (ACA) and the Lagos State Arbitration Law at the federal and Lagos State levels respectively. In addition, various Rules of Court have made provisions for ADR proceedings some of which include the National Industrial Court of Nigeria Civil Procedure Rules 2017, Federal Capital Territory (FCT) High Court Civil Procedure Rules, and the High Court of Lagos State (Civil Procedure) Rules 2019.

Flowing from the above, the following are the primary techniques of alternative dispute resolution accessible in Nigeria for resolving disputes:

- a. Arbitration – This is the most common form of ADR in which the parties present their case to a neutral arbitrator for settlement of their dispute. The judgement reached by the arbitrator after examining all evidence is known as an "arbitral award," and it is binding on the parties and enforceable by the courts.⁹⁷ Arbitration is thought to be speedier than court procedures because parties to the former can receive swift dispute resolution at a lesser expense than parties to the latter.
- b. Conciliation - Conciliation, as an alternative dispute resolution process, entails a neutral third party who can offer an opinion or make a suggestion
- c. Mediation – This is a process in which a third-party neutral supports the disputing parties in creating an atmosphere of understanding in order to reach an agreement.⁹⁸ The mediator makes no decision. Instead, he assists the parties in reaching their arrangement.⁹⁹

areas/litigation-and-dispute-resolution-laws-and-regulations/nigeria/amp> accessed 27 May 2023.

⁹⁷ Esther van den Heuvel, 'Online Dispute Resolution as a Solution to Cross-Border E-Disputes' (2000) <<https://www.oecd.org/digital/consumer/1878940.pdf>> accessed 27 May 2023.

⁹⁸ Aura Esther Vilalta, 'ODR and E-Commerce' <<http://www.ombuds.org/odrbook/vilalta.pdf>> accessed 27 May 2023.

⁹⁹ Olusola Jegede and Winifred Idiuru, 'Nigeria: Overview of Alternative Dispute Resolution Process in Nigeria' (*Monday*, 16 February 2021) <<https://www.mondaq.com/nigeria/arbitration--dispute-resolution/1036840/overview-of-alternative-dispute-resolution-process-in-nigeria>> accessed 27 May 2023.

- d. Negotiation – This technique does not necessitate the use of a third party. This could be done directly between the parties or through their representatives. It is a process in which disputing parties get together voluntarily to establish an agreement.

3.8.1 Online Dispute Resolution

This can also be referred to as online conflict resolution using ADR methods.¹⁰⁰ Online Dispute Resolution (ODR) is described as the use of applications and computer networks to resolve conflicts using ADR methodologies. It is the use of technology and ADR to settle disputes. ODR can be used to resolve both e-disagreements and in-person disputes.¹⁰¹

Whereas some countries are unfamiliar with online dispute resolution, others have been using it for some time.¹⁰² Countries such as the United States of America, Canada, Austria, and the Netherlands have implemented ODR in their legal systems.

Some of the unique advantages that ODR provides include the fact that participants in a disagreement do not have to meet face-to-face and that dispute resolution can occur at any time and in any location.¹⁰³ As such, ODR could be a potential answer to the rise in online-based conflicts and the inability of the judiciary to handle such issues promptly.¹⁰⁴ Although ODR has not been extensively explored in Nigeria, attempts have been made to practise online processes to improve access to justice. For example, the Edo State

¹⁰⁰ Esther van den Heuvel, 'Online Dispute Resolution as a Solution to Cross-Border E-Disputes' (2000) <<https://www.oecd.org/digital/consumer/1878940.pdf>> accessed 27 May 2023.

¹⁰¹ *ibid.*

¹⁰² O. M. Atoyebi, 'Analysing Online Dispute Resolution of E-Commerce Disputes in Nigeria' (*The Nigeria Lawyers*, 19 August 2022) <<https://thenigerialawyer.com/analysing-online-dispute-resolution-of-e-commerce-disputes-in-nigeria/>> accessed 27 May 2023.

¹⁰³ E Katsh & J Rifkin, *Online Dispute Resolution: Resolving Conflicts in Cyberspace* (San Francisco, Jossey-Bass 2001) 96.

¹⁰⁴ OM Atoyebi, 'Analysing Online Dispute Resolution of E-Commerce Disputes in Nigeria' (*The Nigeria Lawyers*, 19 August 2022) <<https://thenigerialawyer.com/analysing-online-dispute-resolution-of-e-commerce-disputes-in-nigeria/>> accessed 27 May 2023.

Judiciary educated 100 persons in ODR in 2021 to strengthen the state's commercial dispute settlement and contract enforcement mechanism.¹⁰⁵

Emphasizing the importance of using ODR in justice delivery, ODR will assist in providing timely and impartial resolution of legal disputes while also reducing the workload of judges.¹⁰⁶

3.9 ELECTRONIC PAYMENT

Electronic payments system refers to all payments that are completed utilizing some sort of electronic communications technology with a variety of payments instruments such as debit or credit cards, internet payments, direct debiting of accounts, and the use of mobile phones.¹⁰⁷ It is vital to highlight that e-payment entails more than just the exchange of money between a business and a customer. It also includes transactions between the government and residents, such as levies, fines, and taxes.

Most electronic transactions need electronic payments, and there is no doubt that it is a necessary aspect of e-commerce. Payment and bill collection techniques in Nigeria have dramatically developed in recent years as a result of the emergence of electronic payments and payment-processing platforms.¹⁰⁸ As more businesses in Nigeria use the e-payment system, which allows customers to pay for goods and services without using physical cash, electronic transactions have increased by 40 percent since 2021.¹⁰⁹

Furthermore, data from the Nigeria Inter-Bank Settlement System (NIBSS) revealed that between January and July 2022, transactions totalling N204.5

¹⁰⁵ OM Atoyebi and Paul Nwaokolo, 'Online Dispute Resolution in Nigeria: Trends and Legal Prospects' (*Omaplex*, 20 January 2023) <<https://www.omaplex.com.ng/online-dispute-resolution-in-nigeria-trends-and-legal-prospects/>> accessed 27 May 2023.

¹⁰⁶*ibid.*

¹⁰⁷ Adeniji Kazeem, 'Legal Aspects of E-Payment in Government' *The Guardian* (11 May 2010) <<https://guardian.ng/features/law/legal-aspects-of-e-payment-in-government/>> accessed 27 May 2023.

¹⁰⁸ E. Jikenghan, O. Oyekan and F. Oguche, 'Fintech Laws and Regulations 2022 | Nigeria' (*Global Legal Insights*) <<https://www.globallegalinsights.com/practice-areas/fintech-laws-and-regulations/nigeria>> accessed 27 May 2023.

¹⁰⁹ Chinwe Michael, 'Electronic Transactions in Nigeria hit N20.5trn in 7 months' (*Business Day*, 22 August 2022) <<https://businessday.ng/news/article/electronic-transactions-in-nigeria-hit-n204-5-trn-between-january-and-july-2022/>> accessed 27 May 2023.

trillion were conducted electronically in Nigeria via the NIBSS rapid payment platform (NIP).¹¹⁰

Based on the foregoing, it is critical for a developing country like Nigeria to have a functional legal and regulatory framework for electronic payments to ensure a secure e-payment ecosystem.

3.9.1 The Central Bank of Nigeria

The Central Bank of Nigeria (CBN), is the regulator of Nigeria's monetary and financial sectors, with statutory powers to establish regulations for the administration of the financial market and the promotion of a sound financial system in Nigeria.¹¹¹ So far, various regulations have been issued to that effect. Among these rules are the following: the *CBN's Guidelines on Operations of Electronic Payment Channels in Nigeria* and *Regulation on Electronic Payments and Collections for Public and Private Sectors in Nigeria 2019*.

These regulations contribute to the promotion and facilitation of the development of efficient and effective transaction settlement systems, including the development of electronic payment systems; the availability of safe, effective, and efficient mechanisms for conveniently making and receiving all types of payments from any location and at any time, via multiple electronic channels; and the regulation, among other things, of the use of ATMs, mobile point of sale systems, and mobile payment systems which align with the core objectives of the National Payments System Vision(PSV2020).¹¹²

¹¹⁰*ibid.*

¹¹¹ Banks and Other Financial Institutions Act, s.57 and Central Bank of Nigeria Act 2007, s.32(1).

¹¹²Banwo and Ighodalo, 'Nigeria: New Regulatory Frameworks to Govern Electronic Payments & Collections and Issuance of Bankers Acceptances & Commercial Papers in Nigeria' (*Monday*, 16 October 2019) <<https://www.mondaq.com/nigeria/financial-services/854290/new-regulatory-frameworks-to-govern-electronic-payments--collections-and-issuance-of-bankers-acceptances--commercial-papers-in-nigeria>> accessed 27 May 2023; N Aderibigbe, C Mbakwe & K Anigbogu, 'Digital Business in Nigeria: Overview' (*Thomson Reuters*, 1 June 2021) <<https://uk.practicallaw.thomsonreuters.com/V1/Delivery/Download/>> accessed 26 May 2023.

4.0 LEGAL AND REGULATORY ISSUES CONCERNING E-COMMERCE IN NIGERIA

4.1 Outdated laws

An out-of-date legal and regulatory framework is problematic because it may be irrelevant, have a limited scope, be rigid, and contain unfair regulations. The current social, political, and economic circumstances may not justify the adoption of a legal and regulatory framework that was established many years ago, such as the Sale of Goods Act of 1893. Laws that were beneficial in the past may no longer be helpful now due to changes in society, technology, and beliefs. One example is our current period. When, compared to the Industrial Era many years ago, technology has had a major impact on a wide range of facets of our lives. As a result, laws must be altered, repealed, or enacted to reflect the current reality.

Furthermore, an outdated framework may be unable to meet contemporary technological, behavioural, or environmental advancements. This may result in exploitable legal loopholes or legal ambiguity. It may also be difficult to modify or update, making it less adaptable to new scenarios.

4.2 lack of adequate and centralised legal framework

Another significant challenge for Nigeria's e-commerce business is the absence of proper and coordinated e-commerce legislation. As a result, a regulatory gap exists, placing companies and consumers at risk.

Due to the lack of a centralised e-commerce legal and regulatory framework, a patchwork of legislation has resulted in ambiguity and confusion for e-commerce businesses as well as people and organisations participating in e-commerce transactions.

To remedy this problem, the government must take proactive steps, such as developing comprehensive e-commerce legislation that provides clarity and protection to all parties participating in e-commerce transactions.

4.3 inadequate research

E-commerce is currently one of the primary drivers of economic growth and development in many countries, including Nigeria. Yet, Nigeria's legal and

regulatory framework for e-commerce is still in its early stages, and there has not been enough research done to solve this issue.

Due to the rapid rate of technological change in the e-commerce business, regulators have found it difficult to keep up with new developments and build suitable regulatory frameworks capable of properly overseeing this sector.

One contributing factor is the lack of research on the legal and regulatory frameworks for e-commerce. Further research is needed regarding the specific legal and regulatory challenges that Nigerian e-commerce enterprises face.

Research may assist in identifying flaws in the current legal system and developing effective legislation to protect consumers and companies from fraud, privacy infringement, and regulatory uncertainties.

4.4 Poor Law Enforcement

Despite having a strong legal system, Nigeria has struggled to effectively enforce its laws, resulting in an array of challenges that have lasted for decades.

Corruption is a major contributor to Nigeria's ineffective law enforcement. Corruption is widespread throughout Nigerian society, including the government and law enforcement. As a result, there is a lack of accountability and transparency, and many authorities either actively engage in or turn a blind eye to corrupt behaviour.

Another factor influencing how poorly laws are executed in Nigeria is a lack of resources. The nation's judicial system is understaffed and underfunded, making it difficult to investigate and punish crimes quickly. This is especially true in rural areas where access to justice may be limited.

Laws that are not adequately enforced have a significant impact on Nigeria. Foreign investment might be discouraged, the economy could suffer, and the rule of law could be jeopardised. Human rights violations, as well as social and political upheaval, might also occur.

5.0 CONCLUSION

Several regulations have risen in Nigeria to govern businesses and their activities in order to maintain continued economic prosperity.¹¹³ A careful review of the rules that are intended to control e-commerce, on the other hand, demonstrates that they are insufficient to sustain a quickly developing industry like e-commerce.¹¹⁴ As a result, it is worrisome that internet commercial transactions are taking place inside an inadequate legal framework.¹¹⁵

Nigeria's current system has many severe issues, including confusing legislation, inefficient enforcement mechanisms, and a lack of judges with e-commerce expertise. The Nigerian government, on the other hand, has recently attempted to enhance the legal system through the implementation of rules such as the Nigerian Data Protection Regulation (NDPR). The government and stakeholders must collaborate to address these problems and implement appropriate legislative and regulatory measures to improve trust, security, and consumer confidence in Nigeria's e-commerce industry as it expands.

¹¹³Judith E. Jessah, 'E-Commerce in Nigeria: Liability for Loss or Damage to Goods Supplied by a Seller Pursuant to an Electronic Contract' (2019) 1 IJOCLLEP 105.

¹¹⁴ Wisdom Enang, 'Laws Regulating E-Commerce in Nigeria' (*Proguide*, 11 January 2023) <<https://www.proguide.ng/laws-regulating-e-commerce-nigeria/>> accessed 30 May 2023.

¹¹⁵Olaniwun Ajayi LP, 'Regulating eCommerce in Nigeria' (*Techpoint Africa*, 23 July 2015) <<https://www.techpoint.africa/2015/07/23/regulating-ecommerce-in-nigeria/>> accessed 30 May 2023.