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**AN INTEGRATED FRAMEWORK FOR CONSUMER
ADOPTION OF E-COMMERCE IN NIGERIA: LEGAL
INSIGHTS FROM THE TECHNOLOGY ACCEPTANCE
MODEL**

By

JOY OTI

**A Thesis Submitted in Partial Fulfilment of the Requirements for the
Degree of Doctor of Philosophy in Law**

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TABLE OF CONTENTS

<i>Acknowledgments</i>	<i>vi</i>
<i>Declaration</i>	<i>vii</i>
<i>Abstract</i>	<i>viii</i>
<i>List of Abbreviations</i>	<i>ix</i>
<i>Table of Cases</i>	<i>xiii</i>
<i>Table of Legislation</i>	<i>xvii</i>
<i>List of Tables</i>	<i>xx</i>
<i>List of Figures</i>	<i>xxi</i>

PART 1

CHAPTER ONE: INTRODUCTION	1
1.1 General Background.....	1
1.2 Rationale for Choosing the UK and China	12
1.3 Applicable Legislative Frameworks in Nigeria	16
1.4 Central Research Issues.....	19
1.4.1 Unfair Contract Terms	19
1.4.2 E-Payment Security.....	23
1.4.3 Physical Delivery and Cancellation of Online Purchases	26
1.5 Research Questions	29
1.6 Research Objectives	29
1.7 Approaches to Regulating Consumer E-Commerce	30
1.8 Scope of Research	33
1.9 Research Methodology.....	35
1.10 Significance of Research.....	38
1.11 Research Limitations.....	41
1.12 Structure of Research	44
CHAPTER TWO: BACKGROUND TO CONSUMER E-COMMERCE	47
2.1 Conceptual Framework of E-Commerce	47
2.1.1 Definition of E-Commerce.....	47

2.1.2	Benefits of E-Commerce.....	53
2.1.3	E-Commerce in Nigeria	55
2.2	Need to Protect the Online Consumer.....	61
2.2.1	Rationale for Protection	61
2.2.2	Meaning of a Consumer	67
2.2.2.1	The Nigerian Definition	68
2.2.2.2	The UK Definition	69
2.2.2.3	The Chinese Definition	70
2.2.2.4	Comparative Analysis	71
2.3	The Confident Consumer	73
2.3.1	Meaning of a Confident Consumer	74
2.4	Conclusion	80
CHAPTER THREE: INTEGRATED RESEARCH FRAMEWORK.....		83
3.1	Comparative Law Technique	83
3.1.1	Functionalism and its Relevance to Study	85
3.1.1.1	Limitations of Functionalism	88
3.1.2	Legal Transplant and the Need for ‘Context’	90
3.1.2.1	Limitations of Transplant Literature	97
3.2	Technology Acceptance Model (TAM)	100
3.2.1	Development of TAM.....	101
3.2.2	Application of TAM to other Research Areas	107
3.2.3	Application of TAM to Consumer E-Commerce-related Research.....	109
3.2.3.1	Gaps in TAM-related E-commerce Literature on Nigeria	113
3.2.4	Research Framework: Integrating Law with TAM.....	115
3.2.4.1	Major Constructs and Independent Variable.....	117
3.2.4.2	Legal-related Variables	122
3.2.4.3	Extra-Legal Variables	135
3.2.4.4	Limitations and Practical Contributions of TAM	154
3.3	Conclusion	158

CHAPTER FOUR: BACKGROUND OF LEGISLATIVE FRAMEWORKS161

4.1	Nigeria.....	161
4.1.1	Federal Competition and Consumer Protection Act 2018	162
4.1.2	Sale of Goods Act 1893	171
4.1.2	Electronic Transaction Bill 2017	174
4.2	The UK.....	180
4.2.1	Consumer Rights Act 2015	181
4.3	China	190
4.3.1	Consumer Protection Law 2013.....	190
4.3.2	E-Commerce Law 2018	198
4.4	Comparative Analysis of Legislative Frameworks	204
4.5	Conclusion	213

PART 2

CHAPTER FIVE: UNFAIR CONTRACT TERMS.....216

5.1	Rationale for Regulating Unfair Terms in Online Consumer Contracts.....	218
5.2	The Nigerian Perspective	220
5.2.1.	Jumia’s General Terms and Conditions of Use for Buyers.....	229
5.3	The UK Perspective	232
5.4	China Perspective.....	244
5.5	Application to TAM.....	249
5.6	Comparative Analysis	252
5.7	Conclusion	258

CHAPTER SIX: E-PAYMENT SECURITY261

6.1	The Nigerian Perspective	262
6.2	The UK Perspective	270
6.3	China Perspective.....	276
6.4	Application to TAM.....	280
6.5	Comparative Analysis	285

6.6	Conclusion	290
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CHAPTER SEVEN: PHYSICAL DELIVERY AND CANCELLATION OF ONLINE PURCHASES.....294

7.1	The Nigerian Perspective	295
7.1.1	Delivery Risk of Loss	295
7.1.2	Cancellation of Online Purchases	299
	7.1.2.1 Background and Relevance of Withdrawal/Cancellation Rights	300
7.2	The UK Perspective	303
7.2.1	Delivery Risk of Loss	303
7.2.2	Withdrawal and Cancellation Rights	305
7.3	China Perspective.....	310
7.3.1	Delivery Risk of Loss	310
7.2.2	Withdrawal and Cancellation Rights	312
7.4	Application to TAM.....	317
7.5	Comparative Analysis	324
7.6	Conclusion	331

PART 3

CHAPTER EIGHT: CONCLUSION.....335

8.1	Introduction	335
8.2	Approach to Research	335
8.3	Research Summary.....	336
8.4	Answer to Research Questions.....	340
8.5	Achievement of Research Objectives	345
8.6	Major Research Findings	349
8.7	Research Recommendations	352
8.7.1	Legal Response	352
8.7.2	Extra-Legal Response	355
8.8	Research Contributions	356
8.8.1	Theoretical Contribution	357

8.8.2	Practical Contribution	358
8.9	Concluding Remarks	359
1.10	Future Research Direction.....	360
BIBLIOGRAPHY		362

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DECLARATION

I declare that this thesis is my original work. It is submitted to the University of Warwick as a requirement for the award of a degree of Doctor of Philosophy in Law. I further confirm that this thesis has not been submitted for a degree at another university.

ABSTRACT

The level of consumer e-commerce adoption in Nigeria remains low due to overwhelming preference for offline transactions. A common reason for this preference is the uncertain nature of e-commerce, which creates risk perceptions that negatively impact on consumer confidence in the online marketplace. This research aims to improve consumer confidence in Nigerian e-commerce by proffering pragmatic measures that have the potential to minimise the impact of perceived risks factors, using law as a tool. It also seeks to explore the contributory influence of extra-legal factors inextricably bound to the context of laws.

Unfair contract terms, e-payment security and issues associated with the physical delivery and cancellation of online purchases, are identified as the central research problems which create risk perceptions. This research argues that existing laws which purport to control these three issues are inadequate, especially, since Nigeria has no law that expressly protects the online consumer. To address these issues, a comparative and doctrinal approach is followed when clarifying the scope of existing rules, filling identified gaps and formulating bespoke policies for Nigeria using the UK and Chinese laws as models.

To ensure that effective laws are formulated, there is need to understand consumer online purchasing behaviour using empirically tested frameworks specifically designed for users of information systems. This thesis develops a unique research framework derived from the TAM to help rationalise the effect of laws on consumer online purchasing behaviour. Here, ‘awareness’, ‘trust in online merchants’ and ‘perceived risks’ are employed as legal-related variables, while ‘facilitating conditions’ and ‘culture’ are used as extra-legal variables that depict the socio-economic and cultural contexts of subject jurisdictions.

Using existing empirical reports, this research finds that although Nigerian consumers generally perceive e-commerce as useful and view online shopping as easy, transactions are often not completed due to the negative influence of facilitating conditions and culture on their behavioural intention. A majority do not trust online merchants while the few who are aware of laws perceive it as generally ineffective. However, when compared to the UK and China, the results positively vary. This research, thus, concludes by proposing adequate policy responses specifically designed to suit Nigeria’s unique context, drawing on lessons from the TAM findings and the UK and Chinese legal regimes.

LIST OF ABBREVIATIONS

ATT	Attitude
BEIS	Business, Energy and Industrial Strategy
B2B	Business-to-Business
B2C	Business-to-Consumer
BI	Behavioural Intention
C2B	Consumer-to-Business
C2C	Consumer-to-Consumer
CAB	Citizens Advice Bureau
CAC	Cyberspace Administration of China
CBN	Central Bank of Nigeria
CC	Civil Code
CCA	China Consumer Association
CCB	Consumer Contract Bill
CCPT	Competition and Consumer Protection Tribunal
CCR	Consumer Contract Regulation
CEL	China E-commerce Law
CJEU	Court of Justice of the European Union
CMA	Competition and Markets Authority
CMSI	Computer-based Media Support Index

COD	Cash On Delivery
CPC	Consumer Protection Council
CPL	Consumer Protection Law of the Peoples Republic of China
CRA	Consumer Rights Act
CRR	Consumer Rights Regulations
EC	European Commission
ECOSOC	Economic and Social Council
ECR	Electronic Commerce Regulation
ESL	Electronic Signature Law
ETA	Electronic Transaction Act
EUWA	European Union Withdrawal Act
FCA	Financial Conduct Authority
FCCPA	Federal Competition and Consumer Protection Act
FCCPC	Federal Competition and Consumer Protection Commission
GSM	Global System for Mobile Communication
ICT	Information and Communication Technology
ISS	Information Society Services
IT	Information Technology
NBS	National Bureau of Statistics
NCC	Nigerian Communications Commission

NGO	Non-Governmental Organisation
NPC	National People's Congress
NTSB	National Trading Standards Board
O2O	Online-to-Offline
OECD	Organisation for Economic Co-operation and Development
OFCOM	Office of Communications
PBC	Perceived Behavioural Control
PBOC	Peoples Bank of China
PEOU	Perceived Ease of Use
PIN	Personal Identification Number
POS	Point Of Sale
PSD	Payment Services Directive
PSR	Payment Services Regulation
PU	Perceived Usefulness
SAIC	State Administration for Industry and Commerce
SMEs	Small Medium Enterprises
SOGA	Sale of Goods Act
TAM	Technology Acceptance Model
UCTA	Unfair Contract Terms Act
UCTD	Unfair Contract Terms Directive

UNGCP	United Nations Guidelines on Consumer Protection
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UTCCR	Unfair Terms in Consumer Contracts Regulations

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LIST OF TABLES

Table 1: Meaning of a Consumer in Nigeria, the UK and China	72
Table 2: Result of Hypotheses	152
Table 3: Differences and Similarities in Background of Legal Frameworks.....	210
Table 4: The Unfair Term Provisions of Nigeria, the UK and China	256
Table 5: Security and Liability Provisions of E-payment Laws in Nigeria, the UK and China.....	288
Table 6: Delivery and Cancellation rules of Nigeria, the UK and China.....	328
Table 7: Summary of Research Findings.....	350

LIST OF FIGURES

Figure 1: Challenges Associated with Electronic Transactions in Nigeria	5
Figure 2: Technology Acceptance Model	8
Figure 3: Modified TAM Framework	11
Figure 4: Revenue for Largest B2C E-Commerce Markets (billion USD).....	12
Figure 5: Consumer E-Commerce Spending in Nigeria (2020)	34
Figure 6: Internet Penetration Rate in Africa’s Most Populous Countries	57
Figure 7: Share of Total Retail Sales in Select African Countries in 2020.....	57
Figure 8: Nigeria’s B2C E-Commerce Readiness (2016-2020).....	59
Figure 9: Annual Growth Rate of Consumer E-Commerce Sales in Nigeria.....	60
Figure 10: Original Technology Acceptance Model (TAM).....	103
Figure 11: Extended Technology Acceptance Model (TAM 2).....	105
Figure 12: Conceptual Framework for Research	116
Figure 13: Hofstede’s Cross-Cultural Index.....	147

PART 1

CHAPTER ONE

INTRODUCTION

1.1 General Background

E-commerce is projected to be a key driver of economic growth in Nigeria.¹ An awareness of its benefits is also facilitated by the government through the Nigerian Information Technology Development Agency (NITDA).² Nevertheless, when compared to other developing economies,³ e-commerce remains at a rudimentary stage, mostly due to its lower rate of adoption.⁴ Interestingly, the growth of Nigerian e-commerce sector is largely dependent on revenue from B2C sales,⁵ although only 38% of the consumption population engage in e-commerce.⁶ To this end, it is necessary to identify and proffer possible solutions to factors that hinder greater adoption of e-commerce by consumers in Nigeria.

Adoption refers to the continuous engagement with or use of a product, service or idea.⁷ According to Milind, before consumers engage with a product, service or idea, they

¹ World Bank, 'Nigeria Digital Economy Diagnostic Report' (*The World Bank Group*, 2019) 2, 8 <<http://documents1.worldbank.org/curated/en/387871574812599817/pdf/Nigeria-Digital-Economy-Diagnostic-Report.pdf>> accessed 2 May 2021.

² The NITDA is a Nigerian government agency established to plan, develop, and promote the wide and consistent adoption of ICT in Nigeria. For more, see Roland Akindele, 'Data Protection in Nigeria: Addressing the Multifarious Challenges of a Deficient Legal System' (2020) 26(4) *Journal of International Technology and Information Management* 110, 114.

³ For instance, the percentage of consumers who make online purchases in South Africa, Egypt and China are higher than those in Nigeria. For African countries, see Statista, 'E-commerce Retail as Share of Total Retail in Select African Countries in 2020' (*Statista*, October 2020) <<https://www.statista.com/statistics/1176023/e-commerce-retail-as-share-of-total-retail-in-africa/>> accessed 1 May 2020.

⁴ Chioma S Ezennia and Mudaray Marimuthu, 'Factors that Positively Influence E-commerce Adoption Among Professionals in Surulere, Lagos, Nigeria' (2020) *African Journal of Science, Technology, Innovation and Development* <<https://doi.org/10.1080/20421338.2020.1840051>> accessed 20 April 2021.

⁵ This is because the Nigerian e-commerce sector is currently valued at 12 billion USD, with over 6 million USD linked to B2C e-commerce transactions. See Georges Desvaux, 'How E-Commerce Supports African Business Growth' (*McKinsey & Company*, 2019) <<https://www.mckinsey.com/featured-insights/middle-east-and-africa/how-ecommerce-supports-african-business-growth>> accessed 3 March 2020.

⁶ Chinyere E Iluno and Asmau J Yakubu, 'The Impact of E-Commerce on Customer Satisfaction: A Case Study of Kaduna State Metropolis in Nigeria' (2017) 5(3) *International Journal of Advanced Studies in Economics and Public Sector Management* 11, 12.

⁷ Rahmath Safeena *et al*, 'Technology Adoption and Indian Consumers: Study on Mobile Banking' (2012) 4(6) *International Journal of Computer Theory and Engineering* 1020, 1021.

undergo “a process of knowledge, persuasion, decision and confirmation.”⁸ Thus, their rejection or adoption commences when the consumer is made aware of their existence.⁹ E-commerce adoption, thus, generally requires exchange relationships with online merchants through their websites, typically commencing with the process of information retrieval to information transfer, and finally, to the purchase of product or service from the merchant.¹⁰ This presupposes that the consumer first needs to form an intention to transact before the actual completion of the online transaction or e-commerce process.

In terms of adoption, Nigerian consumers, regrettably exhibit an overwhelming preference for offline transactions due to their foremost need to physically examine goods and confirm their quality before any final purchasing decision is made.¹¹ Even where an online store with a physical presence exist, most walk-in customers admit to assessing an item online before going into the physical store to examine and pay for the product.¹² A common reason expressed by most consumers for this preference for traditional shopping is the lack of trust and confidence in the online marketplace.¹³ To improve trust, some commentators suggest that consumers should be shielded from transactional risks associated with e-commerce through consumer protection policies.¹⁴ To this end, this research explores the problem of e-commerce adoption in Nigeria from a legal perspective. More specifically, the adequacy of existing laws is assessed with a view to

⁸ Milind Sathye, ‘Adoption of Internet Banking by Australian Consumers: An Empirical Investigation’ (1999) 17(7) *International Journal of Bank Marketing* 324.

⁹ Rahmath Safeena *et al* (n 7).

¹⁰ Said Al-Gahtani, ‘Modeling the Electronic Transactions Acceptance Using an Extended Technology Acceptance Model’ (2011) 9(2) *Applied Computing and Informatics* 47, 56.

¹¹ Gideon Ayaogu, ‘Why E-Commerce Remains Largely Traditional in Nigeria’ (*BusinessDay Newspaper*, 12 April 2017) <<https://businessday.ng/analysis/article/e-commerce-remains-largely-traditional-nigeria/>> accessed 2 May 2021.

¹² *Ibid.*

¹³ Habib U Khan and Stellamaris Uwemi, ‘Possible Impact of E-commerce Strategies on the Utilisation of E-commerce in Nigeria’ (2018) 15(2) *International Journal of Business Innovation and Research* 231, 234.

¹⁴ Timothy I Akomolede and Michael S Afolayan, ‘Socio-Legal Analysis of Electronic Commercial Transactions in Nigeria’ (2020) 11 *NAU Journal of International Law & Jurisprudence* 20, 22; Ihuoma K Ilobinso, ‘Paving the Path to an Enhanced Consumer Protection for the Nigerian Online Market: Theories and Concepts’ (2017) *Nnamdi Azikiwe University Journal of International Law & Jurisprudence* 81; Muhammad Nuruddeen, ‘Legal Issues in Electronic Commerce: Challenges and Prospects for Nigeria’ (2014) *Abuja Journal of Private and Comparative Law* 164.

ensuring that its substantive provisions are enough to boost consumer trust and confidence in e-commerce.

Olson and Olson describe consumer e-commerce as an online activity which requires consumers to purchase products and services through internet-related IT systems like websites.¹⁵ The African Union Convention on Cyber Security and Personal Data Protection¹⁶ defines e-commerce as the “act of offering, buying, or providing goods and services through computer systems and telecommunications networks such as the internet, or any other network using electronic, optical or similar media for distance information exchange.”¹⁷ For the purposes of this research and for consistency in the use of terms, ‘e-commerce websites’ is used in this research to refer broadly to all internet-connected or networked systems media through which e-commerce transactions are initiated. They include online platforms, mobile applications, and related networked information system.

To complete an e-commerce transaction, a consumer usually takes four actions namely, searching for a product on an e-commerce website, exploring payment options, placing an order, and anticipating delivery within a scheduled timeframe. In most cases, consumers are uncertain about executing these actions as initially planned since their ability to complete the actions are not entirely within their control. Such uncertainty, therefore, raises consumer perception of risks associated with the other party’s (online merchant) ability to complete his own part of the bargain.

In the light of the foregoing, ‘perceived risk’ is said to be a major influencing factor that limits consumer trust and confidence in e-commerce transactions.¹⁸ Risk perception is

¹⁵ Judith S Olson and Gary M Olson, ‘i2i Trust in E-commerce’ (2000) 43(12) Communications of the ACM 41.

¹⁶ The Convention was adopted by the African Union (AU) Parliament in 2014. As of April 2021, it has 14 signatories and 7 ratifications, out of 55 AU member-states. Nigeria has neither signed nor ratified the Convention. That notwithstanding, the Convention is yet to come into force as it requires ratification by at least 15 member states. For more, see Yarik Turianskyi, ‘Africa and Europe: Cyber Governance Lessons’ (*Policy Insights*, January 2020) <<https://media.africaportal.org/documents/Policy-Insights-77-turianskyi.pdf>> accessed 30 April 2021.

¹⁷ Ibid, Article 1.

¹⁸ Suraju A Aminu, Olusegun P Olawore and Adesina E Odesanya, ‘Perceived Risk Barriers to Internet Shopping’ (2019) 5(2) KIU Journal of Social Sciences 69-81; Suraju A Aminu, ‘Challenges Militating

heightened in Nigeria due to the country's notoriety for fraudulent-related commercial activities,¹⁹ the general security concerns around the use of IT systems in effecting e-payments,²⁰ and the unsavoury experiences associated with the physical delivery²¹ and return of online purchases.²² The risk associated with physical delivery can be linked the common occurrence of delayed delivery or transit damage and loss. These delivery issues are in some situations, worsened by the dysfunctional road and rail networks, congested ports, and inefficient logistic management system obtainable in the country.²³ Even in such situations, the process of requesting for refunds can be so frustrating either due to non-traceability of the online merchant or the merchant's drafting of strict or onerous contractual delivery and return policies.²⁴

Aside the foregoing risks perceptions, electronic transactions are generally constrained by several risk factors. For instance, in a recent study investigating the possible issues

against Adoption of Online Shopping in Retail Industry in Nigeria' (2013) 1(1) *Journal of Marketing Management* 23-33; Hussaini Mamman, Mustapha Maidawa, and Mohammed Saleh, 'Effects of Perceived Risk on Online Shopping' (Proceedings of the 1st Management, Technology, and Development Conference 2015) 318-323; Habib U Khan and Stellamaris Uwemi, (n 13) 459-60.

¹⁹ Abimbola O Salu, 'Online Crimes and Advance Fee Fraud in Nigeria- Are Available Legal Remedies Adequate?' (2005) 8(2) *Journal of Money Laundering Control* 159; S A Owolabi, 'Fraud and Fraudulent Practices in Nigeria Banking Industry' (2010) 4(3) *African Research Review* 241, 249-251.

²⁰ Safari Kasiyanto, 'Security Issues of New Innovative Payments And their Regulatory Challenges' in G Gimigliano (ed) *Bitcoin and Mobile Payments. Palgrave Studies in Financial Services Technology* (Palgrave Macmillan 2016) 146; P O Adebayo, G E Osanyilusi and A O Adekeye, 'Impact Of E-Payment System on Buying Behaviour: Evidence from Retail Outlets in Ilorin Metropolis, Nigeria' (2017) 9(2) *International Journal of Research in Arts and Social Sciences* 137.

²¹ John Olotewo, 'Examining the Antecedents of In-Store and Online Purchasing Behaviour: A Case of Nigeria' (2017) 20(17) *Journal of Marketing Research and Case Studies* 1; Gladson Nwokah, 'Online Shopping Experience and Customer Satisfaction in Nigeria' (2017) 7(22) *Journal of Marketing Research and Case Studies* 1, 2-3; Terry L Esper *et al*, 'The Last Mile: An Examination Of Effects Of Online Retail Delivery Strategies On Consumers' (2003) 24(2) *Journal of Business Logistics* 177, 177-200.

²² Chioma S Ezennia and Mudaray Marimuthu, 'Factors that Positively Influence E-commerce Adoption among Professionals in Surulere, Lagos, Nigeria' (2020) *African Journal of Science, Technology, Innovation and Development* 1, 4; E Iluno and J Yakubu, 'The Impact of eCommerce on Customer Satisfaction: A Case Study of Kaduna State Metropolis in Nigeria' (2017) 5(3) *International Journal of Advanced Studies in Economics and Public Sector Management* 7, 11-18.

²³ Bashiru A Bello, Ifelara A Rotimi and Boluwatife O. Omoniyi, 'The Logistics Strategy and the Growth of E-Commerce in Nigeria' (2019) 20(1) *The Pacific Journal of Science and Technology* 214, 216; Philips Consulting, 'The 2016 Online Shopping Survey' <https://phillipsconsulting.net/reports_post/the-2016-online-shopping-surv/> accessed 2 May 2021.

²⁴ Gideon Ayaogu (n 11). Strict delivery and return policies may require a consumer to notify the online merchant of any damage to parcel at the point of delivery or 24 hours after delivery. It could also require a consumer to complete returns of product within 3 days. In worst case scenario, online merchants may have a strict non-refundable policy.

associated with online transaction in Nigeria, ‘fraud’ is identified as a major disabler of such transactions.²⁵ This is followed by the absence of a legal framework that specifically regulates online transactions in Nigeria. The summary of the findings is depicted below.²⁶

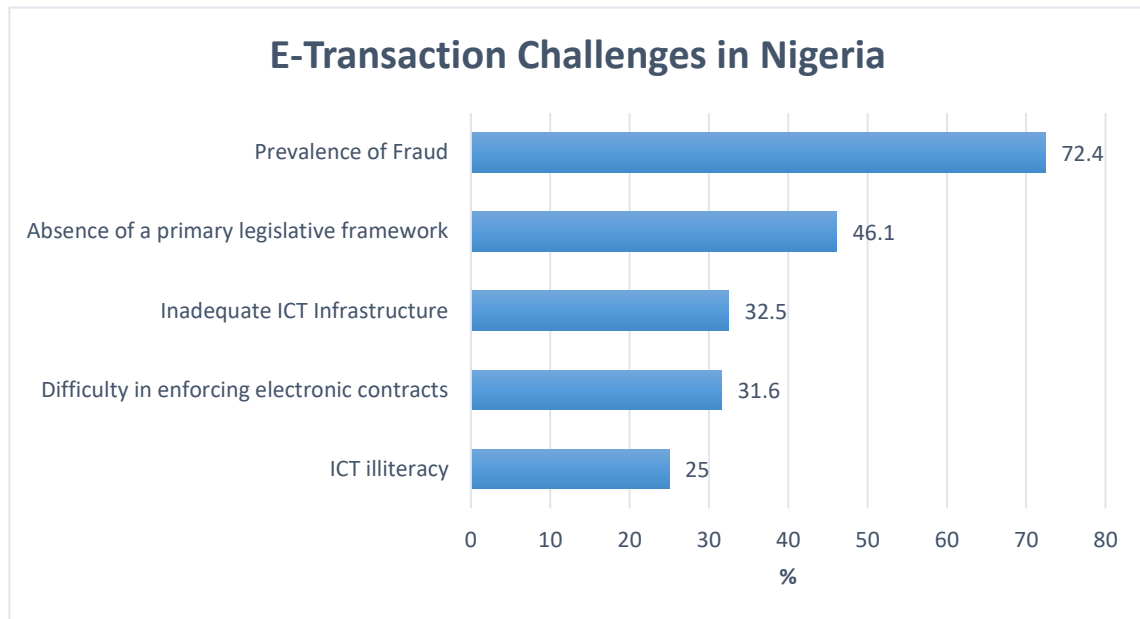


Figure 1: Challenges Associated with Electronic Transactions in Nigeria.²⁷

The chart above complements the common view held by academics that legal, socio-economic, cultural and cognitive factors can inhibit greater adoption of e-commerce in Nigeria.²⁸ As evident from figure 1 above, legal issues may relate to the existence of laws that can sufficiently regulate electronic transactions broadly speaking. Socio-economic factors may be associated with the economic system of government in place, level of consumer disposable income and the availability or ease of access to infrastructural

²⁵ Paul A Aidonjio, Odojor O Anne and Odetokun O Oladele, ‘An Empirical Study of the Relevance and Legal Challenges to E-Contracts in Nigeria’ (2020) 12(3) Cogito Multidisciplinary Research Journal 170, 187.

²⁶ In conducting this study, simple random sampling technique was employed in selecting 406 respondents from various states in Nigeria.

²⁷ Ibid.

²⁸ Habib U Khan and Stellamaris Uwemi (n 13) 458-460; M Agwu and J Murray, ‘Drivers and Inhibitors to e-Commerce Adoption among SMEs in Nigeria’ (2014) 5(3) Journal of Emerging Trends in Computing and Information Sciences 192–199.

facilities, especially by low-income earners and rural dwellers.²⁹ Socio-cultural issues may relate to citizens' nationalistic belief system or common traditional trade practices/beliefs, whether positive or negative, typically associated with a specific group of people. Finally, cognitive factors may consider the level of ICT use, the awareness of their benefits and the level ICT literacy in the country.

This research acknowledges that each of these factors, where adverse in context, need to be addressed to encourage greater adoption of e-commerce in the country. However, as stated earlier, this study focuses on the legal factors, specifically on how perceived risk factors derived from select legal issues can be addressed to enhance consumer confidence in e-commerce transactions. Without such confidence, it is logically expected that consumers will less likely be willing to make online purchases.

On the legal factors, the issues central to this thesis relate to the need to protect consumers from unfair contract terms, the necessity to guarantee e-payment transaction security, the need to address problems associated with the delivery risk of loss and the need to ensure that due to unexplained reasons, consumers can cancel their online purchases after delivery without incurring additional liability.

A possible approach to mitigating the adverse impact of these issues on consumers could be to examine how other thriving e-commerce markets control these issues from a legal perspective and assess their consumption populations' likely reaction or receptivity to the legal controls when making online purchasing decisions. The aim is to confirm that some consumers are to a certain extent, aware of such legal controls and as a result, are favourably influenced by them when making online purchasing decisions. This would, therefore, require the integration of comparative law theories (such as functionalism and legal transplant) to a practical framework (such as the Technology Acceptance Model) which gauges behavioural responses to e-commerce. Put differently, the behavioural responses to the likely use of networked information systems in making online purchases

²⁹ E Ibam., O Boyinbode, and M Afolabi, 'ECommerce in Africa: The Case of Nigeria' (*European Digital Library* 2018) <<https://eudl.eu/doi/10.4108/eai.5-1-2018.153536>> 3 May 2021.

can be ascertained from a legal perspective where existing legal controls (laws) are confirmed to have positively impacted on an informed consumer's behavioural intention to make such purchases within the thriving markets.

The United Kingdom (UK) and China are chosen in this research as examples of economies with thriving e-commerce markets.³⁰ Their laws which purport to regulate the issues associated with the fairness of contract terms, e-payment security, and physical delivery and cancellation of online purchases, are compared to those of Nigeria with a view to identifying any gaps, inconsistencies or ambiguities that may exist within Nigerian laws. Such comparison also reveals the adequacy or otherwise of those laws when adapted to an online context. Thereafter, a research framework derived from the Technology Acceptance Model (TAM) is built to ascertain the possible impact of such laws on informed consumers. The underlying influence of laws is determined judging by consumer's behaviour to TAM's empirically tested and validated variables, confirmed by researchers as capable of predicting the likelihood that a consumer would accept or reject using an information system to complete specific tasks;³¹ which task in this context, is making online purchases.

As with most online activities which make use of information systems, e-commerce adoption can be explained using the TAM. While TAM was originally developed to explain and predict information system usage and adoption in work environments, several studies have applied it to e-commerce adoption research to understand user behaviour towards e-commerce.³² Predicting consumer behavioural intention to make online

³⁰ On the reasons for choosing both economies, see section 1.2 of this chapter.

³¹ Caroline L Miltgen, Ales Popovič and Tiago Oliveira, 'Determinants of End-user Acceptance of Biometrics: Integrating the "Big 3" of Technology Acceptance with Privacy Context' (2013) 56 *Decision Support Systems* 103-114; P C Lai, 'The Literature Review of Technology Adoption Models and Theories for The Novelty Technology' (2017) 14(1) *Journal of Information Systems and Technology Management* 21; Ali Tarhini *et al*, 'A Critical Review of Theories and Models of Technology Adoption and Acceptance in Information System Research' (2015) 6(4) *International Journal of Technology Diffusion* 58.

³² David Gefen, Elena Karahanna and Detmar W Straub, 'Trust and TAM in Online Shopping: An Integrated Model' (2003) 27(1) 51-90; Frederick F Reichheld and Phil Scheffer, 'E-Loyalty: Your Secret Weapon on the Web' (2000) 78(4) *Harvard Business Review* 105-113; Paul A Pavlou, 'Consumer Acceptance of Electronic Commerce: Integrating Trust and Risk with The Technology Acceptance Model' (2003) 7(3) *International Journal of Electronic Commerce* 101; Sarah Malone, 'What is Preventing E-Commerce from

purchases considers the impact of key TAM constructs which hypothesise that ‘perceived usefulness’ and ‘perceived ease of use’ determine ‘behavioural intention’, which intention is a key determinant of ‘actual system use’.³³

Perceived usefulness refers to the extent to which a person believes that using a particular information system to complete specific tasks will enhance the performance of such tasks or yield expected utility.³⁴ On the other hand, perceived ease of use describes the extent to which an individual believes that using an information system will be free from effort.³⁵ When adapted to e-commerce adoption research, TAM theorises that if an individual perceives e-commerce to be useful, whilst also perceiving making online purchases to be an effortless activity, then such individual will be more inclined to actually engage in e-commerce transactions since the individual will tend to exhibit a favourable attitude and behavioural intention towards using information systems to complete the task of making online purchases.³⁶ TAM is aptly depicted in figure 2 below.

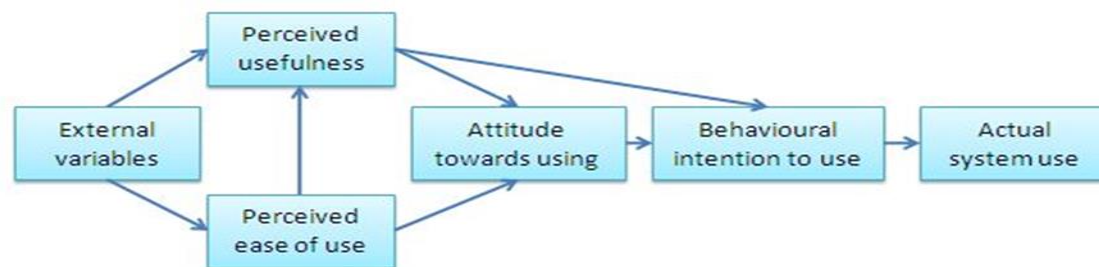


Figure 2: Technology Acceptance Model³⁷

Reaching its Full Potential: An Investigation into Trust as a Barrier for the Adoption of B2C E-commerce in the United Kingdom' (PhD Thesis, Loughborough University 2008); Charles K Ayo, J O Adewoye and Aderonke A Oni, 'Business-To-Consumer E-Commerce In Nigeria: Prospects And Challenges' (2011) 5(13) African Journal of Business Management 5109.

³³ Fred Davis, 'Perceived Usefulness, Perceived Ease of Use, And User Acceptance of Information Technology' (1989) 13(3) Management Information Systems Quarterly 319.

³⁴ Richard Chinomona, 'The Influence of Perceived Ease of Use and Perceived Usefulness on Trust and Intention to Use Mobile Social Software' (2013) 19(2) African Journal for Physical Health Education, Recreation and Dance 258, 261.

³⁵ Dennis A Adams, R Ryan Nelson and Peter A Todd, 'Perceived Usefulness, Ease of Use, And Usage of Information Technology: A Replication' (1992) 16(2) Management Information System Quarterly 227, 229.

³⁶ Rima Fayad and David Paper, 'The Technology Acceptance Model E-Commerce Extension: A Conceptual Framework' (2015) 26 Procedia Economics and Finance 1000.

³⁷ Fred Davis (n 33).

From figure 2 above, one can see that these TAM constructs are not entirely independent. Their impact on a user of an information system can be moderated by the influence of external variables.³⁸ Several empirical studies have modified and extended the TAM from its original form, and adapted the model to their respective technology-related enquiries.³⁹ This was done by oftentimes, introducing new variables, testing these variables for validity and confirming their reliability for predicting the likelihood that a user will be positively influenced to adopt e-commerce in the future, based on the impact of the tested external variables.⁴⁰ These external variables were tested against their causal relationship with user perceived usefulness, perceived ease of use, attitude and behavioural intention to use, before being confirmed as influencing factors for system usage, which in the context of this research, is e-commerce usage (adoption). Some of these variables include, but are not limited to awareness,⁴¹ trust,⁴² perceived risks,⁴³ subjective norms,⁴⁴ culture,⁴⁵

³⁸ Viswanath Venkatesh and Fred D Davis, 'A Theoretical Extension of The Technology Acceptance Model: Four Longitudinal Field Studies' (2000) 46(2) *Management Science* s186; P Legrisa, J Inghamb and P Collette, 'Why do People Use Information Technology? A Critical Review of the Technology Acceptance Model' (2003) 40 *Information and Management* 191; Viswanath Venkatesh and Bala Hillol, 'Technology Acceptance Model 3 and a Research Agenda on Interventions' (2008) 39(2) *Decision Sciences* 273.

³⁹ Aron O'Cass and Tino Fenech, 'Web Retailing Adoption: Exploring The Nature Of Internet Users Web Retailing Behaviour' (2003) 10(2) *Journal of Retailing and Consumer Services* 81; Nazire B Hamutoglu, 'Acceptance and Use of Cloud Computing Systems in Higher Education: An Application of TAM 3 within the Sociocultural Context of Educational Institutions' (2020) 8(4) *Malaysian Online Journal of Educational Technology* 1-22; Oladotun O Okediran, Wajeed B Wahab and Mayowa O Oyediran, 'Factors Determining the Intention to Use Electronic Health Records: An Extension of the Technology Acceptance Model' (2020) 26(7) *Journal of Scientific Research and Reports*, 119-133; Lemohang Molobi, Sajal Kabiraj and Nur Alam Siddik, 'Behavioural Intention Factors Influencing Sharing Economy Innovations: An Exploratory Research of Uber in South Africa' (2020) 19(1) *Journal of Management Research* 42-58.

⁴⁰ Ibid.

⁴¹ Fahad Harby, Rami Qahwajim, and Mumtaz Kamala, 'Towards an Understanding of User Acceptance to Use Biometrics Authentication Systems in E-commerce: Using an Extension of the Technology Acceptance Model' (2010) 6(3) *International Journal of E-Business Research* 34-55.

⁴² Kwasi Amoako-Gyampah and A F Salam, 'An Extension of the Technology Acceptance Model in an ERP Implementation Environment' (2004) 41 *Information & Management* 731-745.

⁴³ Y Chen *et al*, 'Examining the Effects of Decomposed Perceived Risk on Consumer's Online Shopping Behaviour: A Field Study in China' (2015) 26(3) *Engineering Economics* 315-326.

⁴⁴ Xinwen Zhang, Xue Zhou and Esin Yoruk, 'Health Self-Monitoring Devices Adoption in China: A Modified Model Theory of Technology Acceptance Model,' (Paper Presented at BAM Conference in the Cloud 2020, Manchester United United Kingdom, 2020).

⁴⁵ Abdul Ashraf, Narongsak Thongpapanl, and Seigyoung Auh, 'The Application of the Technology Acceptance Model under Different Cultural Contexts: The Case of Online Shopping Adoption' (2014) 22(3) *Journal of International Marketing* 68-93.

computer self-efficacy,⁴⁶ and socio-economic variables like cost⁴⁷ and facilitating conditions.⁴⁸

This thesis modifies the TAM by focusing on the legal-related factors, although, also considering the possible influence of extra-legal or contextual factors. The underlying influence of extra-legal factors are considered because as one can infer from the discussion around figure 1 above, lack of sufficient legislative framework is only a contributory inhibitive factor to e-commerce adoption, not the sole factor. In addition, comparative law theory of legal transplants suggests that law is either loosely or tightly bound by its contexts, which contexts are said to make the law more effective in fulfilling its functions or policy objectives.⁴⁹ Thus, extra-legal factors (like economic system and culture) will also be considered when exploring adequate responses that could promote consumer adoption of e-commerce in Nigeria.

Drawing on the findings from existing TAM literature, ‘trust in online merchants’, ‘perceived risks’ and ‘awareness’ are chosen as influencing variables and are discussed in relation to the impact of laws on these variables. As will be clarified in section 3.2 of chapter three, these variables are chosen since on further analysis, they have a direct or indirect causal relationship with the law. With regards to the extra-legal context, the influence of socio-economic factors on e-commerce adoption is captured using ‘facilitating conditions’ as an external variable, while the influence of socio-cultural factor is depicted through ‘culture.’ The research framework derived from the extended TAM and developed to guide the conduct of this research is aptly captured in figure 3 below.

⁴⁶ Randall J Boyle and Cynthia P Ruppel, ‘The Effects of Personal Innovativeness, Perceived Risk and Computer Self-efficacy on Online Purchasing Intent’ (2006) 15(2) *Journal of International Technology and Information Management* 5.

⁴⁷ Jen-Her Wu and Shu-Ching Wang, ‘What Drives Mobile Commerce? An Empirical Evaluation of the Revised Technology Acceptance Model’ (2005) 42(5) *Information & Management* 719-729.

⁴⁸ James Jiang *et al.*, ‘E-Commerce User Behaviour Model: An Empirical Study’ (2000) 19(4) *Human Systems Management* 265-276.

⁴⁹ Gunther Teubner, ‘Legal Irritants: Good Faith in British Law or How Unifying Law Ends up in New Divergences’ (1998) 61(1) *Modern Law Review* 11, 18; Linda Hantrais, ‘Contextualization in Cross-national Comparative Research’ (1999) 2(2) *International Journal of Social Research Methodology* 93, 101-2; David Nelken, ‘Using the Concept of Legal Culture’ (2004) 29 *Australian Journal of Legal Philosophy* 1, 5-6.

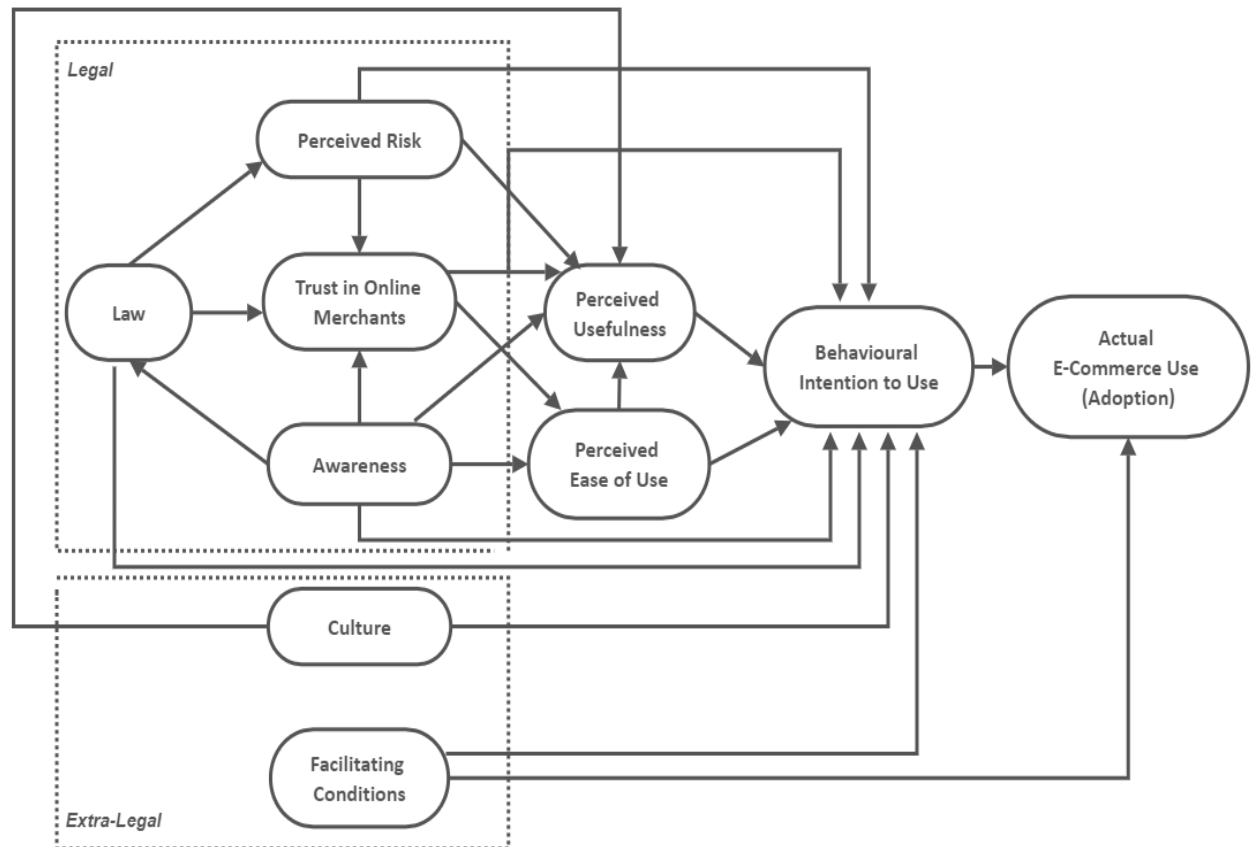


Figure 3: Modified TAM Framework⁵⁰

The objective of following an interdisciplinary approach in this research is to demonstrate that laws can directly or indirectly impact on consumer perceived usefulness, perceived ease of use, behavioural intention to use and actual e-commerce use (adoption). The relevance of developing a modified framework based on the extended TAM lies in the fact that the research recommendations, which derive from the framework, can provide legislators with more insight into factors which ought to be deliberated upon and considered either when drafting new consumer e-commerce related policies, updating existing laws or borrowing rules from other jurisdictions; bearing in mind that such factors are already validated by previous TAM studies as having a significant impact on e-commerce adoption. In addition, this framework can help online merchants understand

⁵⁰ Fred Davis (n 33); Viswanathe Venkatesh and Bala Hillol (n 38).

consumer behaviour, thereby guiding them into implementing self-regulatory policies that could increase consumers' trust in the quality of products and services offered by the merchants, whilst also reducing consumers' perception of risks associated with the online merchants' performance of their legal or contractual obligations.

Having provided a brief background to this thesis and the research approach, it is now necessary to justify the choice of the UK and China as comparative models for Nigeria.

1.2 Rationale for Choosing the UK and China

The UK and China are chosen as comparative models for Nigeria for four reasons. Firstly, looking at both countries from an economic perspective, it is expected that the size of their consumer e-commerce markets should motivate other countries desirous of attaining similar growth prospects. China has the largest consumer e-commerce market in the world while the UK ranks third on the list as shown in figure 4 below.

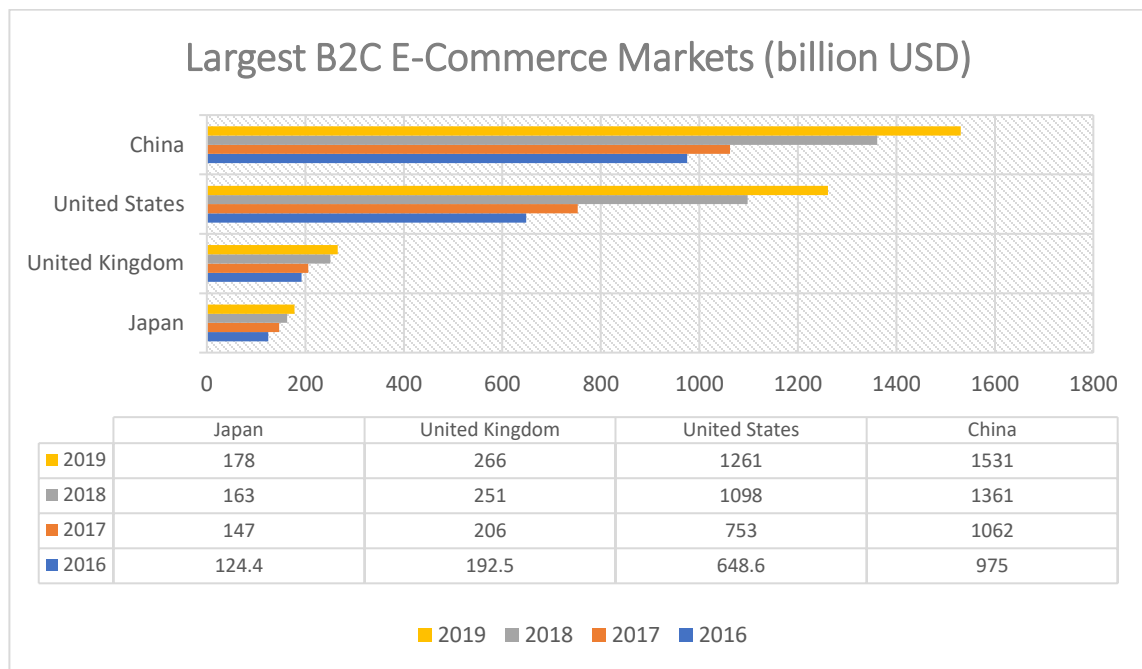


Figure 4: Revenue for Largest B2C E-Commerce Markets (billion USD)⁵¹

⁵¹ UNCTAD, 'Global E-Commerce Jumps to \$26.7 Trillion, COVID-19 Boosts Online Sales' (UNCTAD, April 2021) <<https://unctad.org/news/global-e-commerce-jumps-267-trillion-covid-19-boosts-online->

From figure 4 above, it is evident that the United States of America (USA) has the second largest consumer e-commerce market in the world. However, the UK is chosen for Nigeria since the latter has stronger ties to the UK than the USA.⁵²

Furthermore, judging by the bilateral trade relations that exist between the UK and China, both countries are presumed to have grown and learned from each other's economic experiences.⁵³ On the one hand, Nigeria is Britain's second largest trading partner in Africa with a bilateral trade volume worth 6 billion GBP as of 2016,⁵⁴ on the other hand, Nigeria is China's largest trading partner, with Nigeria receiving over 15 out of 26.5 billion USD worth of investments in Africa, as of 2016.⁵⁵ Therefore, drawing on their shared economic interests, Nigeria can learn from the UK and Chinese experiences, especially with regards to how their consumer markets are regulated.

Secondly, learning from the UK and Chinese legal regimes could aid the course of legal development in Nigeria. It is common knowledge that the UK and China are represent two major legal systems namely, the common law and the civil law systems, respectively. That notwithstanding, China is also known to have transplanted modern legal principles from Western countries from which the country still learns from till date.⁵⁶ For example, to build consumer confidence in distance contracts due to the prevalence of counterfeit products in the market, China is said to have referred to the EU laws as guides, bearing in

sales>; 'Global E-Commerce Hits \$25.6 Trillion – Latest UNCTAD Estimates' (*UNCTAD*, April 2020) <<https://unctad.org/press-material/global-e-commerce-hits-256-trillion-latest-unctad-estimates>>; 'Global E-Commerce Sales Surged to \$29 Trillion' (UNCTAD, March 2019) <<https://unctad.org/press-material/global-e-commerce-sales-surged-29-trillion>> all accessed 4 May 2021.

⁵² Aside being a former British colony and a current member of the Commonwealth, the UK is the largest European overseas investor in Sub-Saharan Africa. See Foreign & Commonwealth Office and Paul T Arkwright, 'Nigeria-UK Relations to Grow Stronger in the Next Century' (Gov.UK, 21 April 2017) 1.

⁵³ Marta Mackiewicz and Agnieszka McCaleb, 'The Impact of Brexit on Foreign Direct Investment and Trade Relations Between the UK and China' in A Kowalski (ed) *Brexit and the Consequences for International Competitiveness* (Palgrave Macmillan 2018) 257-270.

⁵⁴ However, South Africa is Britain's largest trading partner in Africa. See Vincent E Efebeh and Princewill O Okereka, 'Nigeria-British Relations: Implications for Nigeria in the Post-Brexit Era' (2020) 17(7) *Palarch's Journal of Archaeology of Egypt/Egyptology* 8811, 2.

⁵⁵ Shiitu A Raji and Adenike Ogunrinu, 'Chinese Investments and its Implications for Nigerian's Economic Security' (2018) 3(6) *Brazilian Journal of African Studies* 123, 124.

⁵⁶ Jiangqiu Ge, *A Comparative Analysis of Policing Consumer Contracts in China and the EU* (Singapore: Springer 2019) 21.

mind that the EU is a mixed jurisdiction.⁵⁷ One of such policies is the introduction of withdrawal rights into the amended Consumer Protection Law 2013.⁵⁸ Similarly, pre-Brexit UK implements most EU laws as domestic legislations, although post-Brexit, the UK still retains most laws pursuant to the provisions of the European Union (Withdrawal) Act (EUWA) 2018.⁵⁹

The foregoing makes for a convergence of legal systems subsequently developed and adapted along national lines by both jurisdictions. Although Nigeria transplanted the common law by virtue of its historical origin as a former British colony, the country, as an independent nation, is at liberty to voluntarily borrow rules that may positively shape the path of its legal development. By exploring and studying the context of consumer policies in the UK and China, Nigeria can improve its legal system by adapting rules from the UK and China which best suits its present needs.

Thirdly, the three jurisdictions share some economic and political affinities. The UK is a capitalist market while China has a socialist market economy. Nigeria, on the other hand, practices a mixed economic system which embraces both capitalist and socialist ideals. The country, however, fuses greater private freedom with government regulation (capitalism) and lesser centralised planning (socialism).⁶⁰ Institutions and consumer interest groups in the UK and Nigeria also actively encourage government regulation and enforcement of laws that protect consumers in the market.⁶¹ China, on the other hand, is an economy in transition which has slightly detached itself from the strong

⁵⁷ Ibid, 22; Mixed system is a convergence between the civil law and common law systems.

⁵⁸ Consumer Protection Law of the People's Republic of China 2013, Section 25. Article 9 of the EU Consumer Rights Directive 2011/83/EU allows a 14-day cooling off window.

⁵⁹ Most EU laws that applied in the UK on 31 December 2020 are retained as part of UK national law pursuant to Sections 2-4 of the European Union (Withdrawal) Act (EUWA) 2018. However, Section 6 of the EUWA only allows pre-Brexit decisions of the European Court of Justice in so far as they are not set aside by the Court of Appeal in England and Wales or the UK Supreme Court. For more, see Sylvia de Mars, *EU Law in the UK* (Oxford University Press 2020).

⁶⁰ Ahmed W Doho and Abubakar U Alhaji, 'Nigeria and the Dependent Capitalist Economic Development' (2018) 9(6) *International Journal of Scientific & Engineering Research* 225, 226; J Amzat and O Olutayo, 'Nigeria, Capitalism and the Question of Equity' (2009) 11(4) *The Anthropologist* 239, 240-43; Martin Sandbu, 'Brexit and the Future of UK Capitalism' (2019) 90(S2) *The Political Quarterly* 187, 188-9.

⁶¹ For instance, with respect to consumer protection, see chapter 2 of the UK Consumer Rights Act 2015 and the preamble to the Nigerian Federal Competition and Consumer Protection Act 2018.

communist/centrally planned economic and political ideals, to the new and more liberal ‘socialist market economy.’⁶² This means that the Chinese government is moving towards a market economy which allows private freedom, but at the same time, mostly holds on to its socialist beliefs. Perhaps, this explains why some contemporary rules in China are products of transplantation from Western societies.⁶³ Therefore, since Chinese laws are loosely bound to their socialist legal, political and economic ideals, borrowing rules from China becomes much easier than if the economy remained wholly centrally planned.⁶⁴

Lastly, the relevance of comparing the UK and China with Nigeria can be gleaned from a cultural perspective. The national legal culture of the UK and China have for a long period of time, raised influencing ideas and thoughts around social governance.⁶⁵ The wisdom in these thoughts and ideas have accumulated thus far, and are reflected in academic works, legal practices, and most importantly, the law-making processes of these jurisdictions.⁶⁶ An example is the principle of fairness in commercial dealings recognised by the three jurisdictions.⁶⁷ Aside legal culture, socio-cultural elements are also factored into consideration when making governance decisions. For example, ethnicity and religion play a dominant role since the UK, China and Nigeria are considered to be ethnically and religiously diverse.⁶⁸ Accordingly, Nigerian legislators can rationalise the human thought-processes behind laws, adapting the ideas that give more meaning to their own context.

⁶² Gary Sigley, ‘Chinese Governmentalities: Government, Governance and the Socialist Market Economy’ (2006) 35(4) *Economy and Society* 487.

⁶³ An example is the China Consumer Protection Law 2013. For more, see section 4.1.3 below.

⁶⁴ Gunther Teubner, (n 49) 12-18.

⁶⁵ Jiangqiu Ge (n 56) 23.

⁶⁶ Ibid.

⁶⁷ David Nelken, ‘Comparative Legal Research and Legal Culture: Facts, Approaches, and Values’ (2016) 12 *Annual Review of Law and Social Science* 45, 49; Berry Kwock, Mark X James, and Anthony Tsui, ‘Doing Business in China: What is the Use of Having a Contract? The Rule of Law and Guanxi when doing Business in China’ (2013) 4(4) *Journal of Business Studies Quarterly* 56, 61; Susan S Sibey, ‘Legal Culture and Cultures of Legality’ in John R Hall, L Grisdstaff and Ming-Cheng Lo (eds), *Handbook of Cultural Sociology* (London, Routledge) 470, 472; A Alewo and J Musa, ‘The Principle and Nature of Law of Contract in Nigeria: Formation of Binding Contract’ (2012) 5(4) *Journal of Politics and Law* 123, 127.

⁶⁸ Silke L Schneider and Anthony F Heath, ‘Ethnic and Cultural Diversity in Europe: Validating Measures of Ethnic and Cultural Background’ (2020) 46(3) *Journal of Ethnic and Migration Studies* 533; Jean Pierre Matondo, ‘Cross-Cultural Values Comparison between Chinese and Sub-Saharan Africans’ (2012) 3(11) *International Journal of Business and Social Science* 38, 39.

Having provided reasons why the UK and China are chosen as comparative models for Nigeria by identifying commonalities in contexts which support any potential borrowing of laws from both jurisdictions, it is now necessary to outline major Nigerian laws whose provisions are compared to those of the UK and China in subsequent chapters of this thesis. The aim is to lay the foundation that subsequently helps to identify gaps, ambiguities or inconsistencies that may exist within the laws, throughout this thesis.

1.3 Applicable Legislative Frameworks in Nigeria

This section provides a cursory background to three existing/potential consumer-related laws whose adequacy or otherwise for e-commerce are explored throughout this thesis. A more detailed discussion of the purpose, background and provisions of these laws, together with some key UK and Chinese laws,⁶⁹ are made in chapter four of this thesis.

I. The Federal Competition and Consumer Protection Act (FCCPA) 2018

The FCCPA 2018 was passed by the Nigerian National Assembly on 20 December 2018, subsequently receiving presidential assent on 30 January 2019.⁷⁰ The law was promulgated to “promote and maintain competitive markets in the Nigerian economy, promote economic efficiency, promote and protect the interest and welfare of consumers, prohibit restrictive or unfair business practices which prevent, restrict or distort competition, contribute to the sustainable development of the Nigerian economy,”⁷¹ and establish a Commission (Federal Competition and Consumer Protection Commission ‘FCCPC’) to execute the responsibilities conferred upon it by the Act.⁷²

⁶⁹ The UK law discussed in chapter 4 is the Consumer Rights Act 2015. Brief reference to the Consumer Contracts (Information, Cancellation and Additional Charges) Regulation 2013 and the UK Payment Services Regulation 2017 are also made. For China, the Consumer Protection Law 2013 and the E-Commerce Law 2018 are discussed, although reference to the recent Chinese Civil Code 2020 and the repealed China Contract Law 1999 are also made.

⁷⁰ Akebond S Essien, ‘A Critique of the Federal Competition and Consumer Protection Act 2018’ (2019) 1(2) International Journal of Comparative Law and Philosophy 16.

⁷¹ FCCPA 2018, Section 1.

⁷² Ibid, Section 3(1) & (2).

Being a statute that fuses both competition and consumer protection policies into a single legislative document, the scope of the Act extends to both B2B and B2C transactions.⁷³ Its provisions cover the duties expected of the FCCPC, the controls against the abuse of dominant positions, the regulation of monopolies, market prices and mergers, offences against competition and the protection and enforcement of consumer rights. However, the law does not expressly cover online transactions; hence why this thesis generally argues that the FCCPA is more suited to offline transactions.

II. The Sale of Goods Act (SOGA) 1893

The SOGA 1893 is a statute of general application that was in force in England before 1900.⁷⁴ As all former British colonies were subjects of transplantation of the common law, principles of equity, and statutes of general application (otherwise known as the ‘received English laws’), the SOGA 1893 became immediately applicable to Nigeria.⁷⁵

Like the full title of the Act denotes,⁷⁶ the SOGA 1893 generally codifies laws relating to sale of goods contracts by replicating existing common law and statutory rules on such contracts into a legislative document.⁷⁷ The purpose of the Act is to define and delineate the scope of parties’ rights and obligations on sale of goods contracts where such rights and obligations are not expressly agreed upon, whilst at the same time, preserving relevant contract law principles.⁷⁸ The scope of the Act further extends to B2B and B2C transactions, whose provisions revolve around sales contract formation, the effect of implied conditions and warranties on contracts, rules that guide the performance of parties’ obligations, rights of an unpaid seller, and remedies for breach of contract. It is, however, important to note that the modern notion of a consumer is not reflected under

⁷³ Ibid, Section 2(1).

⁷⁴ In force on 20 February 1894.

⁷⁵ Section 32 of Nigeria’s Interpretation Act 2004 acknowledges the status of received English laws as primary sources of law in Nigeria. It is important to note that the UK has repealed the SOGA 1893 and replaced it with the SOGA 1979 (for B2B transactions).

⁷⁶ “An Act for Codifying the Law relating to the Sale of Goods.”

⁷⁷ Judah P Benjamin and Michael G Bridge, *Benjamin’s Sale of Goods* (10th edn, London: Sweet & Maxwell 2017) paras 1-001 – 6.

⁷⁸ Ibid.

the Act.⁷⁹ This explains why this research argues that the law is generally inadequate and cannot sufficiently address contemporary legal issues affecting the online consumer.

III. The Nigerian Electronic Transaction Bill (ETB) 2017

The ETB is a bill passed by the Nigerian National Assembly on 4 April 2017 to regulate both B2B and B2C electronic transactions.⁸⁰ As at the time of writing, the Bill remains pending, having failed to receive the required presidential assent to become effective. Nonetheless, since this Bill represents Nigeria's first attempt at enacting an electronic transaction law whose substantive provisions are more suited to e-commerce transactions than any other existing Nigerian law, the Bill is discussed proactively in this thesis. This is because its provisions may potentially be used to supplement any gap that exists within the FCCPA and the SOGA.

The ETB aims to regulate transactions conducted using electronic or related media, protect consumer rights and those of other parties involved in electronic transactions, protect personal data, and enhance the growth of electronic commerce in Nigeria.⁸¹ The Bill gives legal effect, validity, and enforceability to all electronically generated document or information,⁸² whilst also validating the use of electronic signatures in such documents.⁸³ The scope of the ETB further extends to other forms of e-commerce aside B2C e-commerce, since its objectives alludes to protecting the rights of 'other parties' involved in electronic transactions.⁸⁴ Additional provisions of the Bill cover carriage of goods contracts and liability of platform operators. From the foregoing, it is evident that

⁷⁹ Modern consumer law was first recognised in the Moloney Report on Consumer Protection (HL Deb 14 November 1962, vol 244) <https://api.parliament.uk/historic-hansard/lords/1962/nov/14/the-moloney-report-on-consumer-protection-1#column_653> accessed 2 June 2021. See Law Commission, 'Report on a Reference Under Section 3(1)(e) of the Law Commissions Act 1965 and the Scottish Law Commission - Sale and Supply of Goods (Law Com No 160, Scot Law Com No 104, May 1987) para 1.5.

⁸⁰ National Assembly, Report of the Conference Committee on Electronic Transactions Bill 2017, [online], available at <<https://placng.org/i/wp-content/uploads/2019/12/Report-of-the-Conference-Committee-on-Electronic-Transactions-Bill-2017-2.pdf>> accessed 31 March 2018.

⁸¹ Ibid, section 1

⁸² Section 3(1) (a)

⁸³ Section 11.

⁸⁴ Section 1(b).

the goal of promoting e-commerce adoption by consumers can be facilitated through the Bill where the substantive provisions are practically adequate.

Having outlined the Nigerian laws predominantly discussed in this thesis, the next course of action is to briefly examine three key research issues which act as risk factors to consumer adoption of e-commerce in Nigeria. The aim is to ascertain whether the outlined laws are enough to address the risks, bearing in mind that this thesis generally argues that existing laws are inadequate for e-commerce transactions and will need to be updated if Nigeria expects the law to have a positive impact on consumer online decision making.

1.4 Central Research Issues

This research identifies the risk of being bound by unfair terms, e-payment security risk, and the risk associated with the physical delivery and cancellation of online purchases, as three central research issues which affect consumer adoption of e-commerce in Nigeria. This study argues that the identified issues act as risk factors which are more complex to address in an online context than in offline transactions. The perception of these risks also has the potential to limit consumer confidence in e-commerce. Consequently, there is need to ensure that current laws are enough to mitigate the impact of these risk factors on the online consumer. Where laws are adequate and consumers are made aware of their existence, such laws can contribute to limiting consumer perception of risks derived from these central issues. Therefore, this thesis specifically examines the adequacy or otherwise of existing laws by questioning their likely effectiveness when specifically stretched and adapted to the online environment.

To begin, this section provides a cursory examination of the three identified issues, while a more detailed discussion is provided in Part 2 of this thesis.

1.4.1 Unfair Contract Terms

Under the Nigerian law, a contract term is said to be legally unfair where it is either excessively one-sided in favour of the seller, is so adverse to consumer interest, and is

misleading, deceptive and false, to the consumer's detriment.⁸⁵ The incorporation of unfair terms to contracts can be classed as a 'performance risk' which derives from a buyer's contractual relationship with a seller, and is characterised by the possible exclusion, limitation or transfer of a seller's 'performance-related' contractual obligations towards the buyer.⁸⁶ This risk gives rise to an imbalance between parties during contract performance and could further affect the performance of future obligations arising out of the contract.⁸⁷ Unfair terms could also be classed as an 'information risk' due to the likelihood that buyers may rely on misleading statements about the conditions attached to the purchase of a product, to their detriment.⁸⁸

One can easily assume that terms which are typically considered as rational and fair in traditional contracts are also fair in an online context. Lemley notes that such assumption is questionable due to the unique features of the online environment,⁸⁹ and this further demonstrated in two ways. Firstly, sellers find it effortless getting consumers to consent to their terms and conditions online than they do offline.⁹⁰ This is because in offline transactions, contracts may be concluded without signing a written agreement which specifies party rights and obligations. However, where retailers have an online presence, they impose their standard form contracts on users of their e-commerce websites, "probably because it is easier to get someone to click 'I agree' as part of an online transaction, than it is to have a clerk obtain a signature on a written form."⁹¹ Put differently, sellers find it effortless getting consumers to consent to their terms and conditions online, than they do offline. This ultimately increases the chances of more seller manipulation in online transactions.

⁸⁵ Federal Competition and Consumer Protection Act 2018, Section 127(2).

⁸⁶ Malgorzata Sieradzka, 'Unfair Terms in Loan Agreements Connected with Foreign Currency. Comment to the Judgment in Case C-186/16 Ruxandra Paula Andricuic EA contre Banca Romaneasca SA' (2020) 9 Polish Review of International and European Law 201, 208-209.

⁸⁷ Ibid.

⁸⁸ Y E Naiyi, 'Dimensions of Consumer's Perceived Risk in Online Shopping' (2004) 2(30 Journal of Electronic Science and Technology 177, 180.

⁸⁹ Mark A Lemley, 'Terms of Use' (2006) 91 Minnesota Law Review 459.

⁹⁰ Ibid.

⁹¹ Ibid.

It is commonplace for online businesses to obtain these consents, especially, through click-wrap and browse-wrap contracts.⁹² In click-wrap contracts, consumers physically express their assent to standard terms by clicking an 'I agree' button to referred terms and conditions of sale before placing orders.⁹³ On the other hand, in browse-wrap contracts, consumer agreement to the terms of sale is confirmed on the basis that the terms, usually accessible via a hyperlink, are capable of being viewed by consumers simply by browsing the site.⁹⁴ Here, no active measure is necessarily taken by businesses to draw consumers' attention to the terms of sale. Thus, the ease with which consumers' consent can be obtained, irrespective of the way the terms are presented to them, is a cause for concern.

The second reason why regulatory controls for online terms are needed to protect consumers against unfair terms, is linked to the concern for the 'technologically-mediated' nature of transactions.⁹⁵ Here, consumers approach the online marketplace using an information system (e-commerce websites) exclusively designed by sellers who are essentially privy to content and implications of key terms. This is compared to offline transactions where consumers typically appear in person to make informed purchasing decisions based on the information received physically and directly from the seller.⁹⁶ The online transactional environment, thus, provides online merchants with an avenue to opportunistically impose their standard forms (containing likely unfair terms) on consumers to the latter's detriment. This heightens the need to re-evaluate the application of traditional contract and consumer law policies to the online context.⁹⁷

The major hurdle here is that Nigerians and indeed most consumers, generally do not read online terms and conditions.⁹⁸ They are, however, more inclined to reading hard copies

⁹² Philippa Lawson and Cintia R De Lima, 'Browse-Wrap-Contracts and Unfair Terms: What the Supreme Court Missed in Dell Computer Corporation v. Union des Consommateurs et Dumoulin' (2007) 37 General Law Review 445, 451.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ryan Calo, 'Digital Market Manipulation' (2014) 82 George Washington Law Review 995, 1002.

⁹⁶ Ibid.

⁹⁷ Roger Brownsword, *Law, Technology and Society: Re-Imagining the Regulatory Environment* (Abingdon: Routledge 2019) 275.

⁹⁸ Ihuoma K Ilobinso, 'Protecting Consumers in the Online Market from Unfair Contract Terms- The Nigerian Perspective' (2018) 14(1) Nigerian Journal of Contemporary Law 51, 54-5.

of these terms than when they are sprung up instantly when shopping online.⁹⁹ This is most likely due to the fast-paced nature of the online environment which propels quick transaction completion process. Another factor which contributes to less readership of online terms and conditions is the reality that these terms are deliberately drafted in tiny fonts, are long, and are often too legalistic and ambiguous to understand when read.¹⁰⁰ Therefore, the opportunity to bind consumers to terms which are potentially onerous is higher in online than offline transactions. Additionally, previous negative online shopping experiences derived from consumers' consent to terms they would not have consented to, had they had face-to-face negotiations, further worsens their interest in e-commerce.¹⁰¹ Therefore, there is need to regulate the use of potentially unfair terms in online contracts.

With the promulgation of the FCCPA 2018, the issue of unfair terms in consumer contracts is now expressly covered for the first time, by a federal statute.¹⁰² As will be discussed extensively in chapter five, gaps exist within the provisions of the FCCPA which make it less suited for online transactions. These gaps relate to insufficient provisions on the substance and form of rules which control the use of unfair terms under the Act. With regards to substance of the FCCPA rules, the Act does not provide an indicative list of terms which can be used as a guide to determine whether a contract term may be classed as fair or unfair in a given circumstance. This is more so as no guidance is provided on how such terms can be interpreted. With respect to the form of rules, two sub-issues are also identified. Firstly, the Act fails to clarify the practical means of bringing potentially unfair terms to the attention of a consumer and the consequences of non-compliance. Secondly, the Act fails to incorporate a transparency provision which will require online merchants to draft terms in simple and legible language. When looking at both the substance and form of the rules, the Act is also flawed for not clarifying the implications of using unfair terms on both the consumer and the contract itself.

⁹⁹ Ibid.

¹⁰⁰ Ibid 54; Yannis Bakos, Florencia Marotta-Wurgler and David R Trossen, 'Does Anyone Read the Fine Print? Consumer Attention to Standard Form Contracts' (2014) 43(1) *The Journal of Legal Studies* 1, 22.

¹⁰¹ Ihuoma K Ilobinso (n 98).

¹⁰² FCCPA 2018, Sections 127 and 128.

Again, it is important to reiterate that the FCCPA 2018 does not make explicit provisions for online transactions. The ETB 2017 also fails to cover unfair contract terms under its consumer rights provisions. Therefore, it is important to revise and update the unfair terms provision of the FCCPA to align better with the unique nature of e-commerce transactions.

1.4.2 E-Payment Security

E-payment is aptly described as payments made via the internet using online banking systems, remote smart payment cards or payment platforms.¹⁰³ It refers to “the transfer of an electronic value of payment from a payer to a payee through an e-payment mechanism.”¹⁰⁴ E-payment is relevant to e-commerce since online marketplaces utilise electronic payment portals as convenient tools for effecting easy and speedy remote payments for goods and services.¹⁰⁵ Additionally, the efficiency and growth of online marketplaces is partly predicated upon the security of e-payment architecture.¹⁰⁶

Fatonah *et al* note that secure e-payment transactions reduce consumer perception of risks whilst also promoting trust between sellers and buyers.¹⁰⁷ This explains why e-payment issues are classed as ‘security risks’ which impede upon the general operations of online marketplaces.¹⁰⁸ Previous studies show that perceived e-payment risks associated with the security of payment transactions, increase consumer reluctance to trust the services provided by online merchants and their willingness to effect e-payments through

¹⁰³ OFCOM, “Innovation in UK Consumer Electronic Payments: A Collaborative Study by Ofcom and the Payment Systems Regulator’ (2014) <https://www.ofcom.org.uk/__data/assets/pdf_file/0014/45041/e-payments.pdf> accessed 17 May 2020.

¹⁰⁴ Kim Changsu *et al*, ‘An Empirical Study of Customers’ Perceptions of Security and Trust in E-payment Systems’ (2010) 9 Electronic Commerce Research and Application 84, 85.

¹⁰⁵ Tom Kokkola, ‘The Payment System-Payments, Securities and Derivatives, and the Role of the Eurosystem’ (European Central Bank 2010) 166
<<https://www.ecb.europa.eu/pub/pdf/other/paymentsystem201009en.pdf>> accessed 29 April 2014.

¹⁰⁶ Kim Changsu (n 104).

¹⁰⁷ S Fatonah *et al*, ‘A Review of E-Payment System in E-Commerce’ (2018) 1140(1) Journal of Physics Conference Series 1-8. See also Fenriantob Junadi, ‘A Model of Factors Influencing Consumer’s Intention to Use E-payment System in Indonesia’ (2015) 59 Procedia Computer Science 214-220.

¹⁰⁸ Thanh D Nguyen and Phuc A Huynh, ‘The Roles of Perceived Risk and Trust on E-payment Adoption’ in Ly H Anh *et al* (eds), *Econometrics for Financial Applications* (Springer 2018) 926-940; Sevgi Özkan, Gayani Bindusara and Ray Hackney, ‘Facilitating the Adoption of E-payment Systems: Theoretical Constructs and Empirical Analysis’ (2010) 23(3) Journal of Enterprise Information Management 305-321.

operators' payment portals.¹⁰⁹ As a result, there is need to improve consumer trust in the secure operability of e-payment services provided by online merchants.

Two legal issues with existing Nigerian e-payment regulations are explored in this thesis. The first is the lax regulatory approach to guaranteeing security for remote payments. This is because although the Central Bank of Nigeria (CBN)¹¹⁰ promulgated the CBN Consumer Protection Framework (CPF) 2016 to protect consumer interest in financial institutions and enhance their confidence in the financial services industry,¹¹¹ the CPF's security provision is less than express. The CPF merely requires payment service providers to ensure that their portals are embedded with safety mechanisms.¹¹² What constitutes 'safety mechanisms' is, however, unexplained. Same issue applies to the CBN Guidelines on Operation of Electronic Payment Channels in Nigeria 2020.¹¹³ The second issue discussed in this thesis is the liability placed on e-payment users (consumers) for fraud on their online accounts by both the CBN Guidelines¹¹⁴ and the CPF.¹¹⁵

This thesis argues that the identified issues have the potential to limit the perceived usefulness of e-payment systems as an efficient and more convenient means of effecting payments for online purchases. It is also argued that the implementation of strong security measures such as the use of multi-factor authentication, are needed to build trust in a country beleaguered with high incidents of e-payment fraud.¹¹⁶ Where these measures are

¹⁰⁹ Emrah O, Gizem O Guven and Wajid H Rizvi, 'The Determinants of Electronic Payment Systems Usage from Consumers' Perspective' (2017) 30(1) *Economic Research* 394, Md A Hassan, Zarina Shukur and Mohammad K Hasan, 'An Efficient Secure Electronic Payment System for E-Commerce' (2020) 9(3) *Computers* 66; İkrām Daştan and Cem Gürlü, 'Factors Affecting the Adoption of Mobile Payment Systems: An Empirical Analysis' (2016) 6(1) *Emerging Markets Journal* 17.

¹¹⁰ CBN is the apex regulatory body of all financial institutions in Nigeria and is empowered by Article 1 of the CBN Act to make secondary legislations that regulate the activities of financial services and products.

¹¹¹ Central Bank of Nigeria Consumer Protection Framework 2016, para 1.1.

¹¹² *Ibid*, para 2.6.1.

¹¹³ CBN Guidelines on Operation of Electronic Payment Channels (GOEC) in Nigeria 2020, para 3.4.5.6

¹¹⁴ Article 3.4.6.5.

¹¹⁵ Rule 2.6.1.5

¹¹⁶ See Busola Jeje 'Alarming Growth in Online Fraud Threatens Digital Banking Success' (Tellimer Research, 22 February 2021) <<https://tellimer.com/article/nigeria-alarming-growth-in-online-fraud-threa>> accessed 16 July 2021; Babajide Komolafe, 'Apprehension Over N6.1trn Loss to E-fraud as Annual e-Payment Transactions Hit N97tr' (Vanguard News, 16 November 2018) <<https://www.vanguardngr.com/2018/11/apprehension-over-n6-1trn-loss-to-e-fraud-as-annual-e-payment-transactions-hit-n97tr/>> accessed 16 July 2021.

ignored, the resultant effect may be a resort to cash-based method of payment, which is already known to reduce the efficiency of online businesses.¹¹⁷ Alternatively, consumer preference for offline transactions could soar.

The foregoing explains why existing data shows that over 95% of commercial transactions in Nigeria are cash-based.¹¹⁸ Credit cards are owned by only 2.6% of the adult population while 3.6% effect payment for online purchases through the e-payment portals.¹¹⁹ Additionally, Cash-On-Delivery (COD) method of payment¹²⁰ is used by approximately 80% of the Nigerian consumption population.¹²¹ Even Jumia, the largest online marketplace in Nigeria, acknowledges e-payment security concerns when it revealed in 2018 that 67% of purchases from its platform were paid through COD, 23% effected with debit and credit cards, while 10% of the purchases were paid through mobile payments.¹²²

An examination of the ETB 2017 neither shows the existence of a favourable liability regime for consumers nor the requirement for strong secure mechanisms which guarantee the safety of e-payments. The ETB merely states that all forms of e-payments should comply with the CBN regulations,¹²³ in apparent reference to the importance of the CBN Guidelines and Framework. That notwithstanding, this thesis argues further in chapter six that the security standards and liability provisions of the rules need to be improved.

¹¹⁷ Robert M Grüşchow *et al*, 'How do Different Payment Methods Deliver Cost and Credit Efficiency in Electronic commerce?' (2016) 18 Electronic Commerce Research and Applications 18, 27-36; M Ardiansah *et al*, 'The Effect of Electronic Payments Security on E-commerce Consumer Perception: An Extended Model of Technology Acceptance' (2020) 10(7) Management Science Letters 1473.

¹¹⁸ Lukman O Oyelami, Sulaimon O Adebisi and Babatunde Adekunle, 'Electronic Payment Adoption and Consumers' Spending Growth: Empirical Evidence from Nigeria' (2020) 6(14) Future Business Journal 1,

¹¹⁹ Statista, 'E-Commerce in Nigeria-Statistics and Facts' (November 2020) <<https://www.statista.com/topics/6786/e-commerce-in-nigeria20marketplaces>> accessed 1 May 2020.

¹²⁰ COD is a method of payment used in distance contracts where cash payments are made on receipt or delivery of a product to the customer's location of choosing. See Mohanad Halaweh, 'Cash on Delivery (COD) as an Alternative Payment Method for E-Commerce Transactions: Analysis and Implications' (2018) 10(4) International Journal of Sociotechnology and Knowledge Development 1.

¹²¹ Lukman O Oyelami, Sulaimon O Adebisi and Babatunde S Adekunle, (n 118) 4-5; Patrick O Igudia, 'A Qualitative Evaluation of The Factors Influencing the Adoption of Electronic Payment Systems by SMEs In Nigeria' (2017) 13(31) European Scientific Journal 472, 477-479.

¹²² UNCTAD, 'B2C E-Commerce Index 2018- Focus on Africa' (UNCTAD Technical Notes for ICT Development No 12, 2018) 14

<https://unctad.org/system/files/officialdocument/tn_unctad_ict4d12_en.pdf> accessed 1 May 2021.

¹²³ ETB, Sections 11(6) & 26(5).

1.4.3 Physical Delivery and Cancellation of Online Purchases

Nigeria has a vastly underutilised and dilapidated rail network system, a growing aviation sector, poorly performing ports, and patchy road network conditions,¹²⁴ all of which can increase consumer perception that goods could either be lost or damaged after dispatch, may not be delivered at all, or could be delivered behind schedule.¹²⁵ Studies have shown that delivery risks heightened by inadequate transportation networks contribute to consumers' preference for traditional shopping in Nigeria.¹²⁶ This preference is amplified by the reality that where a loss occurs in transit, consumers are not entirely confident that a seller would assume liability for replacing the lost item, especially since the location of sellers may be difficult to trace.¹²⁷ Additionally, liability for loss is sometimes, excluded in sellers' delivery and return policies.¹²⁸ More issues may arise where sellers adopt varied strict or lenient return policies, especially, since they are not obligated by law to provide consumers with certain guarantees, but offer same as a matter of discretion. Therefore, this research seeks to question how laws can potentially help minimise consumer perception of risk associated with physical delivery and cancellation of online purchases.

Problems associated with physical delivery of online purchases may be classed as delivery or performance risks.¹²⁹ This is because the online merchant may have failed to 'perform'

¹²⁴ Price Water Cooperhouse, 'Africa Gearing Up: Nigeria' (PWC 2015) 65-66 <<https://www.pwc.com/gx/en/transportation-logistics/publications/africa-infrastructure-investment/assets/nigeria.pdf>> accessed 17 September 2020; Emmanuel Paul, 'The Impending Game-Changing Regulations for Nigerian Logistics Companies' (Techpoint Africa, 2020) <<https://techpoint.africa/2020/06/02/changing-regulations-nigerian-logistics/>> accessed 17 September 2020.

¹²⁵ Osio E Joyce and Orubu O Freeman, 'Consumer Perception Towards Online Shopping in Nigeria' (2018) 9(2) Journal of Business Management and Economics 38, 41-43.

¹²⁶ John Olotewo, (n 21); Gladson Nwokah, (n 21); Avange Faajir and Zizi Hassan Zidan, 'An Analysis of The Issues and Challenges of Transportation in Nigeria and Egypt' (2016) 7(2) Business and Management Review 18, 23; Idongesit Eshiett, 'Online Shopping Tendency and Customer Trust in Nigerian Service Sector' (2021) 8 Marketing and Branding Research 66, 68-69.

¹²⁷ Suraju A Aminu, (n 18) 29-30.

¹²⁸ Judith E Jessah, 'E-Commerce in Nigeria: Liability for Loss or Damage to Goods Supplied by a Seller Pursuant to an Electronic Contract' (2020) 3(1) International Journal of Comparative Law and Philosophy 105-114.

¹²⁹ Cuneyt Koyuncu and Gautam Bhattacharya, 'The Impacts of Quickness, Price, Payment risk and Delivery issues on On-line Shopping' (2004) 33(2) The Journal of Socioeconomics 241-251.

his contractual obligation of delivering goods safely to the consumer.¹³⁰ Delivery risks may relate to the delivery of damaged products or even a case of non-delivery.¹³¹ Products may also be lost in transit, with no clear liability regime in place.¹³² Indeed, several studies identify delivery risk as a factor which negatively influences consumer behavioural intention to engage in e-commerce. For example, Yazdanifard *et al* note that the provision of reliable delivery services is a critical determinant of consumer decision to shop online,¹³³ while Sabou *et al* find that consumers who posted negative reviews on websites about an unsatisfactory delivery service showed a negative inclination to make further online purchases.¹³⁴ In more specific terms, the first issue to be addressed further in chapter six is the delivery risk of loss and its liability regime.

On the other end, there is also a product return risk where after delivery, a consumer may decide to cancel the purchase and return the goods in exchange for full refunds but may be disallowed from cancelling without providing justifiable reasons or incurring further liabilities. This is regrettable since studies find cancellation or withdrawal rights as capable of promoting consumer confidence in e-commerce. For example, Guan acknowledges the positive impact of this right in China,¹³⁵ while a study by the UK Department for Business, Energy & Industrial Strategy (BIS) find this right as significant in building consumer confidence in e-commerce.¹³⁶ Even where such rights do not exist as a matter of law, but provided as a contractual right on seller's discretion, such policies

¹³⁰ Ibid.

¹³¹ Mohd S Ariff *et al*, 'Consumer Perceived Risk, Attitude and Online Shopping Behaviour: Empirical Evidence from Malaysia' (2014) 58(1) Materials Science and Engineering 1-11.

¹³² Judith E Jessah, (n 128); Jehirul Islam, 'Jurisprudence of Delivery in Consumer Contract in E-Commerce: A Critical Appraisal of The Consumer Protection Law in India' (2020) 11(2) Indian Journal of Law and Justice 196-210.

¹³³ Rashard Yazdanifard, Terry Agodi and Seyedi Alizadeh, 'How Unreliable Delivery System Affects E-marketing Effectiveness' (Proceedings of 2011 International Conference on Information Communication and Management, 2011) 10-14.

¹³⁴ Simona Sabou, Bianca Avram-Pop and Liliana A Zima, 'The Impact of the Problems Faced by Online Customers on E-commerce' (2017) 62(2) De Gruyter-University Studies 77-88.

¹³⁵ Yue Guan, 'Right to Return Goods Without Reason in Chinese E-commerce as The References for Indonesian Laws' (2020) 7(4) International Journal of Research and Analytical Reviews 653.

¹³⁶ Department for Business, Energy & Industrial Strategy, 'Report on Implementation- Statutory Report on the Objectives of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (BEIS, July 2019) p 16

<https://www.legislation.gov.uk/uksi/2013/3134/pdfs/ukiod_20133134_en.pdf> accessed 21 May 2021.

have shown to improve consumer trust in the quality of goods and services provided by online merchants¹³⁷ whilst also having a positive impact on future purchase intentions.¹³⁸ Thus, the second issue to be addressed here is the product return risk of cancellation.

The SOGA 1893 is the prevailing law which regulates both business and consumer sales contracts in Nigeria. Cancellation rights are not covered by the SOGA 1893, neither are they covered by the FCCPA 2018 nor the ETB 2017. However, with regards to liability for delivery loss, the SOGA may be applicable in this regard. That notwithstanding, this research argues that the relevant provisions of the SOGA on delivery and passage of risk are inconsistent with the nature of e-commerce transactions, and as such, will need to be revised and updated before it can be adapted to online sale contracts.

For example, with regards to delivery, section 32(1) of the SOGA provides that “where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is *prima facie* deemed to be a delivery of the goods to the buyer.” This could mean that delivery to e-commerce logistic service providers, as carriers or intermediaries in the supply chain, equates to delivery to a consumer. Clearly, the unique nature of e-commerce transactions presupposes that consumers mostly have direct access to the online merchant with whom they entered into contract with, as opposed to any other third-party carrier. Similarly, on liability, the SOGA also suggests that liability for damage or loss in transit lies with the consumer since risk passes from the seller to the buyer on contract formation, despite payment or delivery.¹³⁹ Clearly, these provisions are not only inadequate, but also inconsistent with the nature of e-commerce.

The FCCPA has no provisions on liability for transit loss, presumable since it is likely intended that the SOGA could be applied in the circumstance. Looking at the ETB, matters related to delivery and passage of risk are also not addressed by the Bill. Thus, in

¹³⁷ Ilyoo Hong and Hoon S Cha, ‘The Mediating Role of Consumer Trust in an Online Merchant in Predicting Purchase Intention’ (2013) 33(6) *International Journal of Information Management* 927-939.

¹³⁸ Yacan Wang *et al*, ‘The Leniency of Return Policy and Consumers’ Repurchase Intention in Online Retailing’ (2020) 120(1) *Industrial Management & Data Systems* 21-39.

¹³⁹ SOGA 1893, Section 18 rule 1 and 20.

addition to cancellation rights which are also lacking in the FCCPA and the ETB, the gaps and inconsistencies under these Nigerian laws need to be filled to limit consumer perception of delivery and product return risks when making online purchasing decisions.

1.5 Research Questions

Based on the central arguments made in the preceding section, this research aims to answer the following four questions:

1. What is the current state of consumer e-commerce adoption in Nigeria?
2. What major risk factors affect consumer adoption of e-commerce in Nigeria?
3. Are existing Nigerian laws enough to address the central risk factors inhibiting consumer adoption of e-commerce in the country?
4. How can insights from the Technology Acceptance Model (TAM) help shape the law-making process of consumer e-commerce-related policies in Nigeria?

1.6 Research Objectives

Premised on the brief background of the thesis (section 1.1) and the identified central research issues (section 1.4), this research aims to fulfil the following objectives:

1. To identify some risk factors which inhibit consumer adoption of e-commerce in Nigeria.
2. To propose a framework which can help predict the likelihood that Nigerian consumers will engage in e-commerce, drawing on existing laws and the identified risk factors.
3. To demonstrate from a comparative perspective, how awareness of laws can help build consumer confidence in e-commerce.
4. To assess policy implications from the proposed research framework and suggest legal and extra-legal responses to reducing the militating risk factors to e-commerce adoption.

1.7 Approaches to Regulating Consumer E-commerce

Having examined some legal-related issues which current Nigerian laws cannot sufficiently address; it is necessary to consider the regulatory approaches that could be adopted to best tackle the issues. Clarifying the regulatory approach ensures that this thesis follows a consistent pattern when proffering possible regulatory responses to addressing these issues.

The disruptive effect of technological developments on the traditional content of legal rules has prompted regulatory responses from some scholars,¹⁴⁰ some of which can equally be adapted to the realm of consumer e-commerce. On the one hand, there is a need to qualify or change existing laws where their adequacy have been questioned and deficiencies, highlighted by the disruptions.¹⁴¹ On the other hand, new rules may either need to be introduced to fill the omissions or gaps in prevailing rules or technological solutions may ultimately be introduced where those rules cease to be fit for purpose.¹⁴² Accordingly, this study will adopt two regulatory mindsets proposed by Brownsword, namely 'coherentism' and 'regulatory instrumentalism',¹⁴³ with a view to understanding how the identified research issues can be mitigated using laws as a tool.

1. Coherentism

Coherentism is concerned with the "integrity and internal 'consistency' of [a] legal doctrine,"¹⁴⁴ It lays emphasis on clarifying the scope of existing rules, eliminating

¹⁴⁰ Roger Brownsword, *Law, Technology and Society: Re-Imagining the Regulatory Environment* (Abingdon: Routledge 2019); Geriant Howells, 'Protecting Consumer Protection Values in the Fourth Industrial Revolution' (2020) 43 *Journal of Consumer Policy* 145; Frank Pasquale and Arthur J Cockfield, 'Beyond Instrumentalism: A Substantivist Perspective on Law, Technology, and the Digital Persona' (2018) *Michigan State Law Review* 821; Max N Helveston, 'Regulating Digital Markets' (2016) 13 *New York University Journal of Law & Business* 33; Lyria Bennett Moses, 'Recurring Dilemmas: The Law's Race to Keep up with Technological Change' (2007) 2007(2) *University of Illinois Journal of Law, Technology & Policy* 239.

¹⁴¹ Roger Brownsword, *Law Disrupted, Law Re-Imagined, Law Re-Invented* (2019) *Technology and Regulation* 10, 11 <<https://doi.org/10.26116/techreg.2019.002>> accessed 20 March 2021.

¹⁴² *Ibid.*

¹⁴³ Roger Brownsword, 'After Brexit: Regulatory-Instrumentalism, Coherentism, and the English Law of Contract' (2017) 34(2) *Journal of Contract Law* 139-164.

¹⁴⁴ Roger Brownsword (n 141) 14.

inconsistencies or filling gaps.¹⁴⁵ Coherentists are not perturbed about the law's fitness for the current purpose posed by technological advancements, but how they fit within existing legal principles.¹⁴⁶ As such, they are reluctant to abandon existing legal classifications; rather, they contemplate tweaking rules from traditional legal principles to formulate a bespoke response that can be adapted to their online equivalent.¹⁴⁷ This approach is mostly followed by lawyers and judges since they are essentially concerned with "apply[ing] the law in a principled way."¹⁴⁸

Therefore, to suggest an appropriate regulatory response that can protect consumers against the identified perceived risk factors, this study will firstly explore the possibility of adapting general legal principles to the online setting. As noted by Twigg-Flesner, "it seems logical to consider the extent to which existing legal rules can be deployed to deal with any new problems identified in the context of the digital economy."¹⁴⁹ Where ambiguities and questions still exist irrespective of having applied existing legal principles to address an issue, a 'regulatory instrumentalist' approach may be employed.

2. Regulatory Instrumentalism

A regulatory instrumentalist mindset focuses on the 'effectiveness' of the law in serving a specified regulatory cause.¹⁵⁰ Instrumentalists are not concerned with maintaining the coherence of laws; rather, they formulate new bespoke policies where such rules are considered efficient and effective in addressing specified legal issues.¹⁵¹ Not only are new legal instruments developed under this approach, principles from other areas of law can also be transferred into a new terrain to achieve the desired regulatory outcome.¹⁵²

¹⁴⁵ Christian Twigg-Flesner, 'The EU's Proposal for Regulating B2B Relationships on Online Platforms- Transparency, Fairness and Beyond' (2018) 7 *Journal of European Consumer and Markets Law* 222, 226.

¹⁴⁶ Roger Brownsword (n 143).

¹⁴⁷ Ibid.

¹⁴⁸ Roger Brownsword (n 141).

¹⁴⁹ Christian Twigg-Flesner (n 145) 227.

¹⁵⁰ Roger Brownsword (n 143) 142.

¹⁵¹ Ibid.

¹⁵² Ibid. Technology can also be employed to achieve same regulatory goal as opposed to using rules. However, this thesis will not be looking into this form of regulatory response to technological advancements since this research essentially focuses on law-making, particularly with regards to the function of law as a tool that enhances consumer adoption of e-commerce in Nigeria.

Legislators and policymakers are naturally inclined to follow this approach since they make new laws or adopt policies to tackle issues in a country.

Regulatory instrumentalism displaces coherentism since the “standard for judging the value of [the specific] law is not whether it is coherent but rather whether it is effective, that is, effective in establishing and implementing the policy goals of the modern state.”¹⁵³ Instrumentalists are more risk-focused in their thinking.¹⁵⁴ Brownsword suggests that in the realm of contract law, instrumentalists are more focused on addressing economic risks.¹⁵⁵ He further uses the EU Digital Single Market project as an example of an initiative borne with a regulatory instrumentalist mindset.¹⁵⁶ To advance this project as a matter of necessity for the EU, the European Commission acknowledged the rapid changes to international commerce brought about by the digitisation of the global economy.¹⁵⁷ Thus, the Commission sought to develop a legal framework that allows “the benefits of digitalisation to materialise, so that EU businesses can become more competitive and consumers can have trust in high-level EU consumer protection standards.”¹⁵⁸ To this end, the coherentist mindset behind codifying European Contract law or establishing a Common European Sales Law was relegated.¹⁵⁹ In the light of the foregoing, this research will also follow a regulatory instrumentalist approach in

¹⁵³ Ibid; Edward L Rubin, ‘From Coherence to Effectiveness’ in Rob van Gestel, Hans W Micklitz, and Edward L Rubin (eds), *Rethinking Legal Scholarship* (New York: Cambridge University Press 2017) 310, 311, 328.

¹⁵⁴ Roger Brownsword (n 141) 14.

¹⁵⁵ Ibid.

¹⁵⁶ The Digital Single Market Initiative aims to achieve these three objectives: (i) to remove obstacles to consumers shopping across historic borders; (ii) to remove obstacles to businesses trading across historic borders; and (iii) to achieve a high level of consumer protection. For more on this, see European Commission, ‘A Digital Single Market Strategy for Europe – COM (2015) 192 Final’ (Brussels, 06.05.2015) <<https://ec.europa.eu/digital-single-market/en/news/digital-single-market-strategy-europe-com2015-192-final>> accessed 10 May 2020.

¹⁵⁷ European Commission, Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, ‘Digital Contracts for Europe- Unleashing the Potential of E-commerce’ COM (2015) 633 final (Brussels, 9.12.2015).

¹⁵⁸ Ibid 7.

¹⁵⁹ Roger Brownsword (n 77) 14; Despina Anagnostopoulou, ‘The Withdrawal of the Common European Sales Law Proposal and the European Commission Proposal on Certain Aspects Concerning Contracts for the Online and Other Distance Sales of Goods’ in Maren Heidemann and Joseph Lee (eds), *The Future of the Commercial Contract in Scholarship and Law Reform* (Springer 2018) 127-163.

formulating regulatory responses that has the potential to enhance consumer adoption of e-commerce in Nigeria, but solely where the coherentist approach seems inadequate.

Brownsword notes that these two ideals are not totally delineated since a regulatory response to legal issues of the digital economy may require the application of both a coherentist and a regulatory instrumentalist approach.¹⁶⁰ With respect to this research, the borrowing of laws from the UK and China has a coherentist element to it since the consistency of global fundamental consumer protection values will be maintained. However, since extra-legal responses will be proposed and new legal principles will be transferred into a new territory (Nigeria) by legislators, a regulatory instrumentalist ideal is reflected. Therefore, although the coherentist ideal is predominantly employed in this research, being a consumer-centred research, this study will combine both regulatory ideals in fashioning out a befitting response that can encourage consumers to engage in e-commerce in Nigeria.

1.8 Scope of Research

This study focuses on consumer e-commerce transactions, with specific interest in online contracts for the sale and supply of good and services in Nigeria. As this research targets the consumption population in Nigeria, submissions made in this thesis are geared towards enhancing the growth of the country's domestic consumer e-commerce market.

Figure 5 below shows that Nigerian consumers are mostly interested in the sale of tangible goods and provision of services as opposed to sale of digital goods. Consequently, the scope of this research does not extend to digital goods and services.

¹⁶⁰ Roger Brownsword (n 141) 26-7.

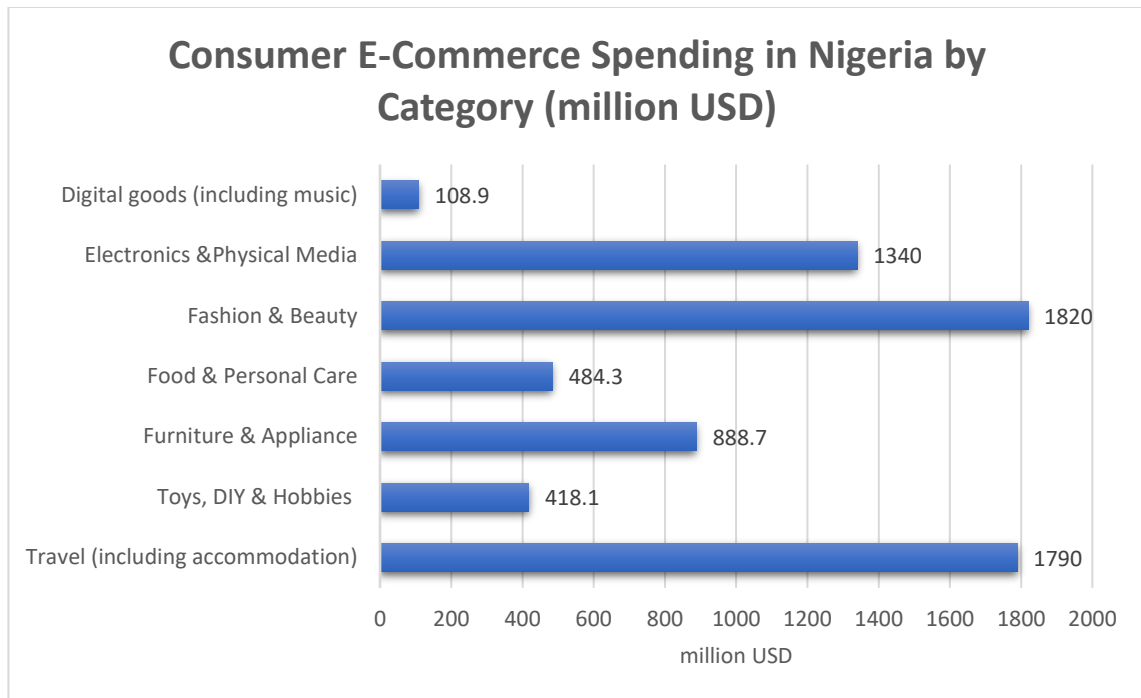


Figure 5: Consumer E-Commerce Spending in Nigeria (2020)¹⁶¹

Since figure 5 shows that Nigeria has a huge consumer e-commerce market for the sale of goods and services, this research therefore, examines legislative measures and policies whose provisions cover online sale or supply of tangible goods and services in Nigeria.

Geographically speaking, this research focuses on Nigeria; although for comparative and exemplary purposes, the legal, socio-economic and cultural contexts obtainable in the UK and China are equally discussed. Section 1.2 of this chapter already justifies the reason for choosing the UK and China as comparative models. However, reference to EU laws and judicial decisions are sometimes, made in this thesis since most pre-Brexit UK legislations and case laws derive from EU laws, and are still retained subject to some exceptions, pursuant to the European Union (Withdrawal) Act (EUWA) 2018.¹⁶²

¹⁶¹ Statista, E-Commerce Spending in Nigeria 2020, by Category' (*Statista*, March 2021) <<https://www.statista.com/statistics/1139851/e-commerce-spending-growth-in-nigeria-by-category/>> accessed 1 May 2021.

¹⁶² See Fn 59.

1.9 Research Methodology

To answer the research questions, this study employs a combination of doctrinal, literature-based and comparative research methodologies.

A doctrinal research “provides a systematic exposition of the rules governing a particular legal category, analyses the relationship between rules, explains areas of difficulty and, perhaps, predicts future development.”¹⁶³ This study critically analyses relevant primary sources of law¹⁶⁴ which regulate e-commerce and consumer-related matters in Nigeria,¹⁶⁵ the UK¹⁶⁶ and China¹⁶⁷ to understand how their substantive rules operate in context within the jurisdictions. Since this research argues that existing Nigerian laws are inadequate for e-commerce, the laws explored in this thesis are taken apart and critiqued to ascertain the extent to which their provisions can be stretched further to help address the central research problems.

Doctrinal research employs a library-based or information-based research design to identify a pragmatic solution to specific problems.¹⁶⁸ Thus, extending the scope of existing rules to cover the identified central issues will require a practical application of those rules to consumers, online merchants, and other market actors. Most importantly, examining how such rules are likely to be perceived by consumers who are made aware of their existence, gives credence to the practical effect of such rules in building the consumer confidence, needed to steer more consumer participation in e-commerce transactions. This examination is further necessary to ensure that relevant provisions of

¹⁶³ Terry Hutchinson, *Researching and Writing in Law* (2nd edn: Thomson Lawbook Co, 2006) 7.

¹⁶⁴ These include authoritative sources such as statutes, secondary legislations or rules and case law. See R van Gestel and Hans Micklitz, *Revitalizing Doctrinal Legal Research in Europe: What about Methodology?* (European University Institute Working Papers Law 2011) 26.

¹⁶⁵ As noted in section 1.3 of this chapter, the FCCPA 2018, the SOGA 1893 and the ETB 2017 serve as primary sources of reference. Nevertheless, the Guidelines and Frameworks drafted by the CBN are analysed in relation to the two substantive legal issues identified as perceived security risks of e-payment in section 1.4.2 of this chapter.

¹⁶⁶ The UK laws analysed in this thesis in relation to the central research issues identified in sections 1.4 of this chapter are the Consumer Rights Act 2015, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulation 2013 and the UK Payment Services Regulation 2017.

¹⁶⁷ In China, relevant laws of the Consumer Protection Law 2013, the E-Commerce Law 2018 and the Chinese Civil Code 2020 are analysed in relation to the central research issues.

¹⁶⁸ Terry Hutchison, ‘Doctrinal Research: Researching the Jury’ in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (2nd edn, Routledge 2017) 8, 18.

these laws support innovation and are enough to protect consumers who make online purchases against perceived risk factors. Where weaknesses or gaps exist, the rules will be reconstructed to ensure their functionality and effectiveness when applied in practice.¹⁶⁹ Prior to such reconstruction, a descriptive method will be applied to generally assess the background, purpose and provisions of the UK and Chinese laws. Such assessment serves as a preliminary investigation needed to confirm if these laws, where subsequently analysed in relation to the central research issues, can be adapted to suit the peculiar context in Nigeria.

The second research approach employed in this study is the literature-based methodology, which like the doctrinal research, is also library-oriented.¹⁷⁰ Here, a systematic review of the contents of existing empirical literature is made with a view to developing some research hypotheses derived from the modified TAM framework, to help answer the research questions. As the subject of this research (consumer e-commerce adoption) is explained as requiring some heuristic interdisciplinary research on consumer behaviour, current literature which analyses consumer policies from an economic perspective is also employed in this study. This is because an economically informed legal research “helps describe and explain how the law is and what effects it creates or can be expected to create, [whilst also providing] a framework for critical analysis and an ultimate view of how the law ought to be (designed, reformed, interpreted or enforced)” to achieve specific normative goals.¹⁷¹

Therefore, to ascertain the likely effect of laws on consumers and achieve the goal of enhancing e-commerce adoption, a secondary research method is applied. Here, existing data, tested and validated in relevant TAM-related literature and other consumer statistical reports, are collated and synthesised. These data are employed to support statements and submission made in this thesis justifying the need for the law to be amended or updated.

¹⁶⁹ Mike McConville and Wing Hong Chui, *Research Methods for Law* (1st edn, Edinburgh University Press 2007) 64.

¹⁷⁰ C R Kothari, *Research Methodology: Methods and Techniques* (2nd edn, New Age Publishers, 2004) 7.

¹⁷¹ Albert Sanchez-Graells, ‘Economic Analysis of Law, or Economically Informed Legal Research’ in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (2nd edn, Routledge 2017) 170, 171.

Lastly, as already explained in some preceding sections of this chapter, a comparative methodology is predominantly applied in this research. This method examines the legal cultures of the UK and China, comparing them with the Nigerian culture with a view to raising new insights on how the Nigerian law can be reformed.¹⁷² It is helpful to adopt this research technique since it is widely affirmed by comparative law scholars that an effective solution to a specific problem may be found in the laws of a foreign jurisdiction where national laws are deemed inadequate.¹⁷³ This also entails analysing and comparing judicial decisions from the three jurisdictions to understand how their courts interpret and apply existing laws to resolve disputes around the identified research issues. The aim is to ensure that any potential borrowing of laws from the UK or China does not obstruct the course of legal development in Nigeria, seeing that laws in the comparative jurisdictions may either be loosely or tightly bound to their unique contexts.¹⁷⁴

As earlier stated, comparative methodology which relies on the functionalist and legal transplant theories is fused with a practical framework, TAM, to build a bespoke research framework. Following this research methodology will add to the understanding of the socio-economic function of law in Nigeria whilst also identifying possible areas for reform within its legal regime on consumer protection.¹⁷⁵ Fusing the legal theories with TAM will further help the writer understand online consumer purchasing behaviour and the possible role that could be played by the law in building consumer confidence in the three subject jurisdictions.

¹⁷² David Nelken, 'Thinking about Legal Culture' (2014) 1 *Asian Journal of Law and Society* 255; L M Friedman, 'The Place of Legal Culture in the Sociology of Law' in M Freeman (ed), *Law and Sociology* (Oxford University Press, 2006) 185-199.

¹⁷³ Edward J Eberle, 'The Methodology of Comparative Law' (2011) 16 *Roger Williams University Law Review* 51, 56-57; Vernon V Palmer, 'From Leretholi to Lando: Some Examples of Comparative Law Methodology' (2005) 53(1) *The American Journal of Comparative Law* 261-290; Geoffrey Samuel, 'Comparative Law and its Methodology' in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (2nd edn, Routledge 2017) 122-145.

¹⁷⁴ Gunther Teubner (n 49).

¹⁷⁵ G Wilson, 'Comparative Legal Scholarship' in M McConville and W H Chui (eds), *Research Methods for Law* (Edinburgh University Press, 2010) 92.

1.10 Significance of Research

This thesis makes significant contributions to existing body of knowledge on comparative commercial/consumer law and information systems behavioural research. It also has remarkable policy implications for the Nigerian government, market actors and other relevant stakeholders, and these are demonstrated in three ways.

Firstly, this research is noteworthy for developing a modified framework based on the extended TAM, used in explaining the likely influence of law on online consumer purchasing decisions. Previous studies on the effect of law on consumer behaviour are mostly centred around insights derived from behavioural economics literature.¹⁷⁶ Like the aim of this research, these insights are used in shaping the design and delivery of consumer policies to better reflect consumer behaviour.¹⁷⁷ However, unlike other behavioural studies, TAM is a more tailored, sector-specific framework particularly designed for information system-related inquiries, which makes it much suited to e-commerce research.

For clarity, behavioural economics literature essentially argues that individual decisions and judgements are sometimes, subject to systemic biases which may lead them into making both favourable and unfavourable market decisions.¹⁷⁸ This is contrary to the

¹⁷⁶ Pete Lunn, *Regulatory Policy and Behavioural Economics* (OECD Publishing, 2014); Alberto Alemanno and Anne-Lise Sibony (eds), *Nudge and the law: A European Perspective* (Hart Publishing 2015); Phillip Hacker, 'More Behavioral vs. More Economic Approach: Explaining the Behavioral Divide between the United States and the European Union' (2016) 39(2) *Hastings International and Comparative Law Review* 355; HW Micklitz, LA Reisch and K Hagen, 'An Introduction to the Special Issue on "Behavioural Economics, Consumer Policy, and Consumer Law"' (2011) 34 *Journal of Consumer Policy* 271; Anne-Lise Sibony, 'Can EU Consumer Law Benefit from Behavioural Insights? An Analysis of the Unfair Practices Directive' (2014) 6 *European Review of Private Law* 901; Joasia Luzak, 'To Withdraw or Not to Withdraw? Evaluation of the Mandatory Right of Withdrawal in Consumer Distance Selling Contracts Taking into Account Its Behavioural Effects on Consumers' (2014) 37 *Journal of Consumer Policy* 91. For the consideration of behavioural economics in the UK consumer policy, see Department for Business Innovation and Skills (BIS), 'Better Choices: Better Deals Consumers Powering Growth' (2011) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/294798/bis-11-749-better-choices-better-deals-consumers-powering-growth.pdf> accessed 17 May 2021.

¹⁷⁷ Ibid.

¹⁷⁸ S Hargreaves Heap, 'What is the Meaning of Behavioural Economics?' (2013) 37(5) *Cambridge Journal of Economics* 985-1000; D Kanev and T Venelin, 'Behavioural Economics: Development, Condition and Perspectives' (2017) 52(4) *Business Economics* 387-410.

neoclassical economic assumption of rationality which depicts human beings as always seeking to maximise utility by selecting best products/services after considering all information, benefits and costs.¹⁷⁹ Such belief is contradicted by findings from cognitive psychologists which suggest that consumers often display ‘bounded rationality’ in the sense that sometimes, they do not follow the predicted and systematic ways of making decisions suggested by neoclassical economists and by so doing, consumers may make inaccurate judgements.¹⁸⁰ This explains why some behavioural economists argue in favour of the need to influence or nudge individuals into making better decisions.¹⁸¹

While acknowledging the importance of behavioural economics literature in improving the form and substance of consumer policies, this study does not delve into the legal insights from the literature, having been widely covered by academics.¹⁸² However, this research provides an alternative, but more distinct framework for understanding consumer purchasing behaviour specifically within the online context. Utilising this model is more significant due to the following reasons:

- i. Unlike the approach followed by behavioural economists, TAM looks at the overwhelming impact of perceived risk factors on consumers behaviour, together with their interrelationship with other impact variables identified in figure 3 above.
- ii. Legal insights from the TAM, which framework is specifically devoted to information systems-related enquiry, will most likely be more relevant to e-commerce research than findings from general behavioural research.
- iii. Aside focusing on the specificity of online transactions, predicting e-commerce adoption by objectively accessing the cumulative effect of multiple impact factors, empirically tested and validated by TAM researchers as determining actual

¹⁷⁹ Lucia A Reisch and Min Zhao, ‘Behavioural Economics, Consumer Behaviour and Consumer Policy: State of the Art’ (2017) 1(2) Behavioural Public Policy 190.

¹⁸⁰ Daniel Kahneman, ‘Maps of Bounded Rationality: Psychology for Behavioral Economics, (2003) 93 American Economic Review 1449–1475; Enrique Fatas and Bruce Lyons, ‘Consumer Behaviour and Market Competition’ in Judith Mehta (ed) *Behavioural Economics in Competition and Consumer Policy* (Norwich: ESRC Centre for Competition Policy 2013) 29-30.

¹⁸¹ Cass R Sunstein and Lucia A Reisch. *The Economics of Nudge* (Routledge 2017); Philippe Mongin and Mikaël Cozic, ‘Rethinking Nudge: Not One but Three Concepts’ (2018) 2(1) Behavioural Public Policy 107-124.

¹⁸² See footnote 176.

consumer behaviour, will most likely produce a more robust and accurate reflection of consumer online decision-making process. This is more so as the socio-cultural factors, psychological and cognitive elements of behavioural economics¹⁸³ are factored into consideration in developing the TAM framework.

- iv. Through the modified framework depicted in figure 3 above, the level of consumer awareness of laws (in Nigeria, the UK and China) are explored, together with the likely influence of such awareness on future consumer purchasing decisions.

Therefore, building on the framework by incorporating the legal element provides a more robust alternative to understanding the variables which impact on consumer decision to engage in e-commerce. Since such framework has not been developed in previous literature, this research makes original contribution to current TAM-related e-commerce adoption research. Nigerian policy makers can therefore, leverage on the research findings to formulate rules that more accurately reflect online consumer behaviour in the country.

The second significance of this research is its potential contribution to improving consumer policy in Nigeria. This is due to the current dearth of literature that discusses the consumer protection provisions of the Nigeria's FCCPA 2018. The few existing literature on the FCCPA essentially focuses on the competition provisions of the Act. Therefore, by providing a general background and overview to the FCCPA, explaining its purpose and critiquing its provisions in relation to the central research issues as contained in Part 2 of this thesis, this study supplements the research gap on recent consumer protection policies in Nigeria.

Lastly, this research generally enhances the development of comparative law literature in Nigeria, which area of law is largely ignored in scholarly works, despite its practical impact on national law reformation. As at the time of writing, no comparative study exists on Nigeria, the UK and China or between Nigeria and any other country with regards to the identified central research issues (or any other e-commerce related issue).

¹⁸³ Maayer S Malter *et al*, 'The Past, Present and Future Consumer Research' (2020) 31 Marketing Letters 137, 140; Amitai Etzioni, 'Behavioural Economics: Next Steps' (2011) 34(3) Journal of Consumer Policy 277-287.

Applying comparative law technique is further significant due to its potential policy and practical implications for the Nigerian government and the consumers, respectively. For instance, as globalisation necessitates the borrowing of laws from model jurisdictions,¹⁸⁴ reformed Nigerian policies will unconsciously promote the international attractiveness of Nigeria's legal regime as models for other emerging or underdeveloped economies. This is possible since jurisdictions (such as the USA, the UK and China) whose laws are often used as models in most comparative literature, are known to easily attract foreign investors.¹⁸⁵ With regards to its impact on consumers, those who generally perceive other country's laws as being more effective in protecting their rights and interests when shopping online (hence, their acknowledged preference for cross-border shopping),¹⁸⁶ may further be inclined to positively alter their nationalistic belief system in favour of their domestic laws.¹⁸⁷ With greater awareness, foreign nationals may also become more comfortable patronising Nigerian suppliers.¹⁸⁸

These original contributions to existing body of knowledge add to current discussions on how laws can practically be used as tools to promote consumer confidence in online transactions.¹⁸⁹ Therefore, where the legal and extra-legal responses to consumer e-commerce adoption suggested in subsequent chapters of this thesis are successfully implemented by the Nigerian government, this research will have its significant impact

¹⁸⁴ Jianfu Chen, 'Modernisation, Westernisation, and Globalisation: Legal Transplant in China' in J C Oliveira and P Cardinal (eds), *One Country, Two Systems, Three Legal Orders - Perspectives of Evolution* (Berlin, Heidelberg: Springer 2009) 91.

¹⁸⁵ Ibid.

¹⁸⁶ This is because empirical study on the possible challenges to e-commerce adoption in Nigeria reveals that 72.5% of consumers agree to having a general fear of placing online orders from domestic retailers and would rather shop from foreign countries whom they believe offer better legal protection against transaction risks. See Habib U Khan and Stellamaris Uwemi (n 13).

¹⁸⁷ For argument on nationalistic belief system, see Thomas Wilhelmsson, 'The Abuse of the "Confident Consumer" as a Justification for EC Law' (2004) 27 *Journal of Consumer Policy* 317, 326-27.

¹⁸⁸ Jianfu Chen

¹⁸⁹ Christian Twigg-Flesner, 'The Importance of Law and Harmonisation for the EU's Confident Consumer' in D Leczykiewicz and S Weatherill (eds), *The Images of the Consumer in EU Law* (Hart Publishing 2015) 183—203; D Wei, 'From Fragmentation to Harmonization of Consumer Law: The Perspective of China' (2020) 43(1) *Journal of Consumer Policy* 35-56; Sutatip Yuthayotin, 'Consumer Protection in B2C E-Commerce: Enhancing Consumer Confidence' in *Access to Justice in Transnational B2C E-Commerce- A Multidimensional Analysis of Consumer Protection Mechanisms* (Springer 2015) 24-26.

on legislators, consumers, online merchants, other relevant stakeholders and the Nigerian economy as a whole.

1.11 Research Limitations and Challenges

In addition to the specific limitations of comparative law theories of functionalism and legal transplant, as well as those of the TAM framework highlighted in chapter three of this thesis, this research is generally limited in five respects.

Firstly, although the doctrinal methodology employed in this research helps determine the effectiveness of existing Nigerian laws and provides quicker response to the research questions, this research may be limited by subjectivity often associated with doctrinal research.¹⁹⁰ There is the possibility that due to the writer's close connection with the subject jurisdiction, the interpretations and analyses of relevant primary sources of law and empirical literature may have consciously or unconsciously been influenced by personal views, perceptions and idiosyncrasies. This limitation is nevertheless mitigated by the fact that various verifiable academic sources is employed in this thesis to support the research submissions. Furthermore, interpretations made justifying the practicability of relevant provisions of the law or lack thereof, are not mere abstractions since some secondary data are used in justifying the normative relevance of the law within the research context. The analyses are also complemented by case laws where available, to show how the courts analyse and interpret applicable provisions of the law.

Secondly, as a comparative law technique is predominantly applied in this research, it is likely that the writer will not be fully accustomed to all compared legal systems.¹⁹¹ This makes it likely possible that the compared foreign laws may be misinterpreted, subsequently leading to incompetent conclusions.¹⁹² More so, since a detailed comparison of all legal systems is likely beyond a writer's ability, selectivity issues could be

¹⁹⁰ Ashish K Singhal and Ikramuddin Malik, 'Doctrinal and Socio-Legal Methods of Research: Merits and Demerits' (2012) 2 Educational Research Journal 252.

¹⁹¹ Alan Watson, *Legal Transplants: An Approach to Comparative Law* (2nd edn, University of Georgia Press 1993) 16-20.

¹⁹² George Mousourakis, 'Legal Transplants and Legal Development: A Jurisprudential and Comparative Law Approach' (2013) 54(3) *Acta Juridica Hungarica* 219; Tom Ginsburg, Pier G Monateri and Francesco Parisi, *Classics in Comparative Law* (Edward Elgar 2014).

encountered where specific legal rules are partially chosen and analysed subjectively.¹⁹³ Such subjective analysis could, therefore, lead to an arbitrary generalisation of results.¹⁹⁴ To curtail the impact of this limitation on the research submissions, the scope of this research is narrowed down to only three issues which affect online sale of goods contracts within domestic jurisdiction. By dealing with limited issues, the researcher provides not only a more tailored, but detailed analyses of issues, but it also limits the prospects of misinterpretation and lack of depth which could come with the discussion of wider issues.

Thirdly, combining comparative methodology with doctrinal research methods can be challenging as both methods are time consuming, with the “difficulty of not knowing when to stop.”¹⁹⁵ This difficulty is, nevertheless, curtailed by limiting analysis to the relevant documents which support the modified TAM framework shown in figure 3 above. That notwithstanding, conducting a library-based study in the UK about three distinct jurisdictions in three different continents, evidently has its limiting effect on the research findings. For instance, statistical reports on the UK are made more readily accessible to the public than those in China and Nigeria. Same goes for databases on decided cases. As a result, more time was spent going through several websites and online databases to find reported cases that explain the judicial approach to interpreting relevant provisions of the laws in China and Nigeria. To curtail the impact of this limitation on the research findings, chapter four establishes a commonality of contexts between Nigeria and the UK. This is to ensure that some empirical reports and court decisions applicable to the UK can equally be adapted to explain and address the situation in Nigeria.

Fourthly, as a consumer-related enquiry, this research would have benefitted from a quantitative analysis conducted using surveys and explaining current consumer online purchasing behaviour. Here, Nigeria would have been chosen as the target population and a specified number of consumers randomly selected from different states chosen as the

¹⁹³ George Mousourakis and Matteo Nicolini, *Comparative Law and Legal Traditions* (Springer 2019) 107-110; Konrad Zweigert and Hein Koetz, *An Introduction to Comparative Law* (3rd edn, Oxford University Press 1998) 98- 119.

¹⁹⁴ Uwe Kischel, *Comparative Law* (Oxford University Press 2019) 87.

¹⁹⁵ Joanne DS Armstrong and Christopher A Knott, *Where the Law Is: An Introduction to Advanced Legal Research* (Thomson West, 2004) 3.

sample population. This survey would for instance give an up-to-date explanation of the extent to which Nigerian consumers are deemed to be aware of laws and whether such awareness or lack thereof, does have an influence on their actual online purchasing decisions. For a more apt comparison, same survey would have also been distributed to UK consumers using a similar research design. However, due to limited resources and time constraints, such primary research method was not utilised. This limitation is, nevertheless, curtailed by reference to existing empirical literature and statistical reports which explain consumer level of legal awareness linked to the identified central issues, not only in Nigeria, but also in the UK and China. This is then supported by TAM-related empirical literature on e-commerce explaining the general influence of awareness on consumer behavioural intention to make online purchases.

Finally, the inability of the writer to translate to English language, academic materials written in ‘Mandarin’ (the official dialect of China), may have limited the writer’s ability to incorporate resourceful literature into the research. As a result, the writer thoughtfully engaged with relevant texts either written in English language or subsequently transcribed to English by a translation software. However, relying on a translation software in academic research raises reliability issues where content is not verified by a human translator due to flaws associated with syntactic problems.¹⁹⁶ Thus, since machine translations are not sufficiently sophisticated to be judged as accurate,¹⁹⁷ the reliability of this research is preserved by limiting the use of Chinese-authored materials not originally written in English language.

1.12 Structure of Research

To provide a logical flow of arguments and a clearer presentation of issues identified in this research, this thesis is divided into three parts with a total of eight chapters. Part 1 consists of four chapters (1-4) which provide a detailed background of the research

¹⁹⁶ Michael Groves and Klaus Mundt, ‘Friend or Foe? Google Translate in Language for Academic Purposes’ (2015) *English for Specific Purposes* 112, 114.

¹⁹⁷ A van Rensburg, C Snyman and S Lotz, ‘Applying Google Translate in Higher Education Environment: Translation Products Assessed’ (2012) 3(4) *Southern African Linguistic and Applied Language Studies* 511.

framework. Part 2 is divided into three chapters (5-7) which focus on addressing the three central issues raised in this research while Part 3 (chapter 8) concludes the research.

After the introductory chapter which provides a general background of the thesis, the issues for determination and the research objectives, chapter two provides a background to consumer e-commerce by explaining the meaning of the term, outlining the perceived usefulness of e-commerce to consumers, and providing more clarification on the reason why Nigerian B2C e-commerce is specifically chosen as the research focus. Thereafter, a clarification of who an online consumer is and why such consumers need more protection, is explored in relation to relevant laws in Nigeria, the UK and China. This then leads us to chapter three which provides another background discussion of the relevance and limitations of the integrated research framework. The thesis background then extends to chapter four which discusses major consumer e-commerce-related legal frameworks applicable in the three jurisdictions. The essence of these discussions is to understand the purposes of the laws, their legal background and the socio-economic situation in the three jurisdictions which may have influenced the drafting of the laws.

Having set the foundation for the research arguments, the second part of this thesis begins with chapter five which delves into the first substantive legal issue of unfair contract terms. The legislative and judicial controls are analysed in relation to the substance and form of its rules. Thereafter, the possible influence of such rules on consumer behavioural intention to make online purchases is determined using the modified TAM framework. A comparative analysis of the laws in the three jurisdictions which further considers how their consumers react to this perceived risk factor, is made with a view to identifying legal gaps within the Nigerian legal regime and suggesting appropriate policy responses to tackle this issue. Same research structure is followed when discussing e-payment security and the physical delivery and cancellation of online purchases in chapters six and seven respectively.

This research concludes with chapter eight where a recap of all previous chapters is made. Chapter eight further shows how the research questions are answered and the research

objectives, met. Here, the summary of the research findings is presented, after which general legal and extra-legal responses to mitigating the impact of the identified risk factors on consumers, are suggested. After demonstrating how the entire chapters of the thesis align, the research concludes by highlighting practical contributions of the findings to legislators, online merchants, consumers, and the Nigerian government. Possible future research directions are also proposed.

CHAPTER TWO

BACKGROUND TO CONSUMER E-COMMERCE

The aim of this chapter is to provide a general conceptual background that will guide the reader into understanding the meaning of terms used in describing the nature and legal implications of online transactions entered into by consumers. To achieve this objective, several steps are followed, but are divided into three major sections.

Section 2.1 first examines the various definitions of e-commerce before outlining its forms. The benefits of e-commerce are then highlighted with a view to understanding its ‘perceived usefulness’ to consumers. Thereafter, the development and present status of consumer e-commerce adoption in Nigeria is explored with a view to understanding why despite e-commerce benefits, its adoption by consumers remains low. This leads us to section 2.2 where the legal background of online consumer protection is provided. Here, the rationale for protection is first explored before clarifying the class of legal entities eligible for protection under the consumer protection laws of Nigeria, the UK and China. Finally, section 2.3 explains the legalistic meaning of a ‘confident consumer,’ since this term is associated with the ‘trust in online merchant’ and legal ‘awareness’ variables incorporated into the modified research framework (in figure 3 above).

2.1 Conceptual Framework of E-Commerce

2.1.1 Definition of E-Commerce

The nature of e-commerce has been subject to varying discussions in several academic texts, however, with no uniform or generally accepted definition. The African Union Convention on Cyber Security and Personal Data Protection 2014¹⁹⁸ defines e-commerce as the “act of offering, buying, or providing goods and services through computer systems

¹⁹⁸ The Convention was adopted by the African Union (AU) Parliament in 2014. As of April 2021, it had 14 signatories and seven ratifications, out of 55 AU member-states. Nigeria has neither signed nor ratified the Convention. Nevertheless, it is yet to come into force as it requires ratification by at least 15 member states. For more, see Yarik Turianskyi, ‘Africa and Europe: Cyber Governance Lessons’ (*Policy Insights*, January 2020) <<https://media.africaportal.org/documents/Policy-Insights-77-turianskyi.pdf>> accessed 30 April 2021.

and telecommunications networks such as the internet, or any other network, using electronic, optical or similar media for distance information exchange.”¹⁹⁹ For Lawal and Ogbu, e-commerce is defined as a commercial activity conducted through the internet using modern electronic communication instruments, including e-payment technologies.²⁰⁰ Rowland and MacDonald define the term as “a broad concept that covers any commercial transaction effected via electronic means, such as mobile phones, telephones, internet and Electronic Data Interchange (EDI)”.²⁰¹ For Gupta, e-commerce involves the use of electronic communication tools and digital information processing technologies to create value, redefine and transform commercial relationships between individuals and businesses.²⁰² Further definition is provided by Chan, who adopts the UNCITRAL approach in his text by extending the scope of e-commerce to include “commercial activities conducted through an exchange of information generated, sorted or communicated by electronic, optical or analogous means”.²⁰³

E-commerce transactions occur between commercial entities or private individuals over data products, information, tangible and intangible goods.²⁰⁴ The element of tangibility is incorporated into the EU definition where e-commerce is described as “any form of business transaction in which parties interact electronically, rather than by physical

¹⁹⁹ Ibid, Article 1.

²⁰⁰ Ahmed Lawal and Richard C Ogbu, ‘E-Commerce, Problems and Prospects in Nigeria’ (2015) 3(1) International Journal of Scientific Engineering and Applied Science 230, 231. Also see Ugo C Okolie and Awulika H Ojomo, ‘E-Commerce in Nigeria: Benefits and Challenges’ (2020) 28(2) Journal of Humanities and Social Sciences Latvia 69, 73.

²⁰¹ Rowland and MacDonald (n 3) 251. See also Sri Nivas Singh, ‘E-Commerce: Role of E-Commerce in Today’s Business’ (2016) 6(1) Computing Trendz - The Journal of Emerging Trends in Information Technology 11; Liran Einav *et al*, ‘Growth, Adoption, And Use of Mobile E-Commerce’ (2014) 104(5) American Economic Review 489.

²⁰² A Gupta, ‘E-commerce: Role of E-Commerce in Today’s Business’ (2014) 4(1) International Journal of Computing and Corporate Research 1–8.

²⁰³ Clayton W Chan, ‘Taxation of Global E-Commerce on The Internet: The Underlying Issues and Proposed Plans’ (2000) 9(1) Minnesota Journal of Global Trade 233, 234.

²⁰⁴ Ahmed Lawal and Richard Chukwu Ogbu, ‘E-Commerce, Problems and Prospect in Nigeria’ (2015) 1 International Journal of Engineering and Applied Science 230; Marcus A Araromi, ‘Taxation of E-Commerce in Nigeria: Treading the Global Pathway’ (2016) 1 International Company and Commercial Law Review 204; Stephen A Ojeka and O Ailemen Ikpefan, ‘Electronic Commerce, Automation and Online Banking in Nigeria’ (2012) 3(1) International Journal of Innovation in the Digital Economy 11.

exchanges”.²⁰⁵ Such electronic interaction could either involve the online ordering of tangible goods, accompanied by physical modes of delivery or direct online ordering, accompanied by online payment and online delivery of intangible goods.²⁰⁶ Tangible goods include, but are not limited to conventional products such as clothing, beverages, furniture and books, while intangible goods include products such as copyrighted images, software, music and similar digital goods. E-commerce further covers a wide range of services such as banking and insurance services, tourism, and legal and financial services.²⁰⁷ For the purposes of this research, it is necessary to reiterate that the scope of this research predominantly focuses on online sale and supply of tangible goods.

Steinfeld notes that e-commerce could be defined in narrower terms to reflect a situation where the act of ordering and payment are concluded over the internet.²⁰⁸ On the other hand, broader definitions permit online information exchange, despite Cash-on-Delivery (COD) or offline payment.²⁰⁹ The OECD aptly captures the broader definition in its text where it defines e-commerce as:

“...the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders. The goods or services are ordered by those methods, but the payment and the ultimate delivery of the goods or services do not have to be conducted online. An e-commerce transaction can be between enterprises, households, individuals, governments, and other public or private organisations.”²¹⁰

²⁰⁵ A European Initiative on Electronic Commerce (COM 1997) 157 Final, at I (7), <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:1997:0157:FIN:EN:PDF>> accessed 12 July 2019.

²⁰⁶ Ibid.

²⁰⁷ Ihuoma K Ilobinso, (n 14) 83.

²⁰⁸ Charles Steinfield, 'E-Commerce', in Hossein Bidgoli (ed), *Handbook of Computer Networks, Network Planning, Control, Management and New Trends and Applications* (2nd edn, Wiley and Sons 2012) 843.

²⁰⁹ Yan Tian, *Electronic Commerce: Concepts, Methodologies, Tools and Applications* (USA, IGI Global 2008) 1-8; Mohamad Halaweh, 'Cash on Delivery (COD) As an Alternative Payment Method for E-Commerce Transactions' (2018) 10(4) International Journal of Sociotechnology and Knowledge Development 1.

²¹⁰ OECD, *OECD Guide to Measuring Information Society 2011* (OECD 2011) 71-2 <<https://www.oecd.org/sti/ieconomy/oecdguidetomeasuringtheinformationsociety2011.htm>> accessed 30 April 2021.

It can be inferred from the above definition that the scope of e-commerce is so vast that it includes both pre-sale and post-sale activities. It is important to note that this research mirrors the broader definition since e-commerce transactions are mostly deemed completed where goods or services have effectively reached the final consumer.²¹¹ In a nutshell, e-commerce generally involves information exchange, geared towards initiating and concluding the process of buying and selling of goods via electronic means.

E-commerce can be initiated between parties that reside in the same jurisdiction (domestic e-commerce) and parties located in different jurisdictions (cross-border e-commerce). Technological devices such as smart phones (notably used for M-commerce), laptops, tablets, personal computers, and other internet-related networking tools are also used in initiating such transactions. As stated in section 1.8 of chapter one, this research focuses on domestic e-commerce transactions conducted through e-commerce platforms, applications, and similar networked media.

E-Commerce can assume several forms, depending on the nature of the commercial relationships that exist between parties to a transaction. A brief description of some of these models will be made rather than providing a detailed discussion, since this thesis focuses on providing adequate online consumer protection measures as one of the tools for promoting e-commerce adoption by consumers. Other forms of e-commerce are highlighted with a view to understanding the nature of different online commercial transaction and how such transactions are mostly dependent on the dynamics of the relationships between contractual parties. These forms of e-commerce include:

I. Business-to-Consumer (B2C) e-commerce:

B2C e-commerce transactions are transient online retail exchanges, which typically involve transactions of smaller value between parties with little or no contractual relationship history.²¹² For most B2C web purchases, businesses sell directly to customers

²¹¹ Fay Sudweeks and Celia T Romm, *Doing Business on The Internet* (Springer London 1999) 140; Patrick Butler and Joe Peppard, 'Consumer Purchasing on The Internet:' (1998) 16(5) *European Management Journal* 600.

²¹² Kenneth L Kraemer *et al*, *Global E-Commerce: Impacts of National Environment and Policy* (Cambridge University Press 2011) 13. Also see Vladimir Zwass, 'The Embedding Stage of Electronic

without any intermediary, while on online platforms, the platforms act as intermediaries in connecting business suppliers to consumers.²¹³ Here, consumers are able to compare the prices of products or services being advertised on the platform by different business suppliers, in addition to their product details, payment options, terms and conditions and delivery information, before a final purchase decision is made. As stated in section 1.1 of chapter one, this e-commerce model forms the basis for this research.

II. Business-to-Business (B2B) e-commerce:

B2B e-commerce involves contracts of larger value between parties most likely with existing trade relations, where the secure exchange of goods and services amongst businesses are executed using internet-enabled technologies.²¹⁴ B2B activities include but are not limited to online market exchanges between manufacturers and suppliers, tendering electronic purchase orders to vendors, proposals for software distribution and the submission of quotation requests from business customers.²¹⁵

III. Consumer-to-Consumer (C2C) e-commerce:

C2C e-commerce describes the online sale and exchange of good and services between a private individual or customer who assumes the capacity of a seller, and another, the end consumer.²¹⁶ Here, online platforms or marketplaces act as intermediaries in connecting these private individuals with end consumers, typically charging listing or transaction fees in return.²¹⁷ The nature of this transaction often requires individuals who act for purposes

Commerce', in Paul Benjamin Lowry, Owen Cherrington and Ronald Watson (eds), *The E-Business Handbook* (St Lucie Press 2020) 34.

²¹³ Damilola Sawyerr, 'Towards the Effective Protection of Consumers in E-commerce Transactions in Nigeria' (2020) 6(5) *International Journal of Law* 298, 299.

²¹⁴ M Niranjnamurthy *et al*, 'Analysis of E-Commerce And M-Commerce: Advantages, Limitations and Security Issues' (2013) 6(2) *International Journal of Advanced Research in Computer and Communication Engineering* 2360; Muneesh Kumar and Mamta Sareen, *Trust and Technology In B2B E-Commerce: Practices And Strategies For Assurance* (Business Science Reference 2012) 18-19.

²¹⁵ Maria Manuela Cruz-Cunha and Joao Varajao, *E-Business Issues, Challenges and Opportunities for SMEs: Driving Competitiveness* (Business Science Reference 2011) 135.

²¹⁶ Yrjölä Mika *et al*, 'Consumer-to-Consumer E-Commerce: Outcomes and Implications' (2017) 27(3) *International Review of Retail, Distribution and Consumer Research* 300-302; Kiku Jones and Lori N Leonard, 'Factors Influencing Buyer's Trust in Consumer-to-Consumer E-Commerce' (2014) 54(4) *Journal of Computer Systems* 71.

²¹⁷ Zheng Qin, *Introduction to E-Commerce* (Springer, Tsinghua University Press 2009) 36-38.

unrelated to their trade or business to sell unused or unwanted items to other consumers.²¹⁸ Such transactions usually take place on various social media, advertising websites and online auction platforms such as Facebook, Craigslist and eBay, respectively.²¹⁹

IV. Consumer-to-Business (C2B) e-commerce:

C2B e-commerce refers to a situation where consumers either place online bids or make or create value for products and services which are sold to organisations using the internet.²²⁰ The C2B e-commerce model is said to be a reverse transposition of B2C relationships and further akin to a sole proprietorship serving a large business entity.²²¹

V. Online-to-Offline (O2O) e-commerce:

O2O e-commerce involves the fusion of offline business opportunities with the internet.²²² Here, various e-mail and web advertising tools are employed by O2O platforms as a means of targeting and attracting customers online.²²³ The online component of the transaction requires merchants to provide information about the product or service.²²⁴ However, the actual consumption or experiencing of the products or services occur offline.²²⁵ Thus, the internet solely acts as an initial front for the offline transaction.

²¹⁸ Ihuoma K Ilobinso (n 14) 86.

²¹⁹ Ibid.

²²⁰ Efraim Turban *et al*, *Electronic Commerce 2018 A Managerial and Social Networks Perspective* (9th edn, Springer 2018) 11; Charles L Cheng, 'E-Commerce Business Models - The Law's Response' (2000) 26 Commonwealth Law Bulletin 580, 581.

²²¹ Rania Nemat, 'Taking a Look at Different Types of E-Commerce' (2011) 2(1) World Applied Programming Journal 100, 102.

²²² Yingsheng Du and Youchun Tang, 'Study on the Development of O2O E-commerce Platform of China from the Perspective of Offline Service Quality' (2014) 5(4) International Journal of Business and Social Science 308.

²²³ Ibid.

²²⁴ Jin Zhang, 'Customer' Loyalty Forming Mechanism of O2O E-Commerce' (2014) 5(1) International Journal of Business and Social Science 164.

²²⁵ Yu Guoyou, 'The Study of the Application of O2O E-Commerce Model in China' (Proceedings of Wuhan International Conference on E-business, 27 May 2016) <<https://aisel.aisnet.org/cgi/viewcontent.cgi?article=1019&context=whiceb2016>> accessed 4 May 2021.

2.1.2 Benefits of E-Commerce

Although e-commerce presents risks some of which are identified in sections 1.1 and 1.4 of chapter one, it is necessary to highlight its general benefits, especially to consumers, since the benefits correlate with TAM's 'perceived usefulness' construct. Understanding the actual benefits of e-commerce would also give credence to the importance of encouraging its adoption in Nigeria.

E-commerce presents several benefits to consumers. For example, it affords consumers unlimited access to goods and services at any given time.²²⁶ Consumers also have easy access to global markets, irrespective of location²²⁷ Through e-commerce, consumers can confirm the availability of products together with their descriptions, comparing prices between competing online merchants, and completing purchases, all within the shortest possible time.²²⁸ Additionally, since most online marketplaces offer goods and services at a price equal to or less than those offered by traditional stores, consumers generally enjoy the benefits of competitive pricing strategies.²²⁹ For Ojedokun, e-commerce enables consumers to gain knowledge of different features of similar products and services sold at different locations, whilst also providing them with the opportunity to make informed decisions on the best quality low-priced product to purchase.²³⁰ Shahjee further adds that through e-commerce, consumers are able to connect and enjoy global access to information, products and services that would otherwise, have been difficult to obtain.²³¹

²²⁶ Samuel Manteaw, 'Entering the Digital Marketplace: E-Commerce and Jurisdiction in Ghana' (2003) 16(1) Transnational Law 345, 358.

²²⁷ Lawal Moh Ma'aruf and Khadija Abdulkadir, 'An Overview of E-Commerce Implementation in Developed and Developing Country; A Case Study of United State and Nigeria' (2012) 2(5) International Journal of Modern Engineering Research 3068, 3071.

²²⁸ Mohamed Abou-Shouk *et al*, 'Perceived Benefits of E-Commerce Adoption by SME Travel Agents in Developing Countries' (2012) 37(4) Journal of Hospitality & Tourism Research 490, 493.

²²⁹ Ibid.

²³⁰ Muqsitat M Ojedokun, 'E- Commerce as A Vehicle Towards Sustainable National Development in Nigeria: Prospects and Challenges' (2019) 3 Social Science Journal 253, 257.

²³¹ Rajneesh Shahjee, 'The Impact of Electronic Commerce on Business Organization' (2016) 27(4) Scholarly Research Journal for Interdisciplinary Studies 3130, 3138.

For online merchants, e-commerce displaces the financial burden on sellers to erect physical shelves and warehouses for storing goods, thereby, significantly reducing overhead costs of renting a prime retail location.²³² Online merchants can also efficiently target different geographical markets, advertise products and services, update prices, and keep customers informed about their operations, at little or no extra cost.²³³ E-commerce further facilitates administrative simplicity through streamlined data capturing, order and billing processes.²³⁴ Additionally, merchants can easily track online customer satisfaction rate to help measure consumers' perception of their quality of goods and services.²³⁵

Chivasa and Hurasha view the benefits of e-commerce from an economic development point of view, alluding to their ubiquity and resultant effect on the market share of online businesses.²³⁶ They further opine that e-commerce is an enabler of economic growth for emerging economies since online businesses are able to easily attract consumers across the globe.²³⁷ Chosin and Ghaffari adds that through e-commerce, the usefulness of IT systems for facilitating the economic development and growth of emerging economies is demonstrated,²³⁸ while Markame, Kang and Park credit e-commerce for its role in ensuring that the resources of developing economies are utilised in the most effective way.²³⁹ Agrawal uses China as an example of an emerging economy that has attained significant economic growth by exploiting the phenomenal benefits of e-commerce,²⁴⁰

²³² Dave Chaffey, *Digital Business and E-Commerce Management: Strategy, Implementation and Practice* (5th edn, Pearson 2013) 68-71; Abdul G Khan, 'Electronic Commerce: A Study on Benefits and Challenges in An Emerging Economy' (2016) 16 (1) *Global Journal of Management and Business Research* 19.

²³³ Mesut Savrul, Ahmet Incekara and Sefer Sener, 'The Potential of E-Commerce for SMEs In a Globalizing Business Environment' (2014) 15(1) *Procedia - Social and Behavioural Sciences* 35, 38.

²³⁴ James Agarwal and Terry Wu, 'Factors Influencing Growth Potential of E-Commerce in Emerging Economies: An Institution-Based N-OLI Framework and Research Propositions' (2015) 57(3) *Thunderbird International Business Review* 197, 199.

²³⁵ Ling Alice Jiang, Zhilin Yang and Minjoon Jun, 'Measuring Consumer Perceptions of Online Shopping Convenience' (2013) 24(2) *Journal of Service Management* 191, 193.

²³⁶ S Chivasa, and C Hurasha, 'Small and Medium Enterprises'(SME) Adoption and Usage of E-Commerce: A Probit Modelling' (2016) 4(3) *International Journal of Economics, Commerce and Management* 218-226.

²³⁷ Ibid.

²³⁸ M Chosin, and A Ghaffari, 'An Investigation of the Impact of Effective Factors on the Success of eCommerce in Small-and Medium-Sized Companies' (2017) *Computers in Human Behaviour* 66, 67-74.

²³⁹ W Makame., J Kang, and S Park, 'Factors Influencing Electronic Commerce Adoption in Developing Countries: The Case of Tanzania' (2014) 45(2) *South African Journal of Business Management* 83-96.

²⁴⁰ R K Agrawal, 'Electronic Commerce-A Study on Benefits and Challenges in an Emerging Economy' (2018) 133(4) *International Journal of Research in Engineering, IT and Social Sciences* 26-46.

while Dan adds that such growth is augmented by the increased level of trust amongst online shoppers and the availability laws that protect consumer welfare in the market.²⁴¹

On the overall benefits of e-commerce, Todd notes that various forms of e-commerce have revolutionised online commercial activities in such a way that buyers and sellers can communicate, purchase, invest and explore products and services without border restrictions.²⁴² Buyers and sellers can also gain direct access to one another easier, faster, and with much convenience.²⁴³ Most importantly, global electronic markets have been created in such a way that sellers have greater access, while buyers have limitless choices to competitively procure goods from different suppliers across the globe.²⁴⁴

2.1.3 E-Commerce in Nigeria

This section provides an overview e-commerce in Nigeria by briefly looking at the historical development and current state of adoption by consumers. The aim of this discussion is to place the perceived risks factors in context and provide more concrete reasons which justify the research focus on B2C e-commerce.

Nigeria has a large population and a growing consumer base which can serve as an asset to making the country an attractive market for e-commerce.²⁴⁵ That notwithstanding, the current state of e-commerce adoption in the country remains uninspiring.

E-commerce became noticeable in Nigeria around the mid-nineties when the telecommunications sector and the internet gradually gained prominence.²⁴⁶ Thereafter,

²⁴¹ Cudjoe Dan, 'Electronic Commerce: State-of-the-Art' (2014) 4(4) American Journal of Intelligent Systems 135-141.

²⁴² Paul Todd, *E-Commerce Law* (3rd edn, Routledge-Cavendish 2015) 1-12.

²⁴³ Efraim Turban *et al*, (n 220) 3-39; Martin Falk and Eva Hagsten, 'E-Commerce Trends and Impacts Across Europe' (2015) 170 International Journal of Production Economics 357.

²⁴⁴ Dania Romagnoli and Maria Emilia Garbelli, 'Why Promoting Online in A Global Electronic Marketplace Is a Successful Strategy for Small and Medium Sized Enterprises: The Alibaba Group Holding Business Model' in Bilgin H Mehmet *et al* (eds), *Country Experiences in Economic Development, Management and Entrepreneurship* (1st edn, Springer International 2017) 423-425.

²⁴⁵ Nigeria currently has a population of approximately 210 million people and is considered the 7th most populous country in the world.

²⁴⁶ Timothy I Akomolede and Michael S Afolayan, 'Socio-Legal Analysis of Electronic Commercial Transactions in Nigeria' (2020) 11 NAU Journal of International Law & Jurisprudence 20, 23.

in 2001, the Global System for Mobile Communication (GSM) was introduced.²⁴⁷ The introduction of the GSM subsequently led to a rapid increase in the number of internet users in the country.²⁴⁸ This explains why statistics places the country at the forefront of African countries with a growing internet penetration rate, mostly propelled by the large population size, affordability of mobile internet data in the country, increased stock of personal computers and greater smart phone accessibility.²⁴⁹ Thereafter, different forms of e-commerce activities which exist presently such as online shopping, internet banking, online ticketing, payment gateways and online auctions, were gradually introduced, with the commonest being online shopping.²⁵⁰

Prior to the development of these forms of activities, e-commerce in Nigeria suffered some retrogression following PayPal's ban of Nigerian accounts in 2005.²⁵¹ This ban was implemented due to increased incidents of e-payment fraud from accounts with Nigerian internet protocol (IP) addresses.²⁵² Following the ban, consumers were left with no other alternative (as cash-on-delivery had not been introduced), than to make bank deposits before delivery.²⁵³ These deposits were less convenient and affected the speed with which transactions were completed.²⁵⁴ This trend eventually changed with the emergence of online switching services like e-Transact, Interswitch and Visa-Packed in 2009.²⁵⁵

The development of e-payment services and the exponential increase in internet penetration rate subsequently led to the emergence of the first e-commerce platforms

²⁴⁷ Ibid.

²⁴⁸ Ibid.

²⁴⁹ Internet World Stats, 'Internet Users Statistics for Africa' (*Internet World Stats*, March 2020) <<https://www.internetworldstats.com/stats1.htm>> accessed 1 May 2021.

²⁵⁰ Charles K Ayo *et al*, 'A Framework for E-commerce Implementation: Nigeria a case study' (2008) 13(2) *Journal of Internet Banking and Commerce* 1-12; Joseph Bitrus, 'The Roles of Information and Communication Technologies (ICTs) and E-Commerce as Agents of Nigeria's Economic Development: Review of Challenges and Prospects' (2019) 10(3) *Wireless Engineering and Technology* 41, 44-48.

²⁵¹ Andrew Smith, 'Nigerian Scam E-Mails and The Charms of Capital' (2009) 23(1) *Cultural Studies* 27, 30 & 33; J Oboh and Y Schoenmaker, 'Nigerian Advance Fee Fraud in Transnational Perspective' (2010) 15 *Policing Multiple Communities* 235.

²⁵² Ibid.

²⁵³ John Effah, 'Institutional Effects on E-payment Entrepreneurship in a Developing Country: Enablers and Constraints' (2016) 22(2) *Information Technology for Development* 205, 206-9.

²⁵⁴ Ibid.

²⁵⁵ Ibid.

between 2012 and 2014, namely Jumia, Konga and Jiji.²⁵⁶ These online marketplaces presently have the largest market share for physical goods in Nigeria and are said to have pioneered the development of modern e-commerce in the country.²⁵⁷

As noted earlier in this section, the rise in internet inclusion amongst Nigeria's growing population is considered as one of the key drivers of e-commerce growth in Nigeria.²⁵⁸ Figure 6 below shows the percentage of internet users in the top five most populated countries in Africa between 2000 and 2020.

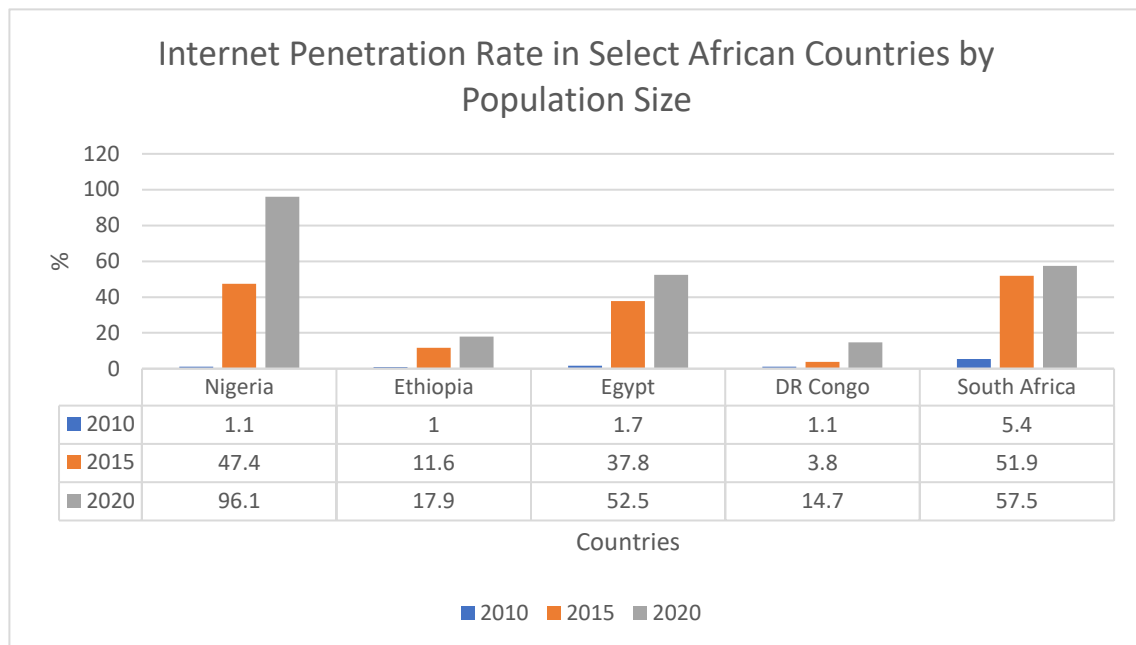


Figure 6: Internet Penetration Rate in Africa's Most Populous Countries²⁵⁹

²⁵⁶ Makuochi S Nkwo *et al*, 'E-Commerce Personalization in Africa: A Comparative Analysis of Jumia and Konga', *Proceedings of the Personalisation in Persuasive Technology Workshop* (Waterloo Canada, 6 March 2018) 66, 68; Oluwafemi Osho *et al*, 'E-Commerce in Nigeria: A Survey of Security Awareness of Customers and Factors That Influence Acceptance' (2016) 7 Organisation Centre for Research and Innovation 169, 170.

²⁵⁷ Statista, 'Estimated Number of Visitors of the Most Popular Online Marketplaces for Physical Goods in Nigeria in 2019' (3 November 2020) <<https://www.statista.com/statistics/1136234/popular-online-marketplaces-for-physical-goods-in-nigeria/>> accessed 11 August 2021.

²⁵⁸ Australian Trade and Investment Commission, 'Accessing the E-Commerce Markets in Kenya, Nigeria and South Africa' (*Austrade*, 2019) 1-9, <<https://www.austrade.gov.au/ArticleDocuments/1353/Accessing-the-Ecommerce-market-in-Kenya-Nigeria-RSA.pdf.aspx>> accessed 4 May 2021.

²⁵⁹ Joseph Johnson, 'Internet Penetration in Africa by Country' (*Statista*, March 2021) <<https://www.statista.com/statistics/1124283/internet-penetration-in-africa-by-country/>> accessed 1 May

From the chart above, it is evident that internet penetration rate in Nigeria has significantly improved, compared to other African countries with an equally large population size. Palatable as the population and penetration advantage may seem for Nigeria, the potential for greater adoption by consumers remains questionable since the volume of consumer sales remains lower than some other African countries with less population size and number of internet users, as illustrated in figure 7 below.

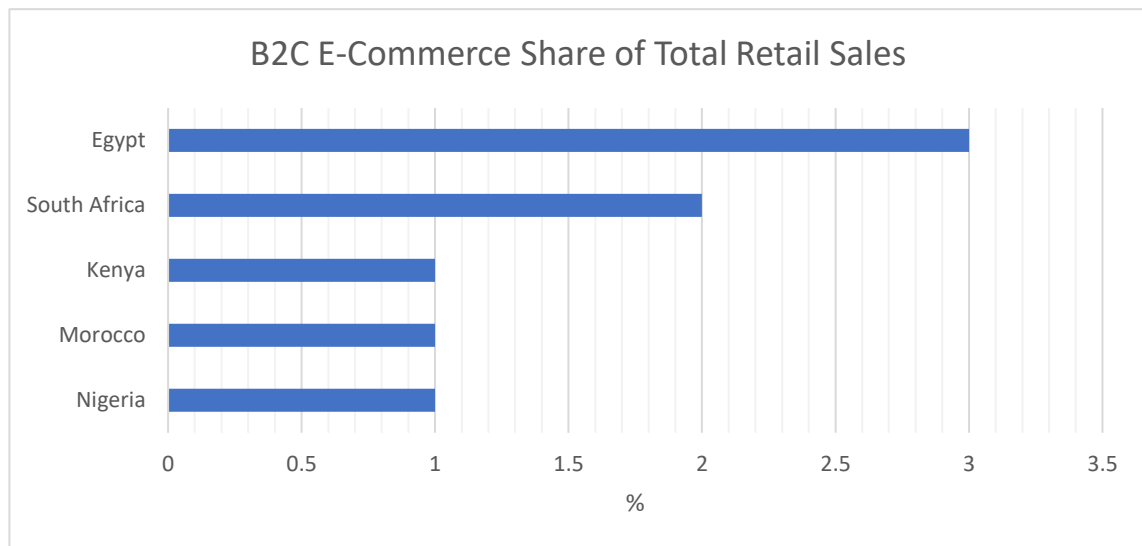


Figure 7: Share of Total Retail Sales in Select African Countries in 2020.²⁶⁰

From figure 7, it is clear that despite Egypt's lower internet penetration rate and population size, 3% of all retail sales were made online, compared to Nigeria's 1%. Same applies to South Africa, whose online consumer sales accounted for 2% of total retail sales in 2020. One may be tempted to argue from a legal point of view that Egypt and South Africa have promulgated laws which protect the interest of the online consumer, hence a contributory factor to increased adoption compared to Nigeria.²⁶¹ However, as shown in

2021. Ethiopia has a population of approximately 115 million people, with Egypt accounting for 102 million people, Democratic Republic of Congo having 89.5 million people, and South Africa recording a population of 59 million people.

²⁶⁰ Statista, 'E-commerce Retail as Share of Total Retail in Select African Countries in 2020' (*Statista*, October 2020) <<https://www.statista.com/statistics/1176023/e-commerce-retail-as-share-of-total-retail-in-africa/>> accessed 1 May 2020.

²⁶¹ Consumer e-commerce transactions in South Africa is generally regulated by the Electronic Communications and Transaction Act 2002, the Consumer Protection Act 2008 and the associated

figure 4, both countries are not renowned as being amongst the top economies with a large consumer e-commerce market, and this, among other reasons outlined in section 1.2 of chapter one, explains why the UK and China are chosen as comparative models.²⁶² Reference to Egypt and South Africa is made to not only position the Nigerian B2C e-commerce market at the African level, but to also support the argument that there are underlying legal issues which contribute to its slower rate of adoption by consumers.

The foregoing argument is complemented by data which shows that Nigeria's B2C e-commerce index has been unsteady despite the increased number of online marketplaces in the country.²⁶³ This index measures a country's readiness for e-commerce based on internet security, actual internet usage, reliability of delivery services and ownership of online shopping accounts.²⁶⁴ Figure 8 below shows that Nigeria's readiness for consumer e-commerce has been shaky in the past five years.

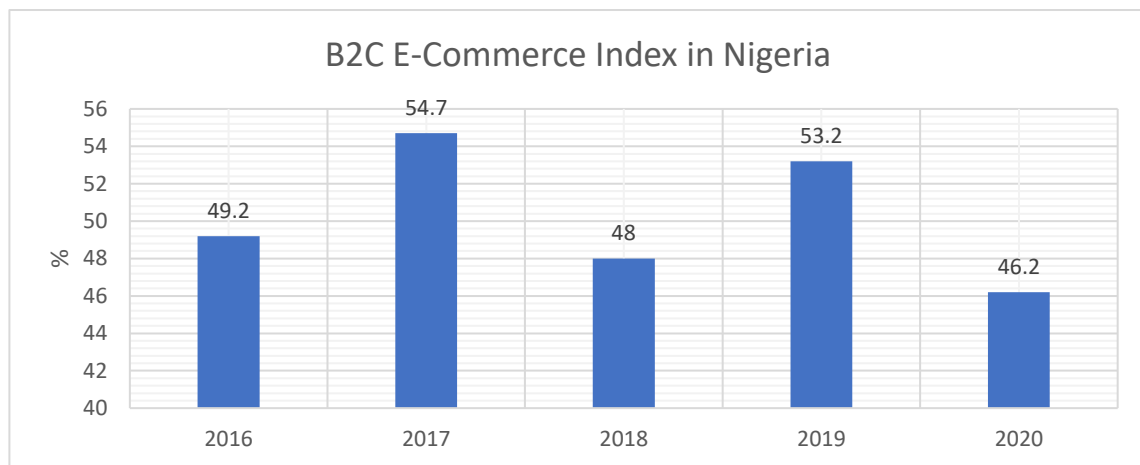


Figure 8: Nigeria's B2C E-Commerce Readiness (2016-2020)²⁶⁵

Consumer Protection Act Regulation 2011. See generally Jack S Phora. 'Developing a Legal Framework for E-Commerce in South Africa' (PhD Thesis, University of Pretoria 2019) 36. In Egypt, consumer e-commerce is regulated by the E-Signature Law of 2004 and the Consumer Protection Law of 2018..

²⁶² China has the largest consumer e-commerce market in the world while UK ranks third on the list.

²⁶³ Statista, 'African Countries with the Highest Number of Online Marketplaces as of 2019' (August 2020) <<https://www.statista.com/statistics/1139271/online-marketplaces-in-africa-by-country/>>; E-Commerce in Nigeria- Statistics and Facts' (Statista, November 2020) <<https://www.statista.com/topics/6786/e-commerce-in-nigeria/#dossierSummary>> all accessed 1 May 2021.

²⁶⁴ Ibid.

²⁶⁵ UNCTAD, 'B2C E-Commerce Index 2018- Focus on Africa' (UNCTAD Technical Notes for ICT Development No 12, 2018) <https://unctad.org/system/files/official-document/tn_unctad_ict4d12_en.pdf>

The country's annual growth percentage for consumer e-commerce sales has also been unsteady as shown in figure 9 below.

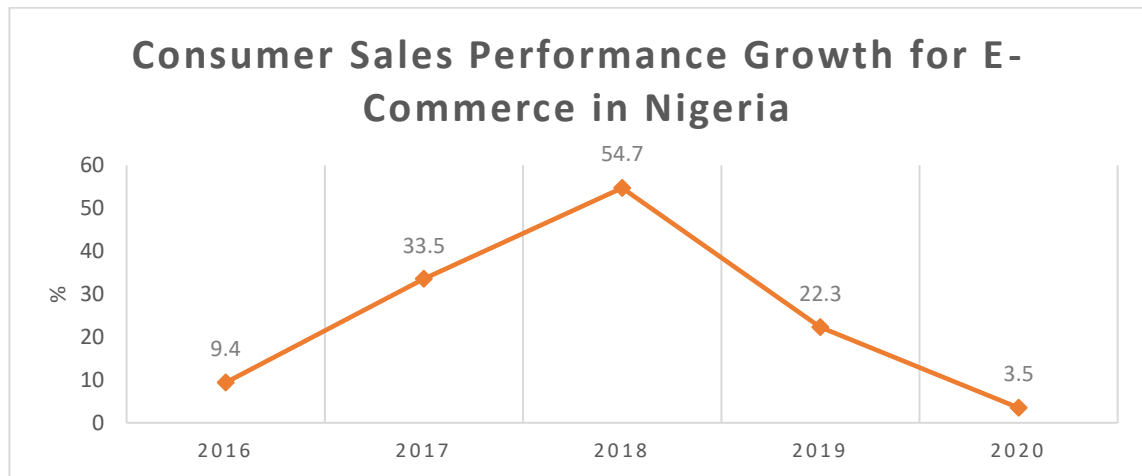


Figure 9: Annual Growth Rate of Consumer E-Commerce Sales in Nigeria²⁶⁶

Though the more recent decline is compounded by the additional impact of COVID-19 lockdown measures on delivery and supply chains,²⁶⁷ figures 7 and 8 explain why more attention need to be placed on B2C e-commerce in Nigeria.

It is important to note that in 2018, McKinsey valued Nigerian e-commerce market at 12 billion USD, with its revenue projected to reach 75 billion USD by 2025.²⁶⁸ Interestingly, B2C e-commerce market is worth approximately 6 billion USD,²⁶⁹ which means that most revenue from Nigeria's e-commerce sector is derived from online B2C sales. If Nigerian e-commerce is to hit the projected value by 2025, such revenue will most likely be derived from consumer transactions. Therefore, measures which enhance greater consumer adoption of e-commerce ought to be implemented.

accessed 1 May 2021; 'B2C E-Commerce Index 2019' (*UNCTAD Technical Notes for ICT Development No 14*, 2019) <https://unctad.org/system/files/official-document/tn_unctad_ict4d14_en.pdf> accessed 1 May 2021; 'The UNCTAD B2C E-Commerce Index 2020- Spotlight on Latin America and the Caribbean' (*UNCTAD Technical Notes for ICT Development No 17*, 2020) <https://unctad.org/system/files/official-document/tn_unctad_ict4d17_en.pdf> accessed 1 May 2020.

²⁶⁶ Passport, 'E-Commerce in Nigeria-Country Report' (*Euromonitor*, March 2021) <<https://www.portal.euromonitor.com/portal/Analysis/Tab>> accessed 15 May 2021.

²⁶⁷ Ibid.

²⁶⁸ Georges Desvaux, (n 5).

²⁶⁹ Ibid.

2.2 Need to Protect the Online Consumer

Since this research as depicted in figure 3 above argues that protecting consumers against the perceived risk factors associated with e-commerce can help improve their trust in online merchants and their overall confidence in e-commerce transactions, it is necessary to look at general reasons why consumers deserve more protection, especially in an online context. The aim is to provide a background to the relevance of law when addressing the substantive issues discussed in Part 2 of this thesis.

2.2.1 Rationale for Protection

Though e-commerce presents innumerable benefits to consumers, the online consumer still faces challenges that can limit their confidence; hence, the need for protection.²⁷⁰ In addition to the specific issues identified in section 1.4 of chapter one, commentators have provided general reasons why consumers ought to be protected in the electronic marketplace. This thesis briefly outlines three reasons. They include:

1. Asymmetric Information

Labrecque et al opine that information asymmetry which exist between businesses and consumers, is not solely unique to the offline environment.²⁷¹ Asymmetric information in consumer sales and supply contracts suggests that consumers usually possess limited knowledge of a product, service or contract terms, compared to the seller.²⁷² Luth adds that due to asymmetric information, consumers experience cognitive biases whilst making

²⁷⁰ Thomas T Reith III, 'Consumer Confidence: The Key to Successful E-Commerce in the Global Marketplace' (2000) 24 Suffolk Transnational Law Review 467; Juergen Noll, 'European Community & e-Commerce: Fostering Consumer Confidence' (2002) 9 Electronic Communication Law Review 207.

²⁷¹ Lauren I Labrecque *et al*, 'Consumer Power- Evolution in the Digital Age' (2013) 27 Journal of Interactive Marketing 257.

²⁷² Dimitar Christozov, Stefanka Chukova, and Plamen Mateev, 'A Measure of Risk Caused by Information Asymmetry in e-Commerce' (2006) 3 Issues in Informing Science & Information Technology 147, 148.

online purchasing decisions.²⁷³ Such biases may impact on their ability act reasonably and in their own best interests,²⁷⁴ hence the need for more protection.

II. Unequal Bargaining Power

Information asymmetry is closely linked to unequal bargaining power. Where contractual parties have unequal bargaining power, it presupposes that a party (usually the seller) has greater negotiating strength in a contract than another party (the buyer). This situation is evident in click-wrap and browse-wrap contracts where consumers consciously or unconsciously consent to a seller's standard terms with no form of negotiation or input from the buyer.²⁷⁵ Consumers are, therefore, termed weaker parties in such transactions, more so as they are deemed to lack the requisite legal capacity to sufficiently understand the nature and implications of the terms they consent to. This further justifies the need for more protection.

III. Consumer Vulnerability

Consumer vulnerability is associated with both asymmetric information and unequal bargaining power. Hence, a more detailed explanation of this concept is provided below.

Helberger *et al* note that vulnerability has an adverse impact on consumer decision making in the electronic marketplace.²⁷⁶ The authors associate vulnerability with “users, or groups of users, that require particular regulatory/policy attention because of their lack of bargaining power, structural inequalities and other market or social conditions that make them more susceptible to harm (for example in the form of discrimination or unequal

²⁷³ Hanneke A Luth, *Behavioural Economics in Consumer Policy* (Antwerp: Intersentia 2010) 48–50. See also Torben Hansen, ‘Perspectives on Consumer Decision Making: An Integrated Approach’ (2005) 4(6) *Journal of Consumer Behaviour* 420–425.

²⁷⁴ C Camerer *et al*, ‘Regulation for Conservatives: Behavioural Economics and the Case for “Asymmetric Paternalism”’ (2003) 151 *University of Pennsylvania Law Review* 1211, 1238.

²⁷⁵ Kimberlianne Podlas, ‘Let the Business Beware: Click-Wrap Agreements in International B2C E-Commerce’ (2001) *Journal of Law and Business* 38, 43–47.

²⁷⁶ Natalie Helberger *et al*, ‘EU Consumer Protection 2.0- Structural Asymmetries in Digital Consumer Markets’ (Brussels, BEUC March 2021) <https://www.beuc.eu/publications/beuc-x-2021-018_eu_consumer_protection.0_0.pdf> accessed 16 May 2021.

treatment).”²⁷⁷ For Reich, vulnerability allows for differentiation in situations where equal treatment to everyone would amount to unfairness to some groups of people.²⁷⁸

Under the EU Unfair Commercial Practices Directive (UCPD),²⁷⁹ a vulnerable consumer is described as a “clearly identifiable group of consumers who are particularly vulnerable to the practice or the underlying product because of their mental or physical infirmity, age or credulity in a way which the trader could reasonably be expected to foresee.”²⁸⁰ One can infer from this EU definition that personal characteristics of a group of people such as age and naivety can influence their ability to make rational decisions when shopping online. This further shows how social contexts are factored into consideration in the consumer law-making process.

Drawing on the above EU definition, Waddington adds that a vulnerable consumer cannot be seen differently from an ‘average consumer’²⁸¹ since both concepts are used in explaining consumers eligible for protection under the EU law.²⁸² Recital 18 of the UCPD specifically describes an average consumer as someone “reasonably well-informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors, as interpreted by the Court of Justice.”²⁸³ From this definition, it is clear that the average consumer is used in a legalistic fashion to depict consumers as active individuals who seek out for more information when making purchases and are most likely aware of

²⁷⁷ Ibid, 7.

²⁷⁸ Norbert Reich, ‘Vulnerable Consumers in EU Law’ in Dorota Leczykiewicz and Stephen Weatherill (eds) *The Images of the Consumer in EU Law: Legislation, Free Movement and Competition Law* (Oxford: Hart Publishing 2016) Ch 5.

²⁷⁹ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 Concerning Unfair Business-to-Consumer Commercial Practices in the Internal Market, OJ L 149.

²⁸⁰ Ibid, Article 5(3).

²⁸¹ Recital 18 of the UCPD specifically describes an average consumer as someone “reasonably well-informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors, as interpreted by the Court of Justice.” This concept is used as a benchmark in explaining the level of consumer awareness of the law and can also be linked to the definition of a ‘confident consumer’ used in recitals 4 and 13 of the UCPD. For more, see section 2.3.1 below.

²⁸² Lisa Waddington, ‘Vulnerable and Confused: The Protection of “Vulnerable” Consumers under EU Law’ (2013) 38(6) *European Law Review* 757-782.

²⁸³ Directive 2005/29/EC.

the law.²⁸⁴ While this definition is not always obtainable in practice, the law still requires that consideration be given to social, cultural, and linguistic factors, which have the potential to impact on individual vulnerability. Thus, it can be inferred that where consumers are passive or uninformed,²⁸⁵ the EU law implicitly recognises the moderating influence of personal extenuating circumstances derived from the influence of social, cultural and linguistic factors.

Helveston justifies the need to protect the online consumer due to new consumer vulnerabilities and threats introduced by the platform economy.²⁸⁶ He notes that just as the platform economy has introduced new business models that require policy changes and new approaches to regulation, new threats to consumers have also been introduced.²⁸⁷ Looking at the introduction of new threats and vulnerabilities from a business point of view, Calo adds that consumers are not the only beneficiaries of innovation in the online marketplace; rather, business capabilities have also been enhanced.²⁸⁸ The author observes that through these enhanced capabilities, businesses now employ new tactics to exploit the individual and collective weaknesses of consumers.²⁸⁹ He further argues that all consumers are unduly persuaded by personalised digital marketing strategies which purposefully target their individual preferences, weaknesses and biases.²⁹⁰

To complement Calo's views, Hanna *et al* adds that the ubiquity and the all-pervasive nature of the internet presents businesses with limitless access to consumers and their

²⁸⁴ See Joasia Luzak, 'Online Disclosure Rules of the Consumer Rights Directive: Protecting Passive or Active Consumers?' (2015) 4(3) Journal of European Consumer and Market Law 79, 83.

²⁸⁵ Ibid. Luzak highlights the difference between 'passive' and 'active' consumers for the purposes of protection under the law. Passive consumers have all the necessary information from a trader to make a purchasing decision but choose not to read them, while an active consumer attempts to gather all necessary information, get acquainted and familiarise themselves with the information before making a purchasing decision.

²⁸⁶ Max N Helveston, 'Regulating Digital Markets' (2016) 13 New York University Journal of Law & Business 33, 37-39

²⁸⁷ Ibid.

²⁸⁸ Ryan Calo, (n 95) 1003-18.

²⁸⁹ Ibid.

²⁹⁰ Ryan Calo, (n 95) 1033.

personal details.²⁹¹ As a result, vast amount of personal information are acquired by these businesses and customised to lure a specific target population into concluding contracts abruptly, thereby taking undue advantage of their vulnerabilities, fears or interests.²⁹² This ultimately makes all consumers vulnerable irrespective of whether they fit into the traditional categories of vulnerable consumers, since their ability to make rational online purchasing decisions have now been impacted by innovation and other digital marketing practices. Indeed, a 2018 survey conducted by the European Commission on consumer purchasing behaviour²⁹³ shows that consumers with a higher level of education are more susceptible to unfair commercial practices from online merchants than those with a lower level of education.²⁹⁴ This demonstrates that irrespective of being more informed, educated individuals are still vulnerable in the online marketplace, thus justifying the need for all consumers to be protected.

Researchers in the field of psychology and behavioural economics argue that externalities and social factors such as consumer identities, privileges and systemic inequalities influence their ability to make rational purchasing decisions.²⁹⁵ Critiquing existing literature on consumer vulnerability which ignores social externalities, Baker *et al* argue that “actual vulnerability arises from the interaction of individual states, individual characteristics, and external conditions within a context where consumption goals may be hindered and the experience affects personal and social perceptions of self.”²⁹⁶ As a result, consumers are generally placed at a disadvantage not solely on the grounds of marketer

²⁹¹ Richard Hanna, Andrew Rohm and Victoria L Crittenden, ‘We’re All Connected: The Power of the Social Media Ecosystem’ (2011) 54 *Business Horizons* 265, 272.

²⁹² Steven Melendez, ‘Customized or Creepy? Websites and Your Data, a Guide’ (*Fast Company*, 6 July 2016) < <http://www.fastcompany.com/3061205/customized-or-creepy-how-websites-toe-the-line-with-user-data> > accessed 6 May 2021.

²⁹³ European Commission, ‘Consumers Attitude Towards Cross-border Trade and Consumer Protection 2018- Final Report’ <https://ec.europa.eu/info/sites/default/files/consumer-survey-2018-main-report_en.pdf> accessed 7 May 2021.

²⁹⁴ *Ibid*, 81.

²⁹⁵ Frank Cooper, ‘Always Already Suspect: Revising Vulnerability Theory’ (2015) 93(5) *North Carolina Law Review* 1339; Alyson Cole, ‘All of Us Are Vulnerable, But Some Are More Vulnerable than Others: The Political Ambiguity of Vulnerability Studies, an Ambivalent Critique’ (2016) 17(2) *Critical Horizons* 260–77.

²⁹⁶ Stacey M Baker, James W Gentry and Terri L Rittenburg, ‘Building Understanding of the Domain of Consumer Vulnerability’ (2005) 25(2) *Journal of Macromarketing* 128, 134.

manipulation, but also through their socio-economic status, individual characteristics and available resources.²⁹⁷ Interestingly, the European Commission, in a recent guidance document,²⁹⁸ acknowledges the need to consider ‘socio-demographic’ and “market environment” variables, as externalities that contribute to consumer vulnerability when making policy decisions.²⁹⁹ This is reflected in the 2018 EU survey which also rates consumers’ degree of vulnerability in domestic and cross-border online/offline transactions based on socio-demographic factors, urbanisation and the ability to speak the official language of their region or country of residence.³⁰⁰

The degree of social externalities which make consumers feel more (or less) vulnerable, further impact on their online purchasing behaviour. This is evident from the same European Commission survey which shows that EU consumers with a higher level of education are more likely to make domestic online purchases than those with a medium and lower level of education.³⁰¹ With regards to age, consumers aged 19-54 years are more likely to make online purchases than those aged 55 years and above.³⁰² Similarly, in terms of availability of resources, consumers who have easy financial conditions are more likely to trust retailers and service providers when making online purchases than those in a difficult financial situation,³⁰³ while in terms of age, consumers aged 54 and below are more likely to trust retailers and service providers than those above the age of 54.³⁰⁴ These factors are also inextricably linked to their level of confidence since consumers aged 18-

²⁹⁷ Ronald P Hill and Eesha Sharma ‘Consumer Vulnerability’ (2020) 30(3) *Journal of Consumer Psychology* 551.

²⁹⁸ London Economics, ‘Consumer Vulnerability Across Key Markets in the European Union- Final Report’ (Brussels, European Commission 2016) xx <https://ec.europa.eu/info/sites/info/files/consumers-approved-report_en.pdf> accessed 17 May 2021.

²⁹⁹ Contrary to the definition provided by the UCPD which only considered consumers’ personal characteristics, the Commission suggests that a consumer who is deemed vulnerable and requires protection under the law is someone “who as a result of socio-demographic characteristics, behavioural characteristics, personal situation, or market environment is (i) at higher risk of experiencing negative outcomes in the market, (ii) has limited ability to maximise their well-being, (iii) has difficulty in obtaining or assimilating information (iv) is less able to buy, choose or access suitable products, or (v) is more susceptible to certain marketing practices.”

³⁰⁰ European Commission (n 293).

³⁰¹ *Ibid* 22.

³⁰² *Ibid*.

³⁰³ *Ibid* 52-53.

³⁰⁴ *Ibid* 53.

54 are more likely to have confidence in domestic online transactions than those aged 55 and above.³⁰⁵ Same applies to consumers with higher level of education and easier financial situation since they are shown to have more confidence in online transactions than those with a lower level of education and difficult financial conditions.³⁰⁶

From the above discussion, it is apparent that all consumers are in one way or the other, made vulnerable and influenced by personal characteristics or social externalities when making purchasing decisions. Most importantly, personalised digital marketing techniques employed by online platforms to capture specific target markets worsen consumer vulnerabilities for all consumers, despite the possible influence of personal or social conditions. Accordingly, these factors provide more insight into how online consumer protection-related policies can be drafted tackle potential power imbalances between consumers and online merchants.

Drawing on the foregoing reasons, it is, therefore, necessary to ensure that consumer protection laws, through their substantive provisions, acknowledge the cumulative effect of personal characteristics, social externalities, and the digital landscape on consumer online purchasing decisions.

2.2.2 Meaning of Consumer

Having understood the key reasons for protecting the online consumer, it is now necessary to examine the meaning of a consumer. The aim of this discussion is to help clarify the status of parties that should be deemed eligible for protection under any existing or potential consumer protection-related legislation in Nigeria. To fulfil this objective, the definitions provided under the consumer laws of Nigeria, the UK and China are examined. Gaps or ambiguities that exist within are further identified and appropriate recommendations, made where necessary.

³⁰⁵ Ibid 74.

³⁰⁶ Ibid.

1. The Nigerian Definition

Section 167 of the FCCPA defines a consumer as “any person who purchases or offers to purchase goods otherwise than for the purpose of resale” or for use in manufacturing other products, and to any person to whom a service is rendered. Though the broad scope of this definition is laudable, the application of this definition to e-commerce transaction raises two issues. Firstly, it can be deemed ambiguous in a sense since emphasis is placed mainly on the purpose of purchase (that is, not for resale or manufacturing), while the capacity of the buyer is relegated. Furthermore, the interpretation of ‘any person’ could extend to either a natural person (such as private individuals) or a legal person (such as companies). A company, can for instance, procure furniture for office use with no intention of reselling the furniture. This essentially makes the company (legal person) a consumer for the purposes of that transaction, even though neither party is considered weaker in terms of bargaining strength.

Secondly, this definition does not reflect the distinct commercial relationships introduced by the platform economy, where online platforms act as intermediaries in connecting consumers who mostly sell one-off products to other consumers.³⁰⁷ This is because C2C transactions have raised questions which pertain to whether a consumer can be deemed a trader or business supplier for the purposes of the transaction.³⁰⁸ From the rationale for protection provided in the preceding section, consumers are primarily protected as they are deemed to be the weaker party who contracts with more powerful suppliers, while suppliers are deemed to possess greater bargaining power and more knowledge of the transaction. C2C transactions do not constitute part of a supply business.³⁰⁹ As a result, giving special protection to consumers like those provided in B2C transactions, is questionable, more so, since the seller in a C2C transaction is also deemed to be much vulnerable, just like the buyer.³¹⁰ It is, thus, logical to expect that where a consumer is

³⁰⁷ This is reflected in C2C e-commerce transactions briefly described in the section 2.1.1 (III) of this thesis.

³⁰⁸ Ihuoma K Ilobinso (n 14) 86.

³⁰⁹ Ibid.

³¹⁰ Ibid.

acting outside his usual trade or business, only consumer protection legislations whose scope extend to B2C transactions, should be applicable in this regard.

Therefore, since this research focuses on B2C e-commerce transactions, the definition provided by the FCCPA cannot adequately be adapted to all forms of consumer transactions. This is because section 167 of the Act fails to clarify the exact category of consumers that require protection under the Act. More so, a ‘supplier’ is vaguely defined under section 167 as “a person who supplies goods and services to another person.”³¹¹ No further clarification is provided with respect to the seller/supplier’s trade, business, or profession. The FCCPA definition is, nevertheless, expected since section 1.3 of chapter one already clarifies that the scope of the FCCPA does not extend to online transactions.

2. The UK Definition

The Consumer Rights Act (CRA) 2015³¹² defines a consumer as any “individual acting for purposes that are wholly or mainly outside that individual’s trade, business, craft or profession.”³¹³ An ‘individual’ is explained as a natural person in the explanatory notes to the CRA, meaning that unlike the FCCPA, companies and small businesses are excluded.³¹⁴ Accordingly, the Court of Appeal decision in *R&B Custom Brokers Co Ltd v United Dominions Trust Ltd*,³¹⁵ where a micro company (comprising of two employees) was held to be a consumer for the purposes of determining the application of section 12 of the Unfair Contract Terms Act (UCTA) 1977,³¹⁶ would not survive under the CRA.

Interestingly, the ambiguity created by the FCCPA can be clarified with this definition since to qualify as a consumer, the individual should not mainly or wholly be acting within

³¹¹ FCCPA 2019.

³¹² Consumer Rights Act 2015 (C 15).

³¹³ CRA 2015, Section 2(3).

³¹⁴ CRA 2015, Explanatory Note 36.

³¹⁵ [1988] 1 WLR 321.

³¹⁶ Section 12 of the UCTA clarifies what it means to deal as a consumer. In this case, the court held that since the claimant, who is a small business, purchased a car that was unfit for purpose according to section 14(3) of the SOGA 1979, and the purchase of cars is not central to the claimant’s business, the defendant cannot exclude liability under the UCTA on the basis that the activity is a consumer contract. Therefore, section 6(2) of the UCTA 1977, which bars exclusion of liability for consumer contracts, applies.

their trade, business, craft or profession. This is contrary to FCCPA's definition which limits the aim of the activity to resale and manufacturing purposes. Furthermore, the different categories of a consumer introduced by the platform economy has also been covered since where any consumer decides to sell a one-off product, such sale will not be deemed as being mainly or wholly within the individual's business, trade, craft or profession. Hence, the party will not be regarded as a trader³¹⁷ and since consumers are deemed to be of equal bargaining power, the rights conferred by the Act for B2C transactions would not apply to the parties in this regard.

The above notwithstanding, the CRA definition does not entirely guarantee utmost clarity since the dividing line between B2B and B2C transactions is not well defined.³¹⁸ For instance, it is still unclear whether a sole trader (being a 'natural person') who purchases a laptop, is acting 'mainly' outside their business or trade with regards to the purchase.³¹⁹ This raises questions around mixed or dual purpose transactions where a transaction could be made partly for personal purposes and partly for a purpose related to their profession or business.³²⁰ Here, whether the transaction will be classified as B2B or B2C for the purposes of relying on the rights provided by a consumer protection legislation, is unclear. Perhaps, reference to 'wholly' or 'mainly' in interpreting the purpose of the transaction may help. However, like the sole trader example, one may still not be able to conclude that the transaction is made mainly for either personal or business purposes.

3. The Chinese Definition

Article 2 of the Consumer Protection Law (CPL) 2013³²¹ states that "when a consumer purchases or uses goods or receives services for the needs of daily consumption, their

³¹⁷ Section 2(2) of the CRA 2015 defines 'trader' as "a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf."

³¹⁸ Paula Gilika, 'The Consumer Rights Act 2015 – A bastion of European Consumer Rights?' (2017) 37(1) *Legal Studies* 78, 82.

³¹⁹ *Ibid.*

³²⁰ Hans Schulte-Nolke, Christian Twigg-Flesner and Martins Ebers, *EU Consumer Law Compendium* (Sellier, Munchen 2008) 174.

³²¹ Law of the People's Republic of China on the Protection of Consumer Rights and Interests, promulgated on 31 October 1993, amended on 27 August 2009 and on 25 October 2013, effective as of 15 March 2014.

rights and interests are protected by this Law”³²² Although the scope of this law extends to e-commerce transactions,³²³ this definition only focuses on the nature of the product or service as being required for daily consumption, as opposed to clarifying the capacity of parties to the transaction or who qualifies for protection under the law. This also means that less thought was given to the types of consumer relationships that exist on online platforms.³²⁴ Furthermore, had the definition been qualified with the word ‘person’ or ‘individual’ just like the FCCPA and the CRA, perhaps, that would make for a more coherent and practical definition. In addition, focus on ‘daily consumption needs’ potentially excludes possible consumer purchases of goods that are typically not of an everyday consumable nature, such vehicles and luxury items.³²⁵

Interestingly, Article 62 of the CPL also suggests that the “law shall apply, by reference, to farmers’ purchase and use of means of production directly for agricultural production.”³²⁶ Reference to agricultural workers involved in production as ‘consumers’ implies that unlike the CRA, micro or small businesses³²⁷ could also be covered by the CPL. This approach is more akin to the FCCPA which uses the word ‘person’ (natural or legal) to describe a buyer. It is, thus, the intention of Chinese legislators to protect farmers and agricultural workers under this law since they are deemed to lack specialised knowledge and skilled negotiation abilities.³²⁸

4. Comparative Analysis

Table 1 below summarises the differences in definition between the three jurisdictions.

³²² Ibid.

³²³ CPL 2013, Article 44.

³²⁴ More so, article 3 of the CPL vaguely describes ‘business operators’ as persons who “supply commodities produced and sold by them or services to consumers.”

³²⁵ Hugh Beale *et al*, *Cases, Materials and Text on Contract Law* (2nd edn, Hart Publishing 2010) 142; Kristie Thomas, ‘Analysing the Notion of ‘Consumer’ in China’s Consumer Protection Law’ (2018) 6(2) Chinese Journal of Comparative Law 294, 301.

³²⁶ CPL 2014.

³²⁷ Micro-enterprises are businesses which have between 0-9 employees while small enterprises employ between 10-99 members of staff. For more, see David J Storey, *Understanding the Small Business Sector* (Routledge 2016) 13.

³²⁸ Jiangqiu Ge, (n 56) 76-77.

JURISDICTION	NIGERIA	THE UK	CHINA
Law	FCCPA 2018, Sec 167	CRA 2015, Sec 2(3)	CPL 2013, Arts 2 & 62.
Legal Status	Any person (natural / legal).	An individual (natural).	None, although reference is made to farmers.
Purpose	Not for resale or manufacturing.	Wholly or mainly outside that individual's trade, business, craft or profession.	1. Daily consumption 2. Agricultural purposes.
Gaps	Capacity of parties ignored, although necessary in view of C2C transactions.	Dividing line between B2B and B2C transactions is not well defined.	1. Status of party ignored. 2. Capacity of parties is not clarified.

Table 1: Meaning of a Consumer under the Nigerian, the UK and the Chinese Laws

It is evident from table 1 that jurisdictions have distinct categories of persons deemed eligible for protection under their consumer protection legislations. The UK considers the purpose of a transaction in relation to a party's trade or business, requiring that such transactions should mostly be unrelated to one's profession. China, on the other hand, considers the nature of the goods as being consumed daily, in addition to being required for agricultural purposes. The FCCPA does not consider the nature of the goods and services but focuses more on the purpose of the transaction as not being subsequently linked to any resale or manufacturing activity. Looking at the legal status, the CPL and the FCCPA implicitly apply to micro or small businesses. However, the gap in the FCCPA mostly lies in its ability to consider different categories of consumers introduced by the platform economy. Bearing in mind that the CPL is also faulted for this reason, it is submitted that the CRA will best fill this gap that exists within the FCCPA.

Therefore, for the purposes of this research, a consumer should be defined under an amended version of the FCCPA as “any person who purchases or offers to purchase goods, or whom service is rendered primarily for purposes outside their business, profession, craft or trade; but should also not include the purchase of goods for resale purposes.”³²⁹ ‘Any person’ is retained here to reflect both natural and legal persons. This is to ensure that consumer confidence in the online marketplace is built, and e-commerce is further adopted by parties who are deemed to possess a weaker bargaining power (irrespective of whether they are businesses or consumers). Nevertheless, for fairness, legal persons deemed eligible for protection as consumers will solely be restricted to micro-enterprises (which have between 0-9 employees).³³⁰ Since Nigeria is a developing country, this provision will help protect infant businesses that lack specific legal competence, expertise, bargaining power and experience. To have legal standing to initiate a lawsuit, these enterprises will have to prove that at the time of the transaction, their annual turnover or asset value does not exceed a specific financial threshold. This threshold will be determined by the Federal Competition and Consumer Protection Commission (FCCPC)³³¹ or any other regulatory commission, with due regard being had to the capabilities expected of all persons deemed eligible for protection under the Act.

2.3 The Confident Consumer

It is necessary to explain the meaning of a confident consumer, a term repeatedly employed in this thesis to depict the psychological and cognitive state of persons who are more trusting and at ease with e-commerce transactions. Since this term relates to the ‘trust in online merchant’ TAM variable, it is most likely that confident consumers will be more willing to make online purchases than less confident consumers, hence the need for clarification. This sub-section aims to explore current literature discussing the likely

³²⁹ The potential law should further include a definition that clarifies the meaning of a ‘trader’ according to the CRA provision.

³³⁰ David J Storey (n 327).

³³¹ The FCCPC is established by the Section 3(1) of the FCCPA to administer and enforce the provisions of the Act pursuant to section 17 of the Act.

effect of laws on the confidence of consumers who are aware of their existence. To fulfil this objective, recourse will be had to some EU literature on consumer confidence.³³² Since awareness is identified in this thesis as an external variable of the modified TAM (in figure 3 above), more empirical data validating the relationship between legal awareness and consumer purchasing behaviour in the UK, Nigeria and China will be discussed in section 3.2 of chapter three. This means that this sub-section predominantly provides a literary background to the meaning of a confident consumer.

2.3.1 Meaning of a Confident Consumer

The need to create a safety net for online consumers using laws is depicted through the image of a ‘confident consumer.’³³³ The term ‘confident consumer’ is notably used by the European Commission in EU legislative instruments as justification for supporting the maximum harmonisation of consumer protection laws across all EU member states, with pre-Brexit UK included.³³⁴ This, nevertheless, creates the impression that consumer protection in the EU is more dependent on whether harmonisation promotes the internal market itself, as opposed to primarily protecting EU consumers.³³⁵ As reflected in Micklitz’s statement, the EU consumer policy “is no longer social protection that legitimates market regulation to fight down imbalance of power, but economic instrumentalisation to establish the Internal Market.”³³⁶ That notwithstanding, although protecting consumers appears to be an indirect motive, the European Commission is of the view that “empowered and confident consumers can drive forward the European economy.”³³⁷ One can, thus, deduce from this statement that consumer confidence is still

³³² Recall from section 1.8 of chapter one that reference to EU laws are made in this thesis since most pre-Brexit UK laws derive from the EU.

³³³ Thomas Wilhelmsson, (n 187).

³³⁴ Once again, the EU is used as an example in this thesis since pre-Brexit UK laws are derived from EU Directives and Regulations.

³³⁵ Hans-W Micklitz, ‘The Concept of Competitive Contract Law’ (2005) 23(3) Penn State International Law Review 549, 553.

³³⁶ Ibid.

³³⁷ Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, A European Consumer Agenda –Boosting confidence and growth, COM (2012) 225 final.

a priority for the Commission since this confidence can help drive sales needed to improve the EU economy.

The foregoing implies that ‘consumer confidence’ can be achieved using the law as a tool which positively influences online purchasing behaviour. The idea presupposes that where consumers are protected and supported using the law, such law becomes more receptive to consumer wants and needs.³³⁸ Furthermore, where consumers are protected against e-commerce risks, they will most likely be stimulated to make further purchases, which in return, drives the sales that is needed to enhance economic growth.³³⁹ Accordingly, consumer protection laws are formulated to reduce perceived risks associated with online transactions. Where consumer perception of risks is reduced, consumers will most likely exhibit a positive attitude towards e-commerce, ultimately encouraging more of its adoption.³⁴⁰

Wilhelmsson, however, doubts the practicability of the law and consumer confidence argument.³⁴¹ He argues that since there may be disparities between consumers’ real knowledge of the law and the influence of such knowledge or lack thereof, on consumers’ actual purchasing decision, the link between law and consumer confidence is blurry.³⁴² He notes that most consumers still make purchases irrespective of being unaware of their domestic laws.³⁴³ The author, nevertheless, concedes that a sectoral counter argument may be raised which suggests that some consumers may have knowledge of laws applicable in

³³⁸ The ‘confident consumer’ argument serves as a basis for enacting some EU laws such as the Injunctions Directive (98/27/EC)- Recital 5, the Consumer Sales Directive (99/44/EC)- Recital 5, Unfair Commercial Practices Directive (2005/29/EU)-Recitals 4 and 13 and Consumer Rights Directive (2011/83/EU)- Recital 6. See Christian Twigg-Flesner, ‘The Importance of Law and Harmonisation for the EU’s Confident Consumer’ in D Leczykiewicz and S Weatherill (eds), *The Images of the Consumer in EU Law* (Hart Publishing 2015) 183-184.

³³⁹ Thomas Wilhelmsson (n 187) 320.

³⁴⁰ Ibid, 321. Here reference is specifically made to a proviso in Recital 3 of Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 Concerning the Distance Marketing of Consumer Financial Services, which states that “...a high degree of consumer protection is required in order to enhance consumer confidence in distance selling.”

³⁴¹ Thomas Wilhelmsson (n 187) 325.

³⁴² Ibid.

³⁴³ Ibid.

high value sectors such as banking and insurance, compared to other sectors.³⁴⁴ Therefore, drawing on the sectoral argument, it may, perhaps be inferred that consumers are most likely aware of laws which regulate e-payments systems, whose relevance to e-commerce is already highlighted in section 1.4.2 of this thesis.

A possible link between a ‘confident consumer’ and an ‘average consumer’ used as a benchmark to explain the degree of consumer awareness under the Unfair Commercial Practices Directive (UCPD), can be raised here.³⁴⁵ Recall from sub-section section 2.2.1 (which discusses the impact of consumer vulnerabilities), that reference is made to Recital 18 of the UCPD to describe an average consumer as someone “reasonably well-informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors, as interpreted by the Court of Justice.” The term ‘confident consumer’ is also used in Recitals 4 and 13 of the same legislative instrument. Thus, to clearly delineate the scope of a confident consumer under the UK law,³⁴⁶ it is presumed that a such consumer is one who is reasonably aware of the law. It is possible to therefore, argue that consumer confidence in the online marketplace can be enhanced where legal rules are introduced to address specific issues which are confirmed as risk factors to consumers participation in e-commerce, and consumers are made aware of those rules.³⁴⁷

Market actors such as online merchants play a significant role in boosting consumer confidence where they create awareness of consumer rights by complying with their information dissemination obligations.³⁴⁸ This view is supported by Scott who adds that government supervisory institutions and non-governmental consumer organisations

³⁴⁴ Ibid.

³⁴⁵ Directive 2005/29/EC aims to harmonise domestic legislations across the EU. It is geared towards providing a high standard of consumer protection in the internal market by preventing unfair business practices on consumers, enhancing the growth of the internal market, facilitating cross-border trade within the market, and promoting consumer confidence when shopping within the internal market.

³⁴⁶ For instance, Section 2(2) of the Consumer Protection from Unfair Trading Regulations 2008, which implements the UCPD, states that “in determining the effect of a commercial practice on the average consumer, ... account shall be taken of the material characteristics of such an average consumer including his being reasonably well informed, reasonably observant and circumspect.”

³⁴⁷ Christian Twigg-Flesner (n 189) 186.

³⁴⁸ Colin Scott, ‘Enforcing Consumer Protection Laws’ in Geraint Howells, Iain Ramsay and Thomas Wilhelmsson (eds), *Handbook of Research on International Consumer Law* (Edward Elgar 2018) 466-490.

(NGOs) are other key actors which play a decisive role in influencing future consumer purchasing behaviour through their monitoring, enforcement and redress functions.³⁴⁹ Luzak further reiterates the role played by online merchants in ensuring that consumers are made aware of their rights and are well informed, prior to making purchasing decisions.³⁵⁰ This can be exhibited where for instance, traders comply with the pre-contractual information requirements available in consumer rights legislations.³⁵¹

It has, however, been argued that the vast amount of mandatory information requirements contained in some EU Directives³⁵² and by extension, some UK laws,³⁵³ may lead to information overload, and by so doing, creates more confusion for consumers.³⁵⁴ Thus, contrary to boosting their confidence, consumers may become too overwhelmed and may be unable to comprehend those pieces of information at that point in time.³⁵⁵ This criticism stems from insights from behavioural economics which as noted in section 1.10 of chapter one, opposes the presumption that consumers exhibit a ‘rational’ behaviour in the market where necessary information is provided by businesses to support their decision making.³⁵⁶ Rather, to behavioural economists, consumers interpret available information based on their own views and biases.³⁵⁷ The way in which these pieces of information are

³⁴⁹ Ibid.

³⁵⁰ Joasia Luzak (n 284).

³⁵¹ See generally Consumer Rights Directive (2011/83/EU), Articles 5 and 6 and the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations (CCR) 2013, Section 13, (also incorporated into section 12 of the Consumer Rights Act 2015).

³⁵² In addition to the CRD, Articles 5 and 6, see Unfair Commercial Practices Directive (2005/29/EC), Articles 6(1) and 7(4) and Distance Marketing of Financial Services (2002/65/EC), Art.4.

³⁵³ For instance, see the CCR 2013, Schedule 2; Consumer Rights Act 2015, section 12.

³⁵⁴ Geraint Howells, Christian Twigg-Flesner and Thomas Wilhelmsson, *Rethinking EU Consumer Law* (Routledge 2018) 98.

³⁵⁵ Ibid.

³⁵⁶ Ian Ramsey, ‘From Truth in Lending to Responsible Lending’ in Geraint Howells, André Janssen and Reiner Schulze (eds) *Information Rights and Obligations: A Challenge for Party Autonomy and Transactional Fairness* (1st edn, Taylor & Francis 2005) 47-65, particularly 51-4; Russel Korobkin, ‘Behavioural Economics, Contract Formation and Contract Law’ in Cass R Sunstein (ed), *Behavioural Law & Economics* (Cambridge University Press 2000) 116-143, particularly 117-9.

³⁵⁷ Geraint Howells, ‘The Potential and Limits of Consumer Empowerment by Information’ (2005) 32(3) *Journal of Law and Society* 349, 360; Mary Donnelly and Fidelma White, ‘The Effect of Information Based Consumer Protection: Lessons from a Study of the Irish Online Market’ in Christian Twigg-Flesner *et al* (eds) *The Yearbook of Consumer Law 2008* (Taylor & Francis 2008) 271-296.

made available to consumers is also said to impact on consumer response towards such information.³⁵⁸

From the foregoing criticisms, it is evident that the argument here is not on the importance of information requirements; rather, it lies in its perceived usefulness to consumers, based in part, on the volume of information provided at a given contractual stage, the timing of such information and the way such information is made available to consumers. This implies that the provision of information by online merchants remains an effective means of educating consumers about their rights and available guarantees where such information is tailored towards reducing consumer uncertainty and risk perceptions associated with making online purchases. Thus, to drive repeat purchases, some information which may not necessarily be relevant at the time of purchase may also be supplied when delivering the goods, thereby giving consumers further opportunity to get acquainted with their rights.³⁵⁹

It has also been argued that compliance with the above information requirements and other relevant mandatory commercial practices does not in reality, equate to certainty that a consumer will actually rely on the provided information when making online purchasing decisions.³⁶⁰ For example, with respect to cancellation and return of purchases, it is argued that consumers may ignore the existence of cancellation rights while making purchasing decisions since they may practically be put off by the possibility of arranging for the return of the item, if deemed unsuitable.³⁶¹ Similarly, with respect to unfair terms, it is observed that consumers rarely read online terms and conditions to determine if they are considered 'unfair' and capable of exploiting the consumer's weaker position vis a vis the seller's.³⁶²

³⁵⁸ Troy A Paredes, 'Blinded by the Light: Information Overload and Its Consequences for Securities Regulation' (2003) 81(2) Washington University Law Review 417, 434-43.

³⁵⁹ Geraint Howells, Christian Twigg-Flesner and Thomas Wilhelmsson (n 354) 98-9.

³⁶⁰ Christian Twigg-Flesner (n 189) 186-187.

³⁶¹ Ibid.

³⁶² See generally arguments for and against this presumption in Yannis Bakos, Florencia Marotta-Wurgler and David R Trossen, (n 100).

The validity of the above arguments is acknowledged since all consumers cannot be presumed to know the law, neither do they all rely on it before placing orders online. More so, one can recall from chapter one that this thesis moves on the premise that law is only a contributory factor whose impact is still felt on some consumers. That notwithstanding, the existence of cancellation rights in the UK is confirmed as having contributed to improving consumer confidence in e-commerce,³⁶³ while in terms unfair contract terms, some consumers do not bother reading contract terms because they believe that such terms “reflect the content of the law, and consumers may be aware of the rights awarded by consumer law legislation through other means. Therefore, not having read the [terms and conditions] does not necessarily mean complete unawareness of consumer rights.”³⁶⁴

Generally, consumers are known to respond to legal information, hence the need to disseminate such information to improve consumer confidence. This is in view of an earlier empirical report published by Donnelly and White on the effectiveness of the pre-contractual information requirement in the repealed Distance Selling Directive 97/7EC Directive implemented in Ireland.³⁶⁵ The report suggests that some consumers in the ‘underdeveloped’ Irish society,³⁶⁶ do indeed respond to information. Here, 80% of consumers adjudged all, but one pre-contractual information in the Directive, as important.³⁶⁷ When probed further on whether they required any more information, 36% of the consumers replied affirmatively, with one-third suggesting the inclusion of

³⁶³ Department for Business, Energy & Industrial Strategy (n 136) p 7.

³⁶⁴ Elshout Maartje *et al*, ‘Study on Consumers’ Attitudes Towards Terms Conditions (T&Cs)- Final Report’ (Report for the European Commission, Consumers, Health, Agriculture and Food Executive Agency, on behalf of Directorate-General for Justice and Consumers, 2016) p 17 [online] <https://ec.europa.eu/info/sites/default/files/terms_and_conditions_final_report_en.pdf> accessed 8 July 2021.

³⁶⁵ Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts OJ L 144, 4.6.1997, repealed and replaced by Consumer Rights Directive 2011/83/EU. The repealed EU Distance Selling Directive was implemented in Ireland by the European Communities (Protection of Consumers in Respect of Contracts made by means of Distance Communication) Regulations 2001. This Directive generally regulates different forms distance selling activities by providing for trader compliance with pre-contractual information requirements and consumer withdrawal rights.

³⁶⁶ In this report, Donnelly and White refers to this Irish society as underdeveloped based on a 2001 report by the OECD, which found that the domestic consumer voice in Ireland was relatively weak. See Mary Donnelly and Fidelma White, (n 357), 273-77.

³⁶⁷ See Article 4 of the Distance Selling Directive for the pre-contractual information.

information on e-payment security.³⁶⁸ This data confirms the importance ascribed to information by consumers. The authors, thus, aver that that legal information contributes to building consumer confidence in online transactions.³⁶⁹

With specific reference to reading online terms and conditions, same authors find that 43% of consumers responded with ‘sometimes’, when asked if they read these terms prior to making online purchases; 29% answered ‘always’, while 28% responded with ‘never’.³⁷⁰ This data shows that while it is generally acknowledged that consumers do not necessarily read online terms and conditions before making online purchases, some consumers actually do, invariably suggesting a degree of consumer responsiveness to legal information and the need to ensure that contract terms are fair.

Although this thesis is not specifically concerned with the practical influence of pre-contractual information requirements on consumer purchasing decision, the data by Donnelly and White serves as an important preliminary discussion to the wider question of whether consumer reliance on the law can boost their confidence in online transactions, thereby, encouraging further consumer engagement with e-commerce. This report, thus, complements Luzak’s earlier view that online merchants play an important role in ensuring that consumers are made aware of their rights.³⁷¹ Accordingly, where such merchants comply with relevant information requirements, they are invariably fulfilling a dual function of informing consumers of their rights whilst also boosting their confidence in e-commerce.

2.4 Conclusion

This chapter has fulfilled its set objectives of providing a conceptual background to e-commerce and clarifying the nature and legal implications of B2C e-commerce

³⁶⁸ Mary Donnelly and Fidelma White (n 357) 286.

³⁶⁹ Ibid.

³⁷⁰ Ibid, 287.

³⁷¹ Joasia Luzak (n 284).

transactions. To achieve these objectives, several steps were followed, but categorised into three different sections.

In the first section, various definitions of e-commerce were provided. It was found that although there is no uniform or generally accepted definition, all definitions suggest that e-commerce involves information exchange, geared towards initiating and concluding the process of buying and selling of goods via electronic means. It was also found that the scope of e-commerce is so broad that it includes both pre-sale and post-sale activities, hence the reason why the three identified research issues reflect both forms of activities. Five different forms of e-commerce were outlined and their overall benefits to market actors highlighted. Despite the perceived benefits of e-commerce to consumers, statistics show that the rate of adoption in Nigerian remains low compared to other African countries with similar population advantage like Nigeria. This is complemented by data which demonstrates the low volume of consumer sales and the country's unsteady B2C e-commerce index. The findings from that section generally provide the background which justifies the B2C research focus and suggests that concrete measures need to be taken to improve the current state of consumer e-commerce adoption in Nigeria.

In the second section, the legal background to consumer protection in e-commerce is provided. This is achieved by firstly identifying asymmetric information, unequal bargaining power and consumer vulnerabilities as three general reasons why consumers may need more legal protection in an online context. It was found from existing literature and some EU legal frameworks that consumer vulnerabilities encompass elements of both asymmetric information and unequal bargaining power which justifies protection for all consumers, irrespective of the influence of personal factors or social externalities. This finding is complemented by data which illustrates how elements of these vulnerabilities impact on consumer online purchasing behaviour. To understand the exact category of persons eligible for protection as consumers, the meaning of a consumer as provided by Nigeria's FCCPA 2018, the UK's CRA 2015 and China's CPL 2013, is analysed. The three laws were compared, after which it was found that the FCCPA's definition is so broad that businesses and parties in a C2C transaction may implicitly be eligible for

protection under the Act. To fill this gap, a revised definition was proposed drawing on inferences derived from analysing the definition provided by the UK's CRA 2015. Based on the overall findings from this section, it is suggested that consumer policies in Nigeria should be framed in clearer terms. They should also be drafted in such a way that they accord greater protection to eligible online consumers, since such consumers are found to be more vulnerable online than they are in offline transactions.

This conceptual background extends to the third and final section where the legalistic meaning of a confident consumer is explained to set the foundation for discussing the 'trust in online merchant' TAM variable in chapter three. Here, reference is made to some EU legal frameworks and empirical literature which explain a confident consumer as someone who is well informed and observant, having regard to some personal, social and market externalities. It was also found that market actors like online merchants, NGOs and public institutions play a role in creating consumer awareness. Although a literal analysis was predominantly conducted, this section finds that consumers are indeed receptive to legal information which can be used as a tool to build the needed confidence for online transactions. Therefore, it is suggested that consumer awareness of laws should be disseminated by key actors in the market. Such actors should provide readily available information on their websites which can be easily accessed by consumers, should they require more information at any stage of the transaction process.

CHAPTER THREE

INTEGRATED RESEARCH FRAMEWORK

This chapter aims to critically discuss the theoretical and practical background that guides the conduct of this research. Recall from section 1.9 of chapter one that the comparative law technique and the TAM framework are largely employed in this thesis as guides to answering the research questions. Thus, chapter three fuses the comparative law theories of functionalism and legal transplant with a modified version of the extended TAM to develop an integrated framework for this research. This framework will help understand the degree of consumer receptivity to laws and how legal awareness or lack thereof, can help influence consumer online purchasing behaviour. Insights from this chapter will lend credence to the regulatory importance of formulating and implementing rules which, based on TAM findings, will most likely be effective in promoting consumer confidence in online transactions, and ultimately, e-commerce adoption.

To achieve the foregoing objective, this chapter is divided into two major sections. Section 3.1 provides a critical discussion of comparative law technique, its benefits, the theoretical frameworks of functionalism and legal transplant, and their associated limitations. In section 3.2, the modified TAM framework is discussed. Here, 14 hypotheses are developed to test the influence of the chosen legal and extra-legal variables of TAM (figure 3 above) on e-commerce adoption. To validate the proposed hypotheses, this research will rely on existing empirical literature on TAM, as well as other statistical data on consumer-related e-commerce matters on Nigeria, the UK and China.

3.1 Comparative Law Technique

Comparative law scholarship presents great benefits for legal research. This research technique specifically stands out in this study for two reasons. Firstly, comparative law research amplifies not only the established body of legal knowledge within a discipline,

but also proffers a unique opportunity to gauge national legal systems from a distance.³⁷² By so doing, an understanding of novel approaches which help in appreciating the fundamental facet of legal rules will be gained.³⁷³ As noted by Legrand, this research technique establishes the key character of rules, assumptions and practices, whilst also maintaining the coherence of existing legal principles.³⁷⁴ Thus, as stated in section 1.10 of chapter one, this research contributes to the existing body of knowledge on comparative commercial/consumer law and more importantly, e-commerce adoption research.

Secondly, comparative law is notably used for national law reformation and modernisation, especially where international law instruments serve as a source of influence.³⁷⁵ Through this research technique, ideas on how to improve one's national legal systems can be gained from the experiences of foreign legal systems.³⁷⁶ This requires one to study not only the strengths of these foreign legal systems but also their flaws, before borrowing favourable ideas to one's domestic system. Interestingly, Frase observes that jurisdictions borrow legal principles not only from countries with similar legal cultures, but also from those with different legal backgrounds.³⁷⁷ The increasing interest in acquiring a wider knowledge of historically different legal systems stems from the benefit derived by law reformers in choosing favourable legal principles from a variety of options and adapting same to achieve the desired national law objective.³⁷⁸ Nigeria and

³⁷² Bogumila Puchalska-Tych and Michael Salter, 'Comparing Legal Cultures of Eastern Europe: The Need for A Dialectical Analysis' (1996) 16(2) *Legal Studies* 157, 158.

³⁷³ Richard S. Frase, 'Main-Streaming Comparative Criminal Justice: How to Incorporate Comparative and International Concepts and Materials into Basic Criminal Law and Procedure Courses' (1998) 100 *West Virginia Law Review* 773, 777.

³⁷⁴ Pierre Legrand, 'Comparative Legal Studies and Commitment to Theory' (1995) 58(2) *The Modern Law Review* 262, 265

³⁷⁵ Luc Wintgens, 'Legisprudence and Comparative Law' in Mark Van Hoecke (ed), *Epistemology and Methodology of Comparative Contract Law* (Oxford and Portland Oregon, Hart Publishing 2004) 244; Wang Jingen and Larry Di Matteo, 'Chinese Reception and Transplantation of Western Contract Law' (2016) 44(1) *International Journal of International Law* 45, 53.

³⁷⁶ Regina Rauxloh, *Plea Bargaining in National and International Law: A Comparative Study* (1st edn, Taylor and Francis Group 2012) 7-8.

³⁷⁷ Richard S. Frase, 'Main-Streaming Comparative Criminal Justice: How to Incorporate Comparative and International Concepts and Materials into Basic Criminal Law and Procedure Courses' (1998) 100 *West Virginia Law Review* 773, 777-80.

³⁷⁸ *Ibid*, 792; Mark Van Hoecke and Mark Warrington, 'Legal Cultures, Legal Paradigms and Legal Doctrine: Towards A New Model for Comparative Law' (1998) 47(3) *International and Comparative Law Quarterly* 495, 496-497.

the UK are common law countries while China operates a civil law system.³⁷⁹ This research considers these differences and by so doing, the writer is equipped with broader, but more viable regulatory options for Nigeria.

Comparative law technique is, nevertheless, faulted for lacking a coherent theoretical grounding.³⁸⁰ Samuel captures the flawed nature of this research technique by questioning how coherence can be achieved when comparative researchers argue distinct points using different approaches.³⁸¹ A firm theoretical framework is, therefore, highly valuable and forms the basis of comparative law research since it aids in simplifying the structuring and integration of different resources from the compared legal systems.³⁸² One of such theories employed in this research is functionalism and its relevance is discussed below.

3.1.1 Functionalism and its Relevance to Study

Functionalism is highly relevant to this research since this theory centrally focuses on the practical role or ‘function’ of law in a particular legal system.³⁸³ Brand notes that functionalists specifically query how “the law’s consequences across legal systems” will be compared, thereby examining rules for what they actually do, as opposed to what they

³⁷⁹ Salvatore Mancuso, 'The New African Law: Beyond the Difference Between Common Law and Civil Law' (2008) 14 Annual Survey of International & Comparative Law 39, 42-45; G. Carney, 'Comparative Approaches to Statutory Interpretation in Civil Law and Common Law Jurisdictions' (2014) 36(1) Statute Law Review 46; W. Tetley, 'Mixed Jurisdictions: Common Law Vs Civil Law (Codified and Uncodified) (Part I)' (1999) 4(3) Uniform Law Review 591.

³⁸⁰ Oliver Brand, 'Conceptual Comparisons: Towards A Coherent Methodology of Comparative Legal Studies' (2007) 32(2) Brooklyn Journal of International Law 405, 407-408; Anne Peters and Heiner Schwenke, 'Comparative Law Beyond Post-Modernism' (2000) 49(4) International and Comparative Law Quarterly 800.

³⁸¹ Geoffrey Samuel, *An Introduction to Comparative Law Theory and Method (European Academy of Legal Theory Monograph Series)* (Hart Publishing 2014) 9.

³⁸² W J Kamba, 'Comparative Law: A Theoretical Framework' (1974) 23(3) International and Comparative Law Quarterly 485.

³⁸³ Anne Peters and Heiner Schwenke, 'Comparative Law Beyond Post-Modernism' (2000) 49(4) International and Comparative Law Quarterly 800, 809; Michele Graziadei, “The Functionalist Heritage” in Pierre Legrand and Roderick Munday (eds), *Comparative Legal Studies: Traditions and Transitions* (Cambridge University Press 2003) 100.

say.³⁸⁴ Here, the social purpose of the rule forms the basis for comparison.³⁸⁵ Therefore, in terms of this research, the ‘function’ of the law as a facilitator of e-commerce will serve as the subject of comparison with the model economies of the UK and China.

Functionalism is hinged on two cardinal ideals. The first is the notion proposed by realists which suggests that law serves as a tool for addressing social interests and needs, thereby regulating human behaviour.³⁸⁶ Functionalists believe that comparisons mostly assume a ‘problem-solution’ approach where research conclusions are made by first identifying a practical problem that requires a solution, then examining select legal systems based on how they address the problem, and finally describing and assessing the similarities and differences identified as solutions from the compared legal systems.³⁸⁷ For Schlesinger, foreign solutions are explored as models or guides for one’s legal system³⁸⁸ while von Mehren argues that an understanding of how other legal systems address issues not only stimulates the researcher’s imagination, but also helps reveal weaknesses and strengths of identified solutions.³⁸⁹ This research clearly identifies with this ‘problem-solution’ approach. This is because section 1.4 of chapter one already identifies the central issues for determination while section 1.2 justifies the choice of the UK and Chinese legal systems as comparative economies. Finally, section 1.9 clarifies how the solutions to the central issues will be derived from the comparative analyses made in this thesis.

The second cardinal ideal believed by functionalists is the notion that legal institutions exist in a state to address inherent sociological issues.³⁹⁰ Resolving socio-legal issues

³⁸⁴ Oliver Brand (n 380) 409.

³⁸⁵ Ralf Michaels, ‘The Functional Method of Comparative Law’ in Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook on Comparative Law* (2nd edn, Oxford University Press 2019) 346, 348.

³⁸⁶ Richard Hylands, ‘Comparative Law’ in Dennis Patterson (ed), *A Companion to Philosophy of Law and Legal Theory* (Wiley-Blackwell 1999) 184, 185-87.

³⁸⁷ Konrad Zweigert and Hein Kötz, (n 193) 43-44.

³⁸⁸ Rudolf B Schlesinger *et al* (eds), *Comparative Law: Cases—Text—Materials* (5th edn 1988) 15, 22.

³⁸⁹ Arthur T von Mehren, ‘The Comparative Study of Law’ (1992) 6 (6-7) *Tulane European and Civil Law Forum* 43.

³⁹⁰ Peter Leyland, ‘Oppositions and Fragmentations: In Search of a Formula for Comparative Analysis?’ in Andrew Harding and Esin Örüci (eds), *Comparative Law in the 21st Century* (Kluwer 2002) 211, 215; Christopher A Whytock, ‘Legal Origins, Functionalism, and the Future of Comparative Law’ (2009) 2009(6) *Brigham Young University Law Review* 1879, 1881-2.

often require empirical research.³⁹¹ To circumvent the need for this form of research, functionalists like Zweigert and Kötz observe that social issues addressed by laws are mostly alike or similar across jurisdictions.³⁹² They argue that all legal systems “are open to the same questions and subject to the same standards, even in countries of different social structures or different stages of development.”³⁹³ They further opine that “different legal systems give the same or very similar solutions, even as to detail, to the same problems of life, despite the great differences in their historical development, conceptual structure, and style of operation.”³⁹⁴ This presumption enables comparative researchers to investigate social problems and identify likely solutions within existing familiar legal regimes, as opposed to delving into sociological research.³⁹⁵ For Reitz, different legal systems can be studied neutrally and the solutions derived, stripped of any national and contextual undertones.³⁹⁶ Ideally, functionalists view such solutions “in the light of their ‘function,’ as an attempt to satisfy a particular legal need.”³⁹⁷

Grounded on this second ideal, the feasibility of comparing Nigeria with the UK and China can be justified despite their contextual differences solely on the basis that e-commerce is a global phenomenon which presents similar benefits, problems, and solutions across jurisdictions. For the law to adequately contribute to mitigating the risks associated with e-commerce, same questions need to be asked by most legal systems and similar solutions are likely to be proposed. However, the functionalist notion that legal solutions should be totally stripped of national and contextual undertones is not strictly adhered to in this research because after comparison, actual transfer of laws is required,

³⁹¹ Ioannis Kampourakis, ‘Empiricism, Constructivism, and Grand Theory in Sociological Approaches to Law: The Case of Transnational Private Regulation’ (2020) 21 German Law Journal 1411-3; Paddy Hillyard, ‘Law’s Empire: Socio-Legal Empirical Research in the Twenty-first Century’ (2007) 34(2) Journal of Law and Society 266, 275.

³⁹² Konrad Zweigert and Hein Kötz, (n 193) 425. Also see Oliver Brand (n 380) 409-410.

³⁹³ Ibid.

³⁹⁴ Ibid, 39.

³⁹⁵ David J Gerber, ‘Sculpturing the Agenda of Comparative Law: Ernst Rabel and the Facade of Language’ in Annelise Riles (ed), *Rethinking the Masters of Comparative Law* (Hart Publishing 2001) 190, 199.

³⁹⁶ John C Reitz, ‘How to Do Comparative Law’ (1998) 46 American Journal of Comparative Law 617, 621-22.

³⁹⁷ Konrad Zweigert and Hein Kötz, (n 193) 44.

and such transfer is not theoretically justifiable without considering the historical, legal, socio-economic, political, and cultural specificities of the compared legal systems.³⁹⁸

In the light of the foregoing, it is necessary to briefly consider the limitations of the functionalist theory.

3.1.1.1 Limitations of Functionalism

Two limitations of functionalism are identified in this study, and they include:

I. Particularism:

Gerber suggests that functionalism is flawed due to its focus on producing ‘particularist’ results.³⁹⁹ This means that the legal solutions proffered do not necessarily consider the possible influence of a country’s historical or socio-economic conditions; rather, more focus is placed on the ultimate function of the law in fulfilling a particular role.⁴⁰⁰ Though there may be a universal problem that requires a solution, Bell argues that this solution should be dependent on the specific needs of a society, which are historically shaped by the other institutional structures that lie within.⁴⁰¹

The foregoing implies that functionalists tend to disregard the extra-legal dependencies in a legal system from which law derives its validity, so long as the solutions to problems from all compared jurisdictions are similar.⁴⁰² Brand, however, suggests that this research technique may be feasible where the compared legal systems share similar cultural ideals.⁴⁰³ Thus, where compared jurisdictions are more culturally remote from each other, the application of the functionalist theory becomes questionable. For example, certain

³⁹⁸ Oliver Brand (n 380) 418.

³⁹⁹ David J Gerber, (n 447) 204. See also Michele Graziadei (n 383) 109; Basil S Markesinis, *Comparative Law in the Courtroom and Classroom: The Story of the Last Thirty-Five Years* (Hart Publishing 2004) 45.

⁴⁰⁰ Ibid.

⁴⁰¹ John Bell, ‘Comparative Public Law’ in Andrew Harding & Esin Örüçü (eds) *Comparative Law in the 21st Century* 235, 243. eds., 2002)

⁴⁰² Oliver Brand (n 380) 418.

⁴⁰³ Ibid

practices such as polygamy and same-sex marriages may be prohibited in some legal systems while others may be accepting of it.⁴⁰⁴ Perhaps, this explains why functionalist tend to apply their ideals to legal subjects like contract law, whose principles are less affected by moral values and connotations.⁴⁰⁵ Since online contracts and transactions form the basis of most e-commerce-related laws, one can, therefore, infer the suitability of the functionalist approach to this research.

II. Lack of Causal Explanation:

Brand argues that functionalism alters the common sequence of cause and effect as issues are rather explained in terms of what happens afterwards, as opposed to what happens before.⁴⁰⁶ By omitting such explanation, the closely connected relationship which exist between legal systems and their institutions may be overlooked.⁴⁰⁷ As Watson observes, the cause-effect relations between an adopted law and its foreign precursor is critical for studies related to the transfer of legal ideas.⁴⁰⁸ Since functionalists fail to include structural-causal explanations to their claims, they are unable to capture the essence and relevance of all non-technical characteristics of law.⁴⁰⁹ This ultimately restricts their comparisons to mostly superficial similarities and differences that exist within those legal systems.⁴¹⁰

To mitigate any foreseeable impact of these limitations to this study, this research examines and applies the theory of legal transplants in 'context'. By 'context', causal explanations which capture the influence of non-technical features of law are provided and factored into consideration when proffering legal and extra-legal solutions to the

⁴⁰⁴ Michele Graziadei (n 383) 102.

⁴⁰⁵ Konrad Zweigert and Hein Kötz, (n 193) 44.

⁴⁰⁶ Oliver Brand (n 380) 418.

⁴⁰⁷ Ibid.

⁴⁰⁸ Alan Watson, 'From Legal Transplants to Legal Formants' (1995) 43 *American Journal of Comparative Law* 469-470; Fedtke, Jörg, 'Legal Transplants' in J Smits (ed), *Elgar Encyclopaedia of Comparative Law* (Edward Elgar Publishing, Cheltenham, 2006) 434.

⁴⁰⁹ Vivian G Curran, 'Cultural Immersion, Difference and Categories in U.S. Comparative Law' (1998) 46 *American Journal of Comparative Law* 43, 61.

⁴¹⁰ Ginter Frankenberg, 'Critical Comparisons: Rethinking Comparative Law' (1985) 26 *Harvard International Law Journal* 411, 436.

problem of e-commerce adoption in Nigeria. The aim is to help clarify how practical solutions identified from comparing the UK and Chinese legal regimes can adequately fit within the Nigerian ‘context’.

3.1.2 Legal Transplants and the Need for ‘Context’

Legal transplant is a term used to denote the movement of a system of laws or legal rules, either from one country to another or from one people to another.⁴¹¹ For Teubner, legal transplants refers to the transfer of laws, legal ideas and institutional structures across national boundaries or cultural and geopolitical borders.⁴¹² The act of transplantation connotes the actual transfer of laws and matters from one jurisdiction or legal institution into another.⁴¹³ Unlike most functionalists, some scholars have cautioned against borrowing laws without considering the extra-legal contexts of the country from which the transplant emanates from (‘the originating country’) and that of the country for which the laws are meant to be applied (‘the adopting country’).⁴¹⁴

Legal transplants are indeed, a historical reality.⁴¹⁵ As early as 1748, Montesquieu, in his writing, acknowledges the need for a cautious approach to transplants.⁴¹⁶ He warns that “whenever there is a design of adopting the civil law of another nation, it would be proper to examine beforehand whether they have both the same institutions and the same political law”.⁴¹⁷ For him, laws are inextricably linked to the principles and nature of the

⁴¹¹ Alan Watson, (n 191) 21.

⁴¹² Gunther Teubner, ‘Breaking Frames: The Global Interplay of Legal and Social Systems’ in John Gillespie, ‘Towards a Discursive Analysis of Legal Transfers into Developing East Asia’ (2008) 40 New York University Journal of International Law and Politics 657, 662.

⁴¹³ Pierre Legrand, ‘The Impossibility of Legal Transplants’ (1997) 4 Maastricht Journal of European and Comparative Law 111, 112.

⁴¹⁴ Helen Xanthaki, ‘Legal Transplants in Legislation: Defusing the Trap’ (2008) 57(3) International and Comparative Law Quarterly 659; Gail Edwards, ‘Legal Transplants and Economics: The World Bank and Third World Economies in the 1980S-A Case Study of Jamaica, the Republic of Kenya and the Philippines’ (2007) 14 European. Journal of Law Reform 243; George Mousourakis, (n 192) 225-9.

⁴¹⁵ Alan Watson, ‘Aspects of Reception of Law’, (1996) 44 American Journal of Comparative Law 335; Amber Daar, ‘Parallel Pasts, Divergent Destinies: A Comparative Analysis of Transferring and Implementing Competition Laws in India and Pakistan’ (PhD Thesis, University College London 2017) 21.

⁴¹⁶ Montesquieu C, Nugent T, and Alembert J, *The Spirit of Laws* (1751).

⁴¹⁷ Charles de Secondat Montesquieu *et al*, *The Spirit of the Laws* (Cambridge University Press 1989) 8,610.

government structures of the state in which they are made.⁴¹⁸ Two centuries later, Kahn-Freund echoed Montesquieu's sentiments by arguing that "any attempt to use a pattern of law outside the environment of its origin continues to entail the risk of rejection" since legal rules which regulate a country's administrative, legislative, judicial or constitutional institutions are organic to the originating country's context.⁴¹⁹ To ensure that such laws are less resistant to transplantation, Khan-Freund further suggests that countries should study not only the foreign law in question, but should also examine the political and social contexts of those laws, prior to making a decision on its adoption.⁴²⁰

Modern day scholars of transplant theory concur with Montesquieu and Kahn-Freund's arguments. For example, Legrand argues that transplantation may be technically impossible altogether, since the structural contexts of the originating country may have so much impact on the country that the adopting country may only succeed in transferring the 'words' of the law, as opposed to its 'original meaning'.⁴²¹ He based his argument on the belief that the meaning of the law is innately bound by the originating country's contexts, and as such, interpretations given to the law are "historically and culturally conditioned" to the adopting country.⁴²² As a result, the letters of the law may be given a different interpretation by legislators and judges in the adopting country.⁴²³

Taking a somewhat positive approach compared to Legrand, Teubner recognises that compatibility of contexts can exist between the originating and adopting country, thereby making transplantation in the theoretical sense of it, possible.⁴²⁴ However, he echoes

⁴¹⁸ Ibid.

⁴¹⁹ Otto Kahn-Freund, 'On Uses and Misuses of Comparative Law' (1974) 37 *The Modern Law Review* 1, 12, 13.

⁴²⁰ Ibid 27.

⁴²¹ Pierre Legrand, (n 413) 114; Pierre Legrand, 'Legal Traditions in Western Europe: The Limits of Commonality' in R Jagtenberg, E Öricü and A J de Roo (eds), *Transfrontier Mobility of Law* (1995) 63.

⁴²² Pierre Legrand, *European Legal Systems Are Not Converging*, (1996) 45 *International & Comparative Law Quarterly* 52, 11; Pierre Legrand, 'What "Legal Transplants"?' in David Nelken and Johannes Feest (eds), *Adapting Legal Cultures* (Bloomsbury Publishing, 2001) 55, 58-61.

⁴²³ Ibid. Also see Nicholas Foster, 'Transmigration and Transferability of Commercial Law in a Globalized World, in *Comparative Law in the 21st Century*' in Andrew Harding and Esin Orucu (eds), *Comparative Law in the 21st Century* (The Hague: Kluwer Law International, 2002) 55.

⁴²⁴ Gunther Teubner, (n 49) 12.

Legrand's sentiments by suggesting that the underlying metaphor behind transplantation is misleading since legal institutions cannot be easily imported or exported from one country to another without careful cultivation and adaptation.⁴²⁵ He rather suggests that the words 'legal irritants' may be more ideal because "where a foreign rule is imposed on domestic culture," such rules are not just transplanted into the adopting country, but they go further to cause a major irritation that leads to unwanted and unanticipated events capable of destabilising a country's domestic culture.⁴²⁶ He uses the analogy of a surgical operation to illustrate the flawed idea behind transplants, suggesting that it is inconceivable to expect a transferred material to play its old role in a completely new territory.⁴²⁷ Thus, even though the rule may appear the same after formal transfer, it ultimately changes its mechanics once integrated into the new territory which has its unique context.⁴²⁸ Therefore, for Teubner, following the metaphor behind legal transplants without careful adaptation can alter an adopting country's legal system and cause it to evolve in unexpected directions.⁴²⁹ Teubner's argument explains why this thesis considers the legal culture of the UK and China by analysing relevant statutes and judicial decisions, before arriving at a solution that best aligns with Nigeria's legal culture.

The above argument notwithstanding, other scholars of legal transplant theory share a somewhat different view from Teubner. For instance, contrary to Teubner's 'legal irritant' argument, Watson partly echoes the functionalist ideal by contending that "a foreign rule can be successfully integrated into a very different system [...] which is constructed on very different principles from that of the donor."⁴³⁰ He based his argument on the assumption that "legal rules are not peculiarly devised for the particular society in which they now operate".⁴³¹ Nonetheless, he shares similar thoughts with Teubner on 'legal irritants' as he acknowledges that the meaning of law may differ between countries and

⁴²⁵ Ibid.

⁴²⁶ Ibid.

⁴²⁷ Ibid

⁴²⁸ Ibid, 19.

⁴²⁹ Ibid.

⁴³⁰ Watson (n 191) 55, 56.

⁴³¹ Ibid 95, 96.

drive them to divergent paths since the ‘spirit of a people’ can have a deep-rooted impact on the law.⁴³² Recognising this obvious polarity in Watson’s views, Ewald draws a distinction between a ‘Weak Watson’ and a ‘Strong Watson’.⁴³³ For Ewald, a ‘Weak Watson’ argues that a foreign law should be cautiously examined for its likely compatibility with the context in an adopting country due to possible complexities, while a ‘Strong Watson’ takes a firm stance that “there is no interesting relationship to be discovered between law and society”.⁴³⁴

This research clearly aligns with the ‘Weak Watson’ argument since it partly echoes the sentiments of functionalists, whilst also acknowledging the ideas behind Teubner’s ‘legal irritant’ argument. Contexts is also significant to this study since Nigeria, a potential adopting country, is at a different developmental path from China and the UK owing to peculiar disparities in their socio-economic structures. Thus, any proposed function of the law in enhancing e-commerce adoption due to its protective guarantees is ‘contextualised’ appropriately for Nigeria.

Although most scholarships on legal transplants emphasise the need for compatibility of contexts between the originating country and the adopting country, there is little consensus on what factors to consider. For Montesquieu and Kahn-Freund, legal transplants should be compatible with the adopting country’s political law, institutions, political and social context,⁴³⁵ while Mattei suggests that transplants should align with the “machinery of justice” in the adopting country.⁴³⁶ Shahein reiterates the need to assess the economic, political and social environment of the originating and adopting countries⁴³⁷

⁴³² Alan Watson, *The Evolution of Law* (Johns Hopkins University Press 1985) 42.

⁴³³ William Ewald, ‘Comparative Jurisprudence (II): The Logic of Legal Transplants’ (1995) 43 *American Journal of Comparative Law* 489, 491, 509.

⁴³⁴ *Ibid.*

⁴³⁵ Montesquieu (n 415); Kahn-Freund (n 419).

⁴³⁶ Ugo Mattei, ‘Efficiency in Legal Transplants: An Essay in Comparative Law and Economics’ (1994) 14 *IRL International Review of Law & Economics* 3, 17. Also see Ugo Mattei, ‘Comparative Law and Critical Legal Studies’ in Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook on Comparative Law* (2nd edn, Oxford University Press 2019) 805, 817-818.

⁴³⁷ Heba Shahein, ‘Designing Competition Laws in New Jurisdictions: Three Models to Follow’ in Richard Whish and Christopher Townley (eds), *New Competition Jurisdictions: Shaping Policies and Building Institutions* (Edward Elgar 2012) 51, 55.

while Zweigert, and Kötz allude to the interaction between legal institutions, legal thinking, interpretations given to legal resources, ideological underpinnings and historical developments in the originating and adopting country.⁴³⁸ While Hantrias identifies commonality in political orientations, values and resources,⁴³⁹ Gal gives a broad interpretation of context by stressing that “almost all issues which relate to the relationship between law and society” should be considered.⁴⁴⁰ In the light of the foregoing, one may question the specific factors which ought to be considered as the most important when deliberating on the parameters for importing a foreign law.

To provide further clarity in this regard, culturalists allude to the importance of cultural and social contexts between the originating country and the adopting country in giving validity to the function of law in a society.⁴⁴¹ For them, law is culturally implanted with limited legal autonomy, and as such, it cannot be altered or detached from the people for whom it was made.⁴⁴² Nelken and Feest contend that transplants are possible where there is a degree of cultural adaptation in the adopting country, “whether it concerns the law, or other social or cultural artifacts that travel across space”⁴⁴³ Cohn adds that “complete isolationism and hermeneutical closeness [are] replaced by a vision of law as rooted in its cultural/social frameworks, but also amenable to various influences”.⁴⁴⁴ Accordingly, the law is considered a living social construct affected by cultural issues which make adaptation to culture a major determining factor for successful transplantation.⁴⁴⁵

⁴³⁸ Konrad Zweigert and Hein Kötz, (n 193) 98.

⁴³⁹ Linda Hantrias, *International Comparative Research: Theory, Methods and Practice* (Palgrave Macmillian 2009) 45.

⁴⁴⁰ Michal Gal, ‘The ‘Cut and Paste’ of Article 82 of the EC Treaty in Israel: Conditions for a Successful Transplant’ (2007) 9 *European Journal of Law Reform* 467, 473.

⁴⁴¹ John Gillespie, *Transplanting Commercial Law Reform: Developing a ‘Rule of Law’ in Vietnam* (2006, Ashgate Publishing Limited, 2006) 9.

⁴⁴² Ibid.

⁴⁴³ Nelken and Feest (n 422). See also Michele Graziadei, ‘Legal Transplants and the Frontiers of Legal Knowledge’ (2009) 10 *Theoretical Inquiries in Law* 723-743.

⁴⁴⁴ Margit Cohn, ‘Legal Transplant Chronicles: The Evolution of Unreasonableness and Proportionality Review of the Administration in the United Kingdom’ (2010) 58 (3) *American Journal of Comparative Law* 583, 587-8.

⁴⁴⁵ Roger Cotterrell, ‘Is There a Logic of Legal Transplants?’ in Nelken and Feest (n 422) 71; David Nelken, ‘Using the Concept of Legal Cultures’, (2004) 29 *Australian Journal Legal Philosophy* 1.

Teubner, tries to strike a balance between autonomous rules and cultural norms by alluding to the abstraction that rule production can either be tightly or loosely coupled with social frameworks.⁴⁴⁶ To him, where “contemporary legal rule production is institutionally separate from cultural norm production, large areas of law are only in loose, non-systematic contact with social processes.”⁴⁴⁷ On the other hand, he avers that “references of law to social norms work as extra-legal rule-making machines” since those laws are driven by “other social discourses which bind them closely together.”⁴⁴⁸ Thus, foreign rules can also act as ‘social irritants’ which obstruct “the social discourse to which law is, under certain circumstances, closely coupled.”⁴⁴⁹ Ultimately, loosely and tightly coupled laws impact on the process of transplantation since the degree in which they are bound by other social processes make it either easier or tougher to accomplish.⁴⁵⁰ Since laws cannot be wholly separated from their socio-cultural context, careful adaptation is needed to align such laws to their peculiar environment. This further explains why the modified TAM framework (figure 3) developed to guide the structure and conduct of this thesis, explores culture as a contextual factor.

Recognising the influence of socio-political contexts, Kahn-Freund argues that transplantation across political boundaries is possible since some laws are more autonomous than others.⁴⁵¹ He, however, notes that for such transplants to be successful, an assessment of the political environment, in the form of interest group coalitions and constitutional structures, will be needed.⁴⁵² This is because some legal systems are so tightly bound to their political context that their transfer to a new territory would require corresponding changes to the adopting country’s political system for the new rules to

⁴⁴⁶ Gunther Teubner, (n 49) 18.

⁴⁴⁷ Ibid.

⁴⁴⁸ Ibid.

⁴⁴⁹ Ibid 31. An example of a social-related circumstance is a country’s socio-economic system. Here, Teubner refers to various forms of capitalist economies which vary in terms of their production regimes and the degree of government regulation involved.

⁴⁵⁰ Ibid, 19 & 21.

⁴⁵¹ Otto Kahn-Freund, (n 419) 27.

⁴⁵² Ibid.; Also see Hideki Kanda and Curtis J Milhaupt, ‘Re-Examining Legal Transplants: The Director’s Fiduciary Duty in Japanese Corporate Law’ (2003) 51 *The American Journal of Comparative Law* 8.

function properly in the new environment.⁴⁵³ Teubner uses the capitalist economic system of government as an example to suggest that the convergence of socio-economic sub-systems are also connected to a country's political context.⁴⁵⁴ Such link has its resultant impact on the transplantation process, depending on how bound the rules are to the originating country's political system. He, however, reiterates that rule production should conform to "the general pattern of socio-economic behaviour" in an adopting country.⁴⁵⁵ The foregoing explains why the socio-economic contexts of Nigeria, the UK and China are integrated into the discussions made in other parts of the thesis.

Berkowitz, Pistor and Richard note the importance of socio-legal compatibility by questioning the viability of transplantation where differences exist in the way countries receive their formal laws.⁴⁵⁶ They argue that the law can only be effective where it is "meaningful in the context in which it is applied so citizens have an incentive to use the law and to demand institutions that work to enforce and develop the law."⁴⁵⁷ Interestingly, they note that the classification of legal families as either common law or civil law countries is less important in determining the effectiveness of legal transplants. Rather, focus should be placed on the underlying social contexts which could encourage nationals to depend on and comply with the law.⁴⁵⁸ This explains why this research seeks to understand online purchasing behaviour by reference to how consumers are most likely influenced by their degree of legal awareness.

⁴⁵³ Otto Kahn-Freund, (n 419) 11.

⁴⁵⁴ Gunther Teubner (n 49) 22.

⁴⁵⁵ Ibid, 31. Arguing against the standardisation and harmonisation process of rule production across the EU, Teubner cites the New Zealand case of *Invercargill City Council v Hamlin* [1994] 3 NZLR 513; [1996] AC 264, where the Privy Council concurred with the House of Lord's decision that the general rules of negligence do not necessarily need to be applied across the Commonwealth countries if it does not align with the countries' socio-economic behaviour.

⁴⁵⁶ Daniel Berkowitz, Katharina Pistor, and Jean-Francois Richard 'The Transplant Effect' (2003) 51(1) *American Journal of Comparative Law* 163, 167.

⁴⁵⁷ Ibid.

⁴⁵⁸ Ibid, 170-2.

3.1.2.3 Limitations of Legal Transplant Literature

Having demonstrated the relevance of legal transplant theory to this research, it is now important to identify possible gaps in the literature with a view to mitigating their impact on the potency of this research. Two limitations are identified under this section. They include:

I. Limited Study on Link between Adoption Process and Compatibility:

The basis of most arguments that underpin legal transplant literature is the need to ensure compatibility of a transplant with the context in an adopting country.⁴⁵⁹ Such argument derives from the presupposition that the contexts in an originating country are already so intrinsically embedded into the transplant that any subsequent transfer of such transplant to another country may irritate the course of legal development in an adopting country.⁴⁶⁰ Admittedly, during the adoption process, there are institutions in the adopting country that deliberate on what laws to borrow and the limits to such laws (such as the legislature) as well as those that interpret the letters of the law (like the judiciary).⁴⁶¹ However, limited attention is paid to understanding the link between the processes involved in acquiring the transplant and the supposed compatibility the adoption may have generated.⁴⁶²

Although Chen-Wishart recognises the significant role played by legislators and the judiciary as actors in the adoption process, the author suggests that focus should be placed not only on the possibility of transferring laws (which is the major focus of transplant theorists), but also on how such transplants develop in the adopting country.⁴⁶³ The author, nevertheless did not consider how the development process in an adopting country may be connected to the way in which the legal transplant was acquired in the first place. This is because although it is argued that a less developed country may not easily assimilate

⁴⁵⁹ Mindy Chen-Wishart, 'Legal Transplant and Undue Influence: Lost in Translation or a Working Misunderstanding?' (2013) 62 *International and Comparative Law Quarterly* 1.

⁴⁶⁰ Gunther Teubner (n 49).

⁴⁶¹ Berkowitz, Pistor and Richard (n 456).

⁴⁶² Amber Daar (n 415).

⁴⁶³ Mindy Chen-Wishart (n 511) 3.

and adapt the laws from a more developed country due to limited technical capabilities and low level of literacy,⁴⁶⁴ transplantation has regardless, been possible in some situations. For example, Liberia, a less developed African country, successfully imported laws from the UK and the USA.⁴⁶⁵ Same applies to Sudan which also imported laws from the UK.⁴⁶⁶ There might be elements in these countries' adoption process which helped facilitate compatibility, despite contrary opinion expressed by scholars. Thus, without establishing a clear link between adoption process and compatibility, transplant theory may be flawed to a certain degree, when applied in practice.

II. Limited Study on Link between Motivation for Transplant and Successful Adoption:

Another limitation of the legal transplant literature is its minimal discussion on the motivations and goals behind transplantation. The success of transplantation can validly be measured where it is proven to have fulfilled the goal the adopting country hoped to achieve through its importation. Motivations for borrowing laws are most often linked to addressing a socio-legal, political, or economic goal or need.⁴⁶⁷ However, whether such needs have been fulfilled by the transplant remain unclear. Same applies to the criteria for assessing the effectiveness of the transplant in fulfilling such needs.

Most transplant literature fail to identify and examine the initial motivations in which an adopting country may be compelled to borrow a law in the first instance when measuring successful transplantation.⁴⁶⁸ Put differently, the need which the transplant tends to cater to is ignored when measuring the actual effectiveness of such transplant. Rather, heavy focus is placed on national contexts, with minimal discussion to show how commonality

⁴⁶⁴ Kevin E Davis and Michael J Trebilcock, 'The Relationship between Law and Development: Optimists versus Skeptics' (2008) 56(4) American Journal of Comparative Law 895, 938.

⁴⁶⁵ John H Beckstrom, 'Transplantation of Legal Systems: An Early Report on the Reception of Western Laws in Ethiopia' (1973) 21(3) American Journal of Comparative Law 557, 558.

⁴⁶⁶ Ronald Daniels, Michael Trebilcock and Lindsey Carson, 'The Legacy of Empire: The Common Law Inheritance and Commitments To Legality In Former British Colonies' (2011) 59(1) American Journal of Comparative Law 111.

⁴⁶⁷ Loukas A Mistelis, 'Regulatory Aspects: Globalization, Harmonization, Legal Transplants, and Law Reform: Some Fundamental Observations' (2000) 34(3) The International Lawyer 1055, 1057.

⁴⁶⁸ Amber Daar (n 415) 28.

of national contexts may have indeed, contributed to successful transplantation. Although Mattei, suggests that the ‘efficiency’ of a law in an originating country may be a compelling reason for an adopting country to consider borrowing the foreign law,⁴⁶⁹ he does not explain the meaning of an efficient law and the yardstick for measuring the law’s efficiency in relation to the role played by the common contexts that exist in both the originating country and the adopting country. Drawing a link between the motivation/goal for a transplant and its subsequent implementation in an adopting country helps validate the actual success of a transplant in fulfilling the function for which it was adopted.

Overall, despite the arguments critiquing the viability of transplant literature, this research argues that transplantation, where necessary, is still plausible. This is due to the impact of globalisation and how it has tremendously altered international trade, especially in relation to the digital economy.⁴⁷⁰ States are now encouraged to incorporate ideas, concepts, rules, and principles from countries experiencing significant economic growth in specific sectors of interest. For the most part, international businesses are being mandated to comply with consumer protection laws in their respective countries of operation.⁴⁷¹ Thus, it will be contentious to assert that undiluted legal systems still exist in today’s world.⁴⁷²

Having considered the theoretical background to this research, the next issue to consider is how one can ensure that a transplant, when implemented in an adopting country, will gain high receptivity in such a way that informed nationals become willing to depend on the law and by so doing, increase the probability that the law will become effective. Addressing this is important since most transplant literature pay less attention to how commonality of contexts may have contributed to successful transplantation or made nationals more willing to use the law for the purposes for which it was borrowed or

⁴⁶⁹ Ugo Mattei (n 436).

⁴⁷⁰ WTO, ‘The Future of World Trade: How Digital Technologies Are Transforming Global Commerce’ (WTO 2018) <https://www.wto.org/english/res_e/publications_e/wtr18_e.htm> accessed 23 April 2021.

⁴⁷¹ Mateja Durovic, ‘International Consumer Law: What Is It All About?’ (2020) 43 *Journal of Consumer Policy* 125, 128.

⁴⁷² Mathias Siems, *Comparative Law* (Cambridge University Press, 2014) 196.

formulated. The TAM framework is relevant in this regard. Through this framework, one can predict more accurately, the likely effectiveness of a borrowed law, judging by its actual influence on consumer online purchasing behaviour in the model and comparative jurisdictions. The framework will also help clarify whether consumers in Nigeria will most likely rely on the law when making online purchasing decisions, ultimately fulfilling the initial goal of the transplant (which in this case, is to promote consumer confidence in e-commerce and encourage more of its adoption). Indeed, predicting consumers' likely behaviour towards the law where awareness is created will help determine if the law has the potential to be effective in fulfilling the goal for which it was promulgated.

3.2 Technology Acceptance Model (TAM)

The aim of this section is to illustrate how the modified version of the extended TAM will be used to guide the conduct of this research, and more specifically, how insights from the TAM can help shape the law-making process of consumer e-commerce-related policies in Nigeria. As mentioned in section 1.1 of chapter one, TAM is used as a validity prediction tool to help determine how consumers will react to participating in e-commerce where relevant laws (and potential transplants), are in place to encourage its adoption. This framework is important since this thesis argues that sole reliance on commonality of contexts between an originating country and an adopting country does not in essence mean that the law will be so effective that one can ultimately conclude that consumers will be more willing to place reliance on it before making online purchasing decisions.

To fulfil this objective, this section is divided into 4 sub-sections. Sub-section 3.2.1 provides a literary background to the development of the TAM, further outlining reasons which justify relying on the extended version of the framework. Sub-section 3.2.2 conducts a review of literature to show how TAM is applied to different research areas while sub-section 3.2.3 tailors the review to empirical findings specifically derived from e-commerce adoption research. Finally, sub-section 3.2.4 analyses the modified framework by developing 14 hypotheses that can help validate the causal relationships between chosen external variables, TAM constructs, the independent variable and actual

e-commerce adoption. The hypotheses will be validated using findings from existing empirical literature on TAM and consumer behaviour, in addition to other statistical data on Nigeria, the UK and China.

3.2.1 Development of TAM

Understanding the background to the TAM framework is the first step to investigating how consumer participation in e-commerce transactions can be improved by reference to laws designed to limit the impact of perceived risk factors on e-commerce adoption. As noted by Marangunic⁴⁷³ and Granic, “without understanding the origins, development, and modifications along with the limitations of the model, there can be no comprehensive and methodical research in the field.”⁴⁷³

TAM is an information systems research framework which investigates the causal connection between beliefs and attitudinal constructs, especially as it relates to the adoption of end-user-computing technologies employed to enhance task performance.⁴⁷⁴ It basically hypothesises that two belief constructs, namely Perceived Usefulness (PU) and Perceived Ease of Use (PEOU), generally determine an individual’s Attitude (ATT) towards using an IT system.⁴⁷⁵ The individual’s ATT then influences their Behavioural Intention (BI) to use such technology, ultimately predicting and ascertaining their actual use of the IT system.⁴⁷⁶ As a result, PU and PEOU are considered TAM’s major constructs in the causal prediction chain which determines BI while BI is seen as an independent variable which determines actual system use.⁴⁷⁷ These constructs further mediate in a complex relationship between external variables and anticipated system usage.⁴⁷⁸ This

⁴⁷³ Nikola Marangunić and Andrina Granić, ‘Technology Acceptance Model: A Literature Review From 1986 to 2013’ (2015) 14(1) Universal Access in the Information Society 81.

⁴⁷⁴ Michael Grob, ‘Exploring the Acceptance of Technology for Mobile Shopping: An Empirical Investigation Among Smartphone Users’ (2014) 25(2) The International Review of Retail, Distribution and Consumer Research 215, 217.

⁴⁷⁵ Ibid.

⁴⁷⁶ Ibid.

⁴⁷⁷ Viswanath Venkatesh and Fred D Davis, (n 38).

⁴⁷⁸ Nikola Marangunić and Andrina Granić, (n 473).

means that, TAM generally employs four impact variables to predict the use of information systems, namely PU, PEOU, ATT and BI.⁴⁷⁹

Perceived Usefulness (PU) explains the degree of importance attached by a user to an information system due to an expected benefit or utility,⁴⁸⁰ while Perceived Ease of Use (PEOU) explains a person's assumption of the level of difficulty likely to be experienced when attempting to use an IT system to complete specific tasks.⁴⁸¹ Attitude (ATT) towards use refers to an individual's negative or positive disposition towards adopting an IT system,⁴⁸² while Behavioural Intention (BI) to use refers to the measure of likelihood that an individual will use an IT system.⁴⁸³ These impact variables are analysed in relation to the influence of other external variables on actual system use.⁴⁸⁴

TAM was originally designed by Davis in 1986 to help increase the acceptance and use of an IT system by looking into the motivations behind its use.⁴⁸⁵ Due to its focus on motivation, the model only questions a user's 'attitude' by examining the correlation between the PU and PEOU (as major constructs) with ATT, thereby, excluding the independent variable, BI, from its analysis. The original TAM is aptly represented in figure 10 below.

⁴⁷⁹ Ji-Won Moon and Young-Gul Kim, 'Extending the TAM for A World-Wide-Web Context' (2001) 38(4) *Information & Management* 217; Aron O'Cass and Tino Fenech, (n 39).

⁴⁸⁰ Yi He, Qimei Chen and Sakawrat Kitkuakul, 'Regulatory Focus and Technology Acceptance: Perceived Ease of Use and Usefulness as Efficacy' (2018) 5(1) *Cogent Business & Management* 1, 2.

⁴⁸¹ T Wang and Y Tseng, 'A Study of The Effect on Trust and Attitude with Online Shopping' (2011) 2(2) *International Journal for Digital Society* 433; M Rafique *et al*, 'Extending TAM, In Terms of Trust and Attitude Towards the Online Shopping Intention' (2014) 4(3) *Journal of Public Administration* 90.

⁴⁸² Sejin Ha and Leslie Stoel, 'Consumer E-Shopping Acceptance: Antecedents in A Technology Acceptance Model' (2009) 62(5) *Journal of Business Research* 565.

⁴⁸³ David T Green and J Michael Pearson, 'Integrating Website Usability with The Electronic Commerce Acceptance Model' (2011) 30(2) *Behaviour & Information Technology* 181, 183; K Eriksson, K Kerem and D Nilsson, 'Customer Acceptance of Internet Banking in Estonia' (2005) 23(2) *International Journal of Banking & Marketing*, 200-216.

⁴⁸⁴ Examples of socio-cultural variables include culture, cyber capabilities, language, literacy, and poverty.

⁴⁸⁵ The original TAM was first introduced in 1986 by Fred D Davis in his unpublished doctoral thesis titled *Technology Acceptance Model for Empirically Testing New End-user Information Systems Theory and Results* (Massachusetts: Sloan School of Management, Massachusetts Institute of Technology).

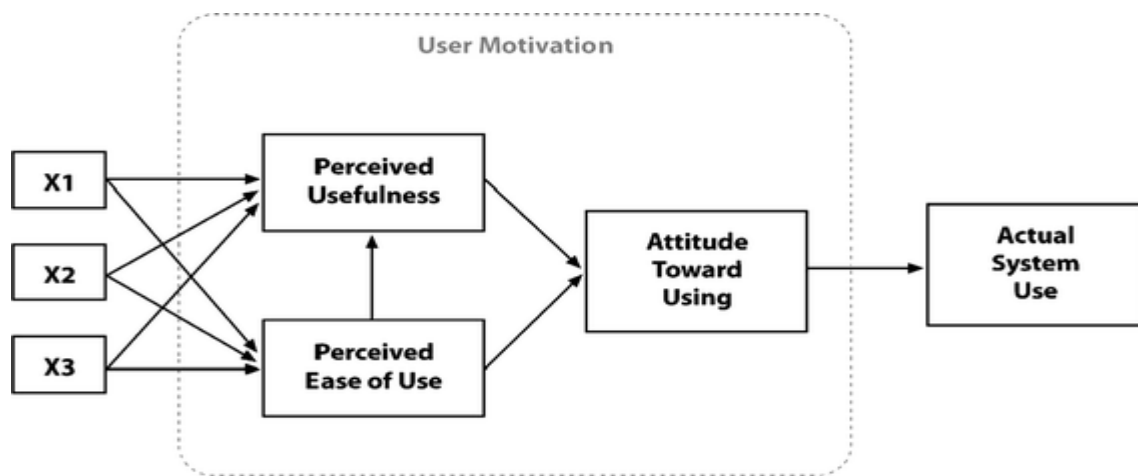


Figure 10: Original Technology Acceptance Model (TAM)⁴⁸⁶

From the figure above, one can see that the motivation to use IT in the original TAM is determined by major belief constructs, PU and PEOU, both of which also exert a considerable degree of influence on the variable, ATT, which variable determines actual system use. Furthermore, PEOU has a correlative impact on PU. These impact factors are ultimately shaped by system design characteristics marked ‘X’, which most researchers now refer to as ‘external variables.’⁴⁸⁷

The original TAM is, however, limited by the fact that it does not consider the impact of social factors like user ‘subjective norms’, as a variable that can influence the usage of IT systems.⁴⁸⁸ Thus, this version of the framework is said to be a ‘traditional’ acceptance model⁴⁸⁹ which cannot sufficiently provide a wholesome explanation or be able to predict

⁴⁸⁶ Fred D Davis (n 33).

⁴⁸⁷ Ibid.

⁴⁸⁸ Xinwen Zhang, Xue Zhou and Yoruk Esin, ‘Re-examining the Technology Acceptance Model from Stakeholders’ Management Perspective in Health Sector’ (BAM2019 Conference Proceedings, British Academy of Management Birmingham, 3 September 2019) 1, 4.

⁴⁸⁹ Other theories (together with their authors) adjudged traditional by commentators include, but are not limited to the Theory of Reasoned Action (TRA) in Martin Fishbein and Icek Ajzen, *Belief, Attitude, Intention, and Behaviour: An introduction to Theory and Research* (1st edn, Addison-Wesley 1975); the Theory of Planned Behaviour (TPB) in Icek Ajzen, *The Theory of Planned Behaviour* (1991) 50(2) *Organization Behaviour and Human Decision Processes* 179-211; Diffusion of Innovation Theory (DOI) in Everett M Rogers, *Diffusion of Innovations* (4th edn, New York: The Free Press 1995) and the Theory of Technology Task-Fit (TTF) in Dale L Goodhue and Ronald L Thompson, ‘Task-Technology Fit and Individual Performance’ (1995) 19(2) *MIS Quarterly* 213-236. The fundamental idea behind TAM is historically traced to the psychological theory of reasoned action and the theory of planned behaviour.

more accurately, the factors which influence a user into accepting or rejecting new task performing technologies.⁴⁹⁰

After the original TAM was introduced to test a user's attitude towards technology, researchers began to improve the model by questioning the intention of those users.⁴⁹¹ In 1989, Davis refined this model as he found out that ATT did not totally mediate between PU and PEOU.⁴⁹² He, therefore, proposed the removal of the ATT variable from the model, introducing in the same year, the Behavioural Intention (BI) to use, in what came to be known as the parsimonious TAM.⁴⁹³ The introduction of the BI variable derives from the finding that in some cases, an individual who perceives an IT system as useful might develop a firm BI to use the system to perform a specific task, without necessarily evincing the attitude towards using such IT system.⁴⁹⁴

Due to the consistent finding that PU determines BI, Venkatesh and Davis proposed an extension of the framework in what is known as the extended TAM 2, with the aim of identifying the specific variables that influence PU alone.⁴⁹⁵ Here they identify the influence of five external variables namely (i) subjective norm, which depicts the influence others have on a user's decision to accept or reject the IT system, (ii) image, which represents a user's desire to maintain a fitting standing amongst people, (iii) job relevance, which refers to the extent to which that IT system is actually required for a task, (iv) output quality, which depicts the degree to which that IT system satisfactorily performs a specific task and (v) result demonstrability, which represents the need to produce tangible results.⁴⁹⁶ Furthermore, 'experience' and 'voluntariness' are incorporated into TAM 2 as moderating factors of subjective norm. While subjective

⁴⁹⁰ Herbjørn Nysveen *et al*, 'Intentions to Use Mobile Services: Antecedents and Cross-service Comparisons' (2005) 33 *Journal of the Academy of Marketing Science* 330-345; Hamed Taherdoost, 'Development of an Adoption Model to Assess User Acceptance of E-Service Technology: E-Service Technology Acceptance Model' (2018) 37(2) *Behaviour & Information Technology* 173, 174.

⁴⁹¹ Xinwen Zhang, Xue Zhou and Yoruk Esin (n 488).

⁴⁹² This work was later published in Fred D Davis, (n 33).

⁴⁹³ Xinwen Zhang, Xue Zhou and Yoruk Esin (n 488).

⁴⁹⁴ Fred D Davis, Richard P Bagozzi and Paul R Warshaw, 'User Acceptance of Computer Technology: A Comparison of Two Theoretical Models' (1989) 35(8) *Management Science* 982.

⁴⁹⁵ Viswanath Venkatesh and Fred D Davis, (n 38).

⁴⁹⁶ *Ibid*.

norms and image are said to depict social processes, output quality, job relevance and result demonstrability represent cognitive instrumental processes.⁴⁹⁷ Figure 11 below provides a pictorial representation of TAM 2.

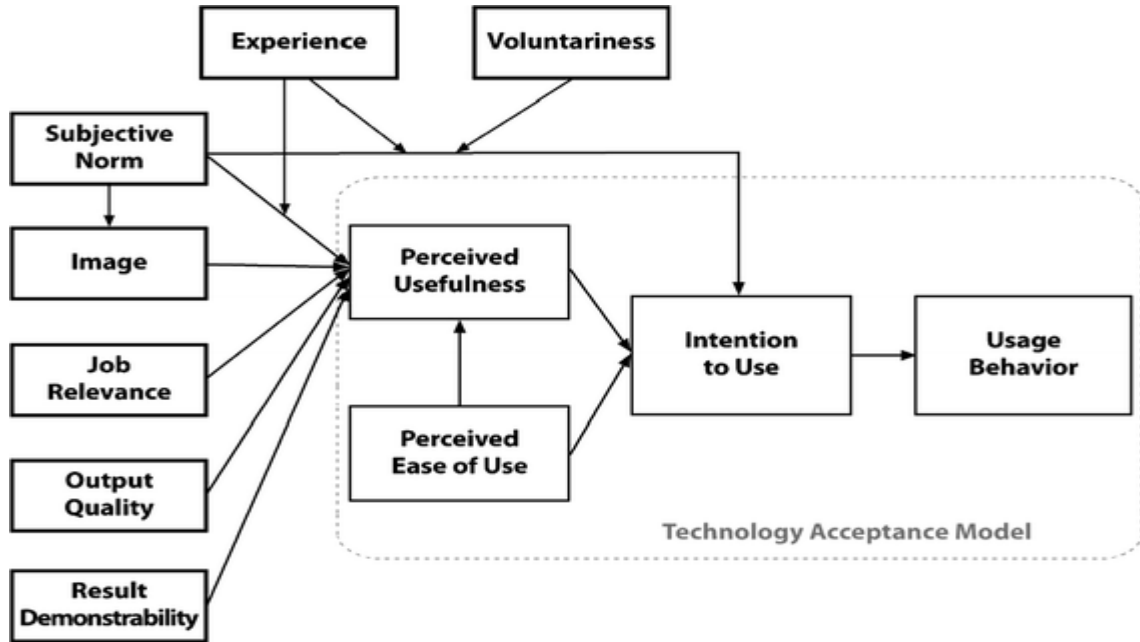


Figure 11: Extended Technology Acceptance Model (TAM 2)⁴⁹⁸

From the figure above, one can see that the five introduced external variables exert a degree of influence on PU, while subjective norm, PU and PEOU determine intention to use. It is important to note that these additional variables and moderating factors were included after Venkatesh and Davis conducted a longitudinal study in four different organisations, two of which required the mandatory use of IT systems while the other two were voluntary.⁴⁹⁹ This invariably means that TAM 2 presents a more comprehensive version of the framework as it applies to where information system use is made mandatory and to those situations where users are at liberty to make a choice regarding its use.

⁴⁹⁷ Viswanathe Venkatesh and Bala Hillol, (n 38) 277.

⁴⁹⁸ Paul Legrisa, John Inghamb and Pierre Colletette, (n 38) 200.

⁴⁹⁹ Viswanath Venkatesh and Fred D Davis, (n 38).

Despite this refined version, practitioners and researchers still had some difficulty understanding clearly, the predictors of these variables; thus, they opted to extend the model by integrating additional influencing factors.⁵⁰⁰ Venkatesh and Bala subsequently proposed a significant extension to TAM called TAM 3 in 2008, by introducing two groups of antecedents for PEOU, namely, anchors and adjustments.⁵⁰¹ Anchors represent general beliefs about computer and their usage while adjustments depict belief shaped by direct experience from completing tasks with such computer system.⁵⁰²

Despite TAM 3, new modifications to TAM continuously emerged from different studies as supplementary factors were being incorporated into the model and further enhancements, made to adapt the model to relevant research areas.⁵⁰³ Additionally, it was necessary to test not only the application of the model to technology-related enquiries, but it was also important to enhance its predictive validity for future practical use.⁵⁰⁴

The authors who introduced additional variables all made use of either the original TAM or the extended TAM.⁵⁰⁵ Since this research aims to introduce law as an influencing variable, this study builds on the extended versions of TAM as opposed to the original TAM. This is because as noted earlier, the original TAM is said to be more traditional and less suited to internet-related enquiries than the extended TAM 2. Furthermore, since the extended TAM 2 provides a more comprehensive understanding of contextual factors due to its introduction of social influencing factors, the original TAM is not relied upon in this research.⁵⁰⁶ The extended TAM 2 also identifies five additional variables which specifically influence PU. As will be illustrated in subsequent sub-sections of this chapter,

⁵⁰⁰ Barbara H Wixom and Peter A Todd, 'A Theoretical Integration of User Satisfaction and Technology Acceptance' (2005) 16(1) 85-102.

⁵⁰¹ TAM 3 is also known as the Unified Theory of Acceptance and Use of Technology (UTAUT). See Viswanathe Venkatesh and Bala Hillol, 'Technology Acceptance Model 3 and a Research Agenda on Interventions' (2008) 39(2) Decision Sciences 273-315.

⁵⁰² Ibid.

⁵⁰³ Nikola Marangunić and Andrina Granić (n 473) 89.

⁵⁰⁴ Ibid.

⁵⁰⁵ Ibid.

⁵⁰⁶ More so, extended version of TAM is more suited to internet-related technology enquiries. See Hung-Pin Shih, 'Extended Technology Acceptance Model of Internet Utilisation Behaviour' (2004) 41 Information & Management 719-729.

the influence of chosen external variables on PU and BI has more relevance to this research than PEOU, hence the writer's reliance on the extended TAM 2. Thus, for clarity and consistency in the use of terms, TAM is used in this thesis to refer to the extended version of the framework, as opposed to the original TAM.

3.2.2 Application of TAM to other Research Areas

Lee *et al* observe that the introduction of new variables to TAM through the years has made the model so popular that it is now cited in most technology-related adoption research.⁵⁰⁷ Researchers further agree that TAM serves as a versatile tool, which ought to be applied to technology-related inquiries in diverse fields of study and this is demonstrated in the concise literature review below.⁵⁰⁸

In the education field of study, Nazire's research applies the extended TAM to investigate the rate of acceptance and use of cloud computing systems between a UK and a Turkish university. Here, computer anxiety and subjective norms are chosen as external variables which significantly varied between both universities when correlated with the impact of PEOU and PU on students' intention to use cloud computing services. The author eventually finds that cloud computing systems are used more in the UK university than in the Turkish University.⁵⁰⁹ Similarly, in Adewole-Odeshi's research which investigates the attitude of Nigerian students towards online learning using the original TAM, PU and PEOU is said to significantly impact on students' ATT towards using e-learning systems.⁵¹⁰ This is because findings suggest that students perceive e-learning tools to be easy to use and where available, would be useful in completing their course works.⁵¹¹

⁵⁰⁷ Younghwa Lee, Kenneth A Kozar and Kai R T Larsen, 'The Technology Acceptance Model: Past, Present, and Future' (2003) 12 Communications of the Association for Information Systems 753.

⁵⁰⁸ Ji-Won Moon and Young-Gul Kim, (538); Aron O'Cass and Tino Fenech, (n 39).

⁵⁰⁹ Nazire B Hamutoglu, (n 39).

⁵¹⁰ Egbe Adewole-Odeshi, 'Attitude of Students Towards E-learning in South-West Nigerian Universities: An Application of Technology Acceptance Model' (2014) Library Philosophy and Practice (e-journal) 1035 <<https://digitalcommons.unl.edu/libphilprac/1035/>> accessed 16 June 2021.

⁵¹¹ Ibid.

With respect to health management studies, the extended TAM is further applied by Zhang, Zhou and Youruk in their research which seeks to predict and improve the use of health technologies by the UK National Health Service (NHS).⁵¹² Drawing on the original TAM, a conceptual model was developed to demonstrate how the stakeholder theory can be integrated into TAM.⁵¹³ Beyond the organisational context, a similar research was also conducted by the authors to understand the factors which inhibit the use of digital health self-monitoring services by Chinese patients.⁵¹⁴ Here, the collectivist nature of the Chinese culture is considered using ‘trust in social media’ and ‘conformity’ as the social factor variables which impact on patients’ BI to use the self-monitoring devices.⁵¹⁵

TAM has also been applied to sharing economy adoption-related investigations. For example, Liu and Yang employed the extended TAM to examine the adoption of bicycle sharing applications in China.⁵¹⁶ Here, it was found that the PEOU and the PU of these applications had a direct influence on users’ BI to use the application, while additional external variables like subjective norms and trust exerted an indirect influence on users’ BI.⁵¹⁷ Molobi, Kabiraj and Siddik conducted a similar study by adapting the original TAM to their investigation on Uber in South Africa.⁵¹⁸ The authors find external variables such as company characteristics and level of education as having a positive impact on user attitude (ATT) and BI to use Uber applications, while gender, age and perceived risks had a negative impact on users’ ATT and BI. However, like TAM posits, PU, PEOU and ATT, impact on users’ BI to use Uber in South Africa.

With respect to financial services, the extended TAM is applied in Hu *et al*’ empirical study which investigates the intention of bank users to adopt fintech services in China. Here, variables such as trust, brand image, government support and user innovativeness

⁵¹² Xinwen Zhang, Xue Zhou and Yoruk Esin, (n 488).

⁵¹³ Ibid.

⁵¹⁴ Xinwen Zhang, Xue Zhou and Esin Yoruk, (n 488).

⁵¹⁵ Ibid.

⁵¹⁶ Yupeng Liu and Yutao Yang, ‘Empirical Examination of Users’ Adoption of the Sharing Economy in China Using an Expanded Technology Acceptance Model’ (2018) 10(4) Sustainability 1262 [online] <<https://doi.org/10.3390/su10041262>> accessed 16 June 2021.

⁵¹⁷ Ibid.

⁵¹⁸ Lemohang Molobi, Sajal Kabiraj and Nur Alam Siddik, (n 39).

were introduced as important variables.⁵¹⁹ However, PU had a more significant impact on user adoption of fintech services than PEOU. This is because fintech services in China were at the primary stages of development and users were still unfamiliar with using the service.⁵²⁰ Similarly, in Kaur and Malik's empirical research which applies the extended TAM to investigate Indian customers' intentions to adopt internet banking, electronic service quality⁵²¹ was introduced as an influencing variable.⁵²² Whilst the findings from this study indicate that electronic service quality and PU significantly impact on user attitude and intention to use internet banking, contrary to the TAM framework, PEOU did not impact on user intention to adopt internet banking.

With respect to user acceptance of privacy enhancing technologies, Miltgen, Popovič and Oliveira integrate three models of technology acceptance to explain consumers intention to use biometrics,⁵²³ with TAM employed as the bedrock of the chosen frameworks.⁵²⁴ However, contrary to the TAM framework, PEOU did not influence user BI to accept biometrics.⁵²⁵ This means that sometimes, PEOU is not necessarily relevant in explaining user behavioural intention to accept new technologies. That notwithstanding, other variables such as perceived risk, technology trust, facilitating conditions and innovativeness did impact on consumer intention to accept biometrics.

Overall, these varied applications of both the original and extended versions of TAM to different research areas suggest that the model will continuously be updated to address technology-related adoption enquiries. The significance of these studies lie in the fact that

⁵¹⁹ Zhongqing Hu *et al*, 'Adoption Intention of Fintech Services for Bank Users: An Empirical Examination with an Extended Technology Acceptance Model' (2019) 11(3) *Symmetry* 1-16 [online] <<https://www.mdpi.com/2073-8994/11/3/340>> accessed 18 June 2021.

⁵²⁰ *Ibid*.

⁵²¹ In this research, five antecedents of e-service quality were used, namely efficiency, system availability, assurance, fulfilment, responsiveness, privacy, website aesthetics and guide.

⁵²² Amandeep Kaur and Garima Malik, 'Examining Factors Influencing Indian Customers' Intention and Adoption of Internet Banking: Extending TAM with Electronic Service Quality' (2019) 15(2) *Innovative Marketing* 42-54.

⁵²³ Caroline L Miltgen, Ales Popovič and Tiago Oliveira, (n 31).

⁵²⁴ Other theories used are the Diffusion of Innovation theory (DOI) and the Unified Theory of Acceptance and Use of Technology (UTAUT).

⁵²⁵ *Ibid*.

it provides more insight into how relevant stakeholders who benefit from these studies can leverage on the findings to explore new prospects to innovate, attract customers, expand businesses, and achieve operational efficiency. Additionally, it guides policy makers into understanding how appropriate frameworks can be developed to improve user adoption of relevant IT systems, having understood the factors which practically impact on a user's attitude and intention to use such systems.

3.2.3 Application of TAM to Consumer E-Commerce-related Research

Although TAM is designed to explain the adoption of new technologies rather than wholly explaining user online purchasing behaviour in particular, e-commerce adoption research can be classed as a technology-related inquiry. This is because e-commerce involves the completion of tasks (such as online shopping) through networked information systems (such as the internet) and using ICT devices (such as personal computers and mobile phones). As observed by Al-Gahtani, "TAM has received substantial attention in the information systems literature because it focuses on system use, has reliable instruments with excellent measurement properties, is parsimonious, and is empirically sound. It has been shown to apply to a wide range of information technologies, including e-commerce."⁵²⁶ Accordingly, the ensuing literature review shows how TAM is employed and adapted by academics to consumer e-commerce research.

Fayad and Paper extend TAM to e-commerce in a bid to understand better, consumer online purchasing behaviour and their actual usage of e-commerce services.⁵²⁷ Drawing on findings from previous TAM studies, e-commerce process satisfaction, outcome satisfaction, expectations and e-commerce use are employed as external variables and determinants of PU and PEOU.⁵²⁸ The authors find that PU exerted greater influence on user BI to adopt e-commerce as well as its actual adoption, compared to PEOU.⁵²⁹ A

⁵²⁶ Said Al-Gahtani, (n 10) 57-58.

⁵²⁷ Rima Fayad and David Paper, (n 36).

⁵²⁸ Ibid.

⁵²⁹ Ibid.

similar finding is also made by Koufaris who uses the extended TAM to examine consumers' intention to make repeat online purchases.⁵³⁰

For Gefen *et al*, consumer trust in e-vendors is identified as a variable which influences their behavioural intention (BI) to shop online.⁵³¹ In the authors' research which integrates trust with TAM in e-commerce, it is revealed that trust influences PEOU and PU of e-commerce.⁵³² Trust in e-vendors is also found to be a key determinant of PU.⁵³³ Some researchers support this view by affirming that consumers mostly avoid shopping from e-vendors they do not trust.⁵³⁴ However, with respect to BI to use e-commerce websites to place online orders, PU remained a stronger predictor than PEOU.⁵³⁵

The extended TAM is further applied to Pavlou's research which investigates the influence of trust and perceived risk on e-commerce adoption.⁵³⁶ Here, it was discovered that both trust and perceived risk act as major determinants of PU and are said to exert greater influence on consumer BI than PEOU.⁵³⁷ Similar finding is made in Malone's empirical study into trust as a possible barrier to B2C e-commerce adoption in the UK.⁵³⁸ In addition, Doolin *et al* identify perceived risk and internet shopping experience as key influencing variables to consumer online purchasing behaviour in New Zealand.⁵³⁹ They find that the perceived adverse consequences associated with online shopping, especially, with regards to product safety and privacy risks, exert a significant influence on BI.⁵⁴⁰

⁵³⁰ Marios Koufaris, 'Applying the Technology Acceptance Model and Flow Theory to Online Consumer Behaviour' (2002) 13(2) Information Systems Research 115-225.

⁵³¹ David Gefen, Elena Karahanna and Detmar W Straub, (n 32).

⁵³² Ibid.

⁵³³ Ibid.

⁵³⁴ Frederick F Reichheld and Phil Schefter, (n 32); Sirkka L Jarvenpaa, N Tractinsky and Lauri Saarinen, 'Consumer Trust in An Internet Store: A Cross-Cultural Validation' (2006) 5(2) Journal of Computer-Mediated Communication 1-35.

⁵³⁵ David Gefen, Elena Karahanna and Detmar W Straub, (n 32).

⁵³⁶ Paul A Pavlou, (n 32).

⁵³⁷ Ibid.

⁵³⁸ Sarah Malone, (n 32).

⁵³⁹ Stuart Doolin *et al*, 'Perceived Risk and the Internet Shopping Experience in Online Purchasing Behaviour' (2005) 13 Journal of Global Information Management 66-88.

⁵⁴⁰ Ibid.

Ashraf, Thongpapani and Auh develop an extended theory on the model by integrating trust and perceived behavioural control (PBC)⁵⁴¹ with TAM to better understand the adoption of e-commerce across cultures in Pakistan and Canada.⁵⁴² Despite some significant differences between the Pakistan and Canadian culture, their findings validate the predictive power of TAM since PU, PEOU and PBC proved to be important predictors of attitude (ATT), while BI was significantly influenced by ATT, PEOU, trust and PBC.⁵⁴³ However, while PU and trust did not have a considerable impact on BI to use e-commerce services in Pakistan, the opposite was the case in Canada.⁵⁴⁴ Additionally, the result from both countries shows that PEOU did not have any effect on BI to use, although there is evidence to suggest the existence a causal relationship between PEOU and PU.⁵⁴⁵

In Ayo, Adewoye and Oni's research into the prospects and challenges facing B2C e-commerce implementation in Nigeria, the authors adapted the extended TAM by integrating the Technology Task-Fit theory,⁵⁴⁶ perceived risk and trust into the model.⁵⁴⁷ In adapting the TAM, the authors treated e-commerce as a technology adoption process, dropped the PEOU-PU correlation and focused on the causal link between PEOU, PU and BI to use e-commerce. Their findings show that task-fit and PU have a major impact on BI to use while PEOU had no significant effect on user BI because "system ease of use is not an inherent quality of [a] purchased product" in e-commerce.⁵⁴⁸ Additional factors identified as impeding e-commerce use are reliability of e-payment instrument, high risk of fraud, insufficient information on e-commerce sites and cost of internet access.⁵⁴⁹

⁵⁴¹ This represents a situation where users have low control over their actions, like in online shopping where consumers do not have total control over the process. PBC is captured in the theory of planned behaviour (TPB) first introduced in 1991 by Icek Ajzen. As noted in footnote 743, Davis developed the TAM drawing on the findings from studies on Theory of Reasoned Action (TRA) propounded by Martin Fishbein and Icek Ajzen in 1975, from which TPB is derived.

⁵⁴² Abdul Ashraf, Narongsak Thongpapanl, and Seigyoung Auh, (n 45).

⁵⁴³ Ibid.

⁵⁴⁴ Ibid.

⁵⁴⁵ Ibid.

⁵⁴⁶ This theory focuses on the correlation between a user's reason and need for performing a task and whether the IT system anticipated to be used in performing such tasks has the requisite functionality needed to achieve the expected result. See Dale L Goodhue and Ronald L Thompson, (n 548).

⁵⁴⁷ Charles K Ayo, J O Adewoye and Aderonke A Oni, (n 32).

⁵⁴⁸ Ibid, 5116.

⁵⁴⁹ Ibid.

Iroebe and Ayotunde investigate the behavioural intention of Nigerian consumers towards online shopping, especially when using e-payment systems.⁵⁵⁰ They modify and extend the original TAM by looking into the effect of PU, PEOU and ATT on consumer BI, while also introducing facilitating conditions and trust as influencing variables. They find that although PU and PEOU have an impact on BI, such intention does not really materialise into actual adoption in the absence of facilitating conditions such as government support systems. The study, nevertheless, reveals that trust directly impacts user BI.

Overall, the reviewed consumer e-commerce literature shows that BI, ATT and actual adoption of e-commerce by consumers can be predicted using PU and PEOU. It further shows the overwhelming influence of PU on consumer BI. However, the influence of PEOU is debateable, especially since “system ease of use is not an inherent quality of [a] purchased product” in e-commerce.⁵⁵¹ Different external variables and contextual factors also influence consumer BI while other studies mostly identify trust and perceived risk as important influencing variables to e-commerce adoption.⁵⁵² There is, however, a limited examination of social factors in e-commerce adoption research. This raises the question of possible gaps in TAM and e-commerce adoption literature on Nigeria

3.2.3.1 Gaps in TAM-related E-commerce Literature on Nigeria

In addition to the original contributions made by this research as highlighted in section 1.10 of chapter one, this sub-section aims to outline ways in which in this thesis fills the gaps in current TAM and e-commerce adoption literature in Nigeria.

⁵⁵⁰ Ofunre Iriobe and Afolabi Ayotunde, ‘E-Commerce in Nigeria and Consumers Intention to Shop Online’ (2017) 8(4) *Journal of Global Economics, Management and Business Research* 181-192.

⁵⁵¹ Charles K Ayo, J O Adewoye and Aderonke A Oni (n 32) 5116.

⁵⁵² Yongchang Wei *et al*, ‘Online Purchase Intention of Fruits: Antecedents in an Integrated Model Based on Technology Acceptance Model and Perceived Risk Theory’ (2018) 9 *Frontiers in Psychology* 1521; Farrah Zeba and Shirshendu Ganguli, ‘Word-of-Mouth, Trust, and Perceived Risk in Online Shopping: An Extension of the Technology Acceptance Model’ (2016) 8(4) *International Journal of Information Systems in the Service Sector* 17-32.

Firstly, existing TAM studies on Nigerian are mostly focused on e-commerce adoption by businesses.⁵⁵³ Same applies to the use of internet banking services by customers.⁵⁵⁴ As a result, there is very limited research on consumer adoption of e-commerce. This research tends to complement the limited studies on Nigeria by building on existing TAM studies from other countries and adapting same to the Nigerian context.

Secondly, although related literature on other countries link trust and perceived risks to issues around privacy and fraud,⁵⁵⁵ with others suggesting the need for regulatory frameworks to safeguard users against these risks,⁵⁵⁶ none of these studies have considered the likely response of consumers to these suggested legal frameworks using the TAM framework. This research tends to fill this gap, once again, by using data and empirical reports associated with online shopping in Nigeria, the UK and China.

Thirdly, the influence of social factors on consumer adoption of e-commerce in Nigeria has not been considered. This thesis seeks to fill this gap in literature by exploring how social influencing factors like culture may impact on e-commerce adoption, comparing same to the situation in the UK and China to better understand consumer online behaviour.

Once again, it is necessary to reiterate that the overall purpose of this study is to provide policy/law makers with more insight into the factors (or external variables) that should be considered and deliberated upon when updating existing policies, promulgating new ones,

⁵⁵³ Hart O Awa, Ojiabo U Ojiabo, and Bartholomew C Emecheta, 'Integrating TAM, TPB and TOE Frameworks and Expanding their Characteristic Constructs for E-commerce Adoption by SMEs' (2015) 6(1) *Journal of Science & Technology Policy Management* 76-94; Majid Esmaeilpour, Seyed Y Hoseini, and Younes Jafarpour, 'An Empirical Analysis of the Adoption Barriers of E-commerce in Small and Medium Sized Enterprises (SMEs) with Implementation of Technology Acceptance Model' (2016) 21(2) *The Journal of Internet Banking and Commerce* 1-23.

⁵⁵⁴ Maqbool Ahmad, 'Review of The Technology Acceptance Model (TAM) in Internet Banking and Mobile Banking' (2018) 3(1) *International Journal of Information Communication Technology and Digital Convergence* 23-41; Yusuf S Dauda and Jongsu Lee, 'Technology Adoption: A Conjoint Analysis of Consumers' Preference on Future Online Banking Services' (2015) 53 *Information Systems* 53, 1-15.

⁵⁵⁵ Farid S Fawzy and Nermine Esawai, 'Internet Banking Adoption in Egypt: Extending Technology Acceptance Model' (2017) (12) 1 *Journal of Business and Retail Management Research* 109-118; Emad Abu-Shanab, and Osamah Ghaleb, 'Adoption of Mobile Commerce Technology: An Involvement of Trust and Risk Concerns' (2012) 3(2) *International Journal of Technology Diffusion* 36-49.

⁵⁵⁶ Ofunre Iriobe and Afolabi Ayotunde (n 550); Rahmath Safeena *et al* (n 7); David Gefen, Elena Karahanna and Detmar W Straub (n 32).

or transferring rules from other jurisdictions. Such insight is highly likely to attract the needed response from informed consumers, thereby enhancing the effectiveness of laws since consumer behaviour can be predicted using frameworks that have already been validly and reliably tested by researchers through the years.

3.2.4 Research Framework: Integrating Law with TAM

This sub-section provides a detailed discussion of the research framework derived from the extended TAM and adapted to this study with a view to demonstrating the possible influence of laws on consumer adoption of e-commerce in Nigeria, bearing in mind the identified issues around unfair contract terms, e-payment security and the physical delivery and cancellation of online purchases. As stated in section 1.1 of chapter one, ‘adoption’ refers to the continuous *engagement with* or *use* of a product, service, or idea.⁵⁵⁷ Hence, to use e-commerce invariably means to engage with or adopt e-commerce.

Recall from chapter one that this research proposes to gauge the likely influence of laws using three variables namely, awareness, trust in online merchants, and perceived risks. More so, since laws are loosely or tightly bound to their context, this research includes two additional variables, namely ‘facilitating conditions’, as a variable which represents the socio-economic context and ‘culture’ as one which depicts the socio-cultural context in the country. For clarity, this research framework is tailored to the Nigerian context. However, the situation in the UK and China are also highlighted to support the argument which justifies the existence of a relationship between law and e-commerce adoption.

Figure 12 below replicates figure 3. However, it adds pointers that represents 14 hypotheses (H) proposed in this research to clarify the causal connection between the chosen external variables, TAM constructs, independent variable and e-commerce use.

⁵⁵⁷ Rahmath Safeena *et al*, (n 7) (emphasis mine).

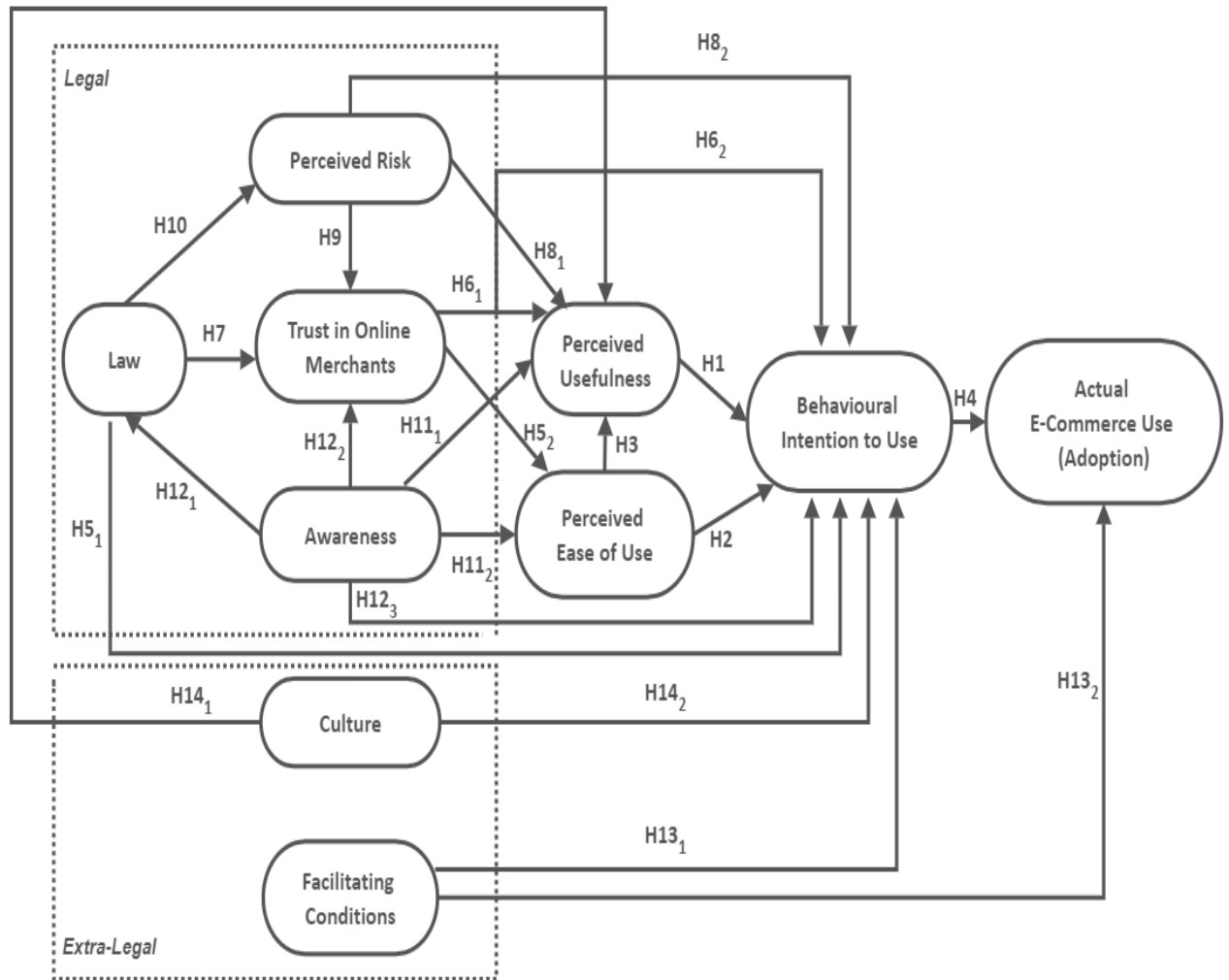


Figure 12: Conceptual Framework for Research

The next step is to analyse and discuss each variable using empirical data and literature. This discussion will be divided into 4 parts. The first part examines the relationship between TAM constructs, perceived usefulness (PU) and perceived ease of use (PEOU) with the independent variable, behavioural intention (BI). The second part considers the relationship between the legal-related external variables, namely perceived risks, trust in online merchants and awareness, with the law, PU, PEOU, BI and actual e-commerce use. The third part considers the extra-legal variables which explain the socio-economic and cultural contexts, namely facilitating conditions and culture, respectively, while the final part considers some limitations and practical contributions of the research framework.

3.2.4.1 Major Constructs and Independent Variable

Recall from section 3.2.2 of this chapter that PU and PEOU are major TAM constructs which determine BI to use⁵⁵⁸ while PEOU indirectly impacts on user behavioural intention (BI) through PU.⁵⁵⁹ BI is also viewed as independent variable affirmed by some researchers as determining actual system use.⁵⁶⁰ Subsequent studies, however, show that the BI does not necessarily predict actual system use since extra-legal factors such as cost and facilitating conditions can impact on actual usage⁵⁶¹

With regards to the influence of laws, Alghamdi *et al* opine that laws are vital to the regulation of IT systems and the protection of the rights of all parties involved in commercial transactions, the absence of which would most probably result in chaotic situations.⁵⁶² Travica notes that the absence of customer protection laws can adversely affect the rate of e-commerce adoption.⁵⁶³ This sentiment is echoed by Plant who also links the obstacles to e-commerce diffusion to the lack of customer protection laws.⁵⁶⁴ Andam comments on the need for governments to adopt a legal framework for electronic transactions, including those that will protect business and consumer rights whilst

⁵⁵⁸ Viswanath Venkatesh and Fred D Davis, (n 38).

⁵⁵⁹ Fred D Davis, (n 33).

⁵⁶⁰ Linda G Wallace and Steven D Sheetz, 'The Adoption of Software Measures: A Technology Acceptance Model (TAM) Perspective' (2014) 51(2) Information and Management 249-259; Detmar Straub, Moez Limayem, and Elena Karahanna-Evaristo, 'Measuring System Usage: Implications for IS Theory Testing' (1995) 41(8) Management Science, 1328-1342; Bernadette Szajna, 'Empirical Evaluation of the Revised Technology Acceptance Model' (1996) 42(1) Management Science 85-92.

⁵⁶¹ Mostafa Al-Emran and Andrina Granić, 'Is It Still Valid or Outdated? A Bibliometric Analysis of the Technology Acceptance Model and Its Applications From 2010 to 2020' in M Al-Emran and K Shaalan (eds), Recent Advances in Technology Acceptance Models and Theories. Studies in Systems, Decision and Control (Vol 335, Springer, Cham 2021) 1-12; Y J Lim *et al* 'Factors Influencing Online Shopping Behaviour: The Mediating Role of Purchase Intention' (2016) 35 Procedia Economics and Finance 401.

⁵⁶² Rayed AlGhamdi, Steve Drew and Waleed Al-Ghaith, 'Factors Influencing E-commerce Adoption by Retailers in Saudi Arabia: A Qualitative Analysis' (2011) 47(1) The Electronic Journal of Information Systems in Developing Countries 1, 4.

⁵⁶³ Bob Travica, 'Diffusion of Electronic Commerce in Developing Countries: The Case of Costa Rica' (2002) 5(1) Journal of Global Information Technology Management 4, 5.

⁵⁶⁴ Robert T Plant, *E-Commerce: Formulation of Strategy* (Upper Saddle River, NJ: Financial Times/Prentice Hall 2000) 268.

mitigating fraud between parties.⁵⁶⁵ Alqahtani *et al*'s findings further confirm the importance of laws in encouraging greater participation of consumers in e-commerce.⁵⁶⁶

As stated earlier, some academics observe the absence of a possible correlation between PEOU and BI, mostly on the basis that system use is not an underlying feature of a purchased product.⁵⁶⁷ That notwithstanding, to demonstrate the likely connection between law and PEOU, the construct will be applied in the context of this study to evince the degree to which consumers may perceive e-commerce websites (being, an information system designed by the online merchant)⁵⁶⁸ as easy to use when placing online orders.

Thus, applying the PEOU construct to e-commerce, this thesis posits that the effortlessness of using an e-commerce website to make online purchases can positively impact on consumer behavioural intention to use such websites to commence and complete the transaction process. This is because even where an intention to make a purchase is evident by virtue of a user's visit to an e-commerce website, such users can be discouraged from placing orders or completing the transaction process due to several information and accessibility issues.⁵⁶⁹ Daryanto *et al* note that consumers easily make informed decisions online judging by the nature, content, and appearance of a website.⁵⁷⁰ This means that the information contained on websites can also facilitate or hamper the perceived ease of use of websites. Important pieces of information which may facilitate the ease of initiating and concluding a transaction include but are not limited to information about the identity of a business, nature of transaction, price, payment, terms of delivery

⁵⁶⁵ Zorayda R Andam, *E-Commerce and E-Business* (Manila: E-ASEAN Task Force, Kuala Lumpur: UNDP-APDIP, May 2003) 15.

⁵⁶⁶ Mohammed A Alqahtani, Ali H Al-Badi and Pam J Mayhew, 'The Enablers and Disablers of E-commerce: Consumers' Perspectives,' (2012) 54(1) *The Electronic Journal of Information Systems in Developing Countries* 1, 10.

⁵⁶⁷ Charles K Ayo, J O Adewoye and Aderonke a Oni (n 32).

⁵⁶⁸ As stated in section 1.1 of chapter one, 'e-commerce websites' is used in this research to refer broadly to all internet-connected or networked systems media through which e-commerce transactions are initiated. They include online platforms, mobile applications, and related networked information system.

⁵⁶⁹ Said S Al-Gahtani (n 10) 55-56; Wayne D Hoyer *et al*, *Consumer Behaviour* (2nd edn, Boston: Houghton Mifflin Company 2001) 3-6.

⁵⁷⁰ Ahmad Daryanto *et al*, 'Adoption of Country-specific Business Websites: The Case of UK Small Businesses entering the Chinese Market' (2013) 20(3) *Journal of Small Business and Enterprise* 550-660.

and return and other core pieces of information. Without these, an online consumer may not have the necessary information needed to easily make a decision about purchasing a product or service.

In the light of the foregoing, one may infer that where specific rules exist to ensure that an online merchant provides clear and accurate information that aids a consumer in its online decision-making process, then the rules indirectly impact on the ease of making purchases through the e-commerce website. The indirect impact lies in the fact that the rules directly regulate the conduct of online merchants, although the end-user beneficiary is the consumer. So, where an online merchant fails to comply with the rules, it is likely that consumer's intention to interact with such website for the purposes of making purchases may be adversely impacted.

Since TAM is validated in various literature investigating user intention to adopt different forms of information systems when completing tasks and this research predominantly deals with the online sale and supply of tangible goods, we hypothesise the following:

H1- The perceived usefulness of e-commerce positively impacts on consumer behavioural intention to make online purchases.

H2- The perceived ease of use of making online purchases using e-commerce websites positively impacts on consumer behavioural intention to make such purchases.

H3- The perceived ease of use of making online purchases using e-commerce websites positively influences the perceived usefulness of e-commerce.

H4- The behavioural intention to make online purchases positively impacts on actual e-commerce use.

H5₁- Law indirectly influences the perceived ease of use of making online purchases using e-commerce websites.

H5₂: Law directly impacts on consumer behavioural intention to make online purchases.

I. Discussion

Empirical studies conducted using Nigeria as a case study confirm that Nigerians acknowledge the usefulness/benefits of e-commerce, perceive online shopping as easy, and have exhibited the intention to make online purchases in the future.⁵⁷¹ Furthermore, empirical study conducted by Khan and Uwemi in 2018 investigating possible obstacles to e-commerce adoption in Nigeria shows that 83.5% of the respondents⁵⁷² acknowledge the importance e-commerce.⁵⁷³ This validates hypothesis (1) and (2). However, it is found that the usefulness, ease, and formation of behavioural intention does not necessarily translate into actual adoption due to the absence of facilitating conditions in Nigeria, such as the availability of ICT infrastructure, skills acquisition training, and adequate government support.⁵⁷⁴ This invariably means that there is no significant relationship between behavioural intention to use and actual usage in Nigeria and this aligns with the findings from available literature on Nigeria.⁵⁷⁵ Therefore, it is submitted that hypothesis (4) is not always valid in Nigeria.

The above notwithstanding, the perceived usefulness of e-commerce and perceived ease of use of placing online orders through e-commerce websites, does have an impact on consumer behavioural intention to make online purchases as posited in hypothesis (1) and (2). This is for instance, proven in a 2015 study conducted by ‘Kaymu’ (now ‘Jumia’, the largest e-commerce platform in Nigeria) on consumers who shop from its offline on online retail stores. The study finds that 93% of consumers generally appreciate online shopping due to the ease and convenience associated with it while only 10% expressed to have had

⁵⁷¹ Ofunre Iriobe and Afolabi Ayotunde (n 550); S C Chiemeké and A E Ewuekpae 'A Conceptual Framework of a Modified Unified Theory of Acceptance and Use of Technology (UTAUT) Model with Nigerian Factors in E-Commerce Adoption' (2011) 2(12) International Research Journal 1719; Ann Ogbo *et al*, 'E-Commerce as a Strategy for Sustainable Value Creation among Selected Traditional Open Market Retailers in Enugu State, Nigeria' (2019) 11 Sustainability 1, 4; Paul A Aidonojie, Odojor O Anne and Odetokun O Oladele (n 25).

⁵⁷² Here 200 consumers in Nigeria between the ages of 18 and 62 were randomly selected.

⁵⁷³ Habib U Khan and Stellamaris Uwemi (n 13) 466.

⁵⁷⁴ Ofunre Iriobe and Afolabi Ayotunde (n 550) 184.

⁵⁷⁵ See Fn 571.

no intention of making online purchases.⁵⁷⁶ The significant percentage of consumers who generally perceive online shopping as useful, perhaps, explains why only 23% of those consumers admit to finding the e-commerce website very confusing to use.⁵⁷⁷ This data further supports the correlation between PEOU and PU posited as hypothesis (3).

The next step is to validate the influence of the law on PEOU and BI. The writer argues that the perceived ease of making online purchases using e-commerce websites is measured through the law's direct influence on online merchants who are mandatorily required to provide core information about a product or service on their websites to enable consumers make informed online purchasing decisions. This has the potential to make online shopping easier to commence and complete, ultimately improving consumer behavioural intention to make similar purchases in the future.

Using the UK as an example to validate hypothesis (5₁) since Nigeria's FCCPA does not expressly extend to distance contracts, Schedule 2 of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations (CCR) 2013⁵⁷⁸ provides an exhaustive list of information requirements which online merchants are expected to include on their websites to help build consumer confidence in transactions. Same applies to Article 8 of the China Consumer Protection Law 2013⁵⁷⁹ and Article 17 of the China E-Commerce Law 2018.⁵⁸⁰ Compliance with essential information requirements could facilitate the ease with which consumers make informed online purchasing decisions. Though the vast amount of mandatory information requirements may result in information overload,⁵⁸¹ research shows that consumers are generally responsive to essential

⁵⁷⁶ Kaymu, 'E-Commerce in Nigeria- Market Trends and Consumer Behaviour' (Kaymu.com, 2015) [online], available at <https://d21buns5ku92am.cloudfront.net/39131/documents/28448-E-commerce_NG-d42f69.pdf> accessed 23 June 2021.

⁵⁷⁷ Ibid.

⁵⁷⁸ SI 2013/3134.

⁵⁷⁹ 'Decision on Amending the Law of the People's Republic of China on the Protection of Consumer Rights and Interests', adopted at the 5th session of the Standing Committee of the Twelfth National People's Congress (NPC) on 25 October 2013, in force on 1 January 2014.

⁵⁸⁰ Adopted at the Fifth Session of the Standing Committee of the 13th National People's Congress, in force on 1 January 2019.

⁵⁸¹ Geraint Howells, Christian Twigg-Flesner and Thomas Wilhelmsson, (n 354); Geraint Howells, (n 357); Mary Donnelly and Fidelma White, (n 357).

information clarifying the core terms of contracts such as quality, price, payment, delivery and after sales services.⁵⁸²

To validate hypothesis (5₂), the 2019 report on the UK CCR 2013 specifically reveals that:

“consumers’ willingness and propensity to engage in e-commerce has increased since the Regulations came into force... [The Regulations] are more important to UK consumers than ever. They would also appear to be providing the reassurance consumers need to operate and purchase online. Accordingly, online sales have grown strongly over the period since the Regulations came into force.”⁵⁸³

This statement clearly shows the favourable impact of the law on consumer behavioural intention.

In the light of the foregoing discussions, it is submitted that hypotheses (1)-(5) are justified, although (H4) is not always applicable in Nigeria.

3.2.4.2 Legal-related External Variables

This sub-section analyses and discusses the possible influence of law on external variables namely trust in online merchants, perceived risks and awareness.

1. Trust in Online Merchants

Trust is said to be a distinguishing attribute of most socio-economic interactions which have an element of uncertainty.⁵⁸⁴ It is seen as a catalyst in trader-consumer relationships because it serves to represent expectations from a successfully completed transaction.⁵⁸⁵

⁵⁸² Mary Donnelly and Fidelma White (n 357) 286.

⁵⁸³ Department for Business, Energy & Industrial Strategy, (n 136) 19. The respondents here consist of a mix of consumer representatives, trade associations, businesses and enforcement experts.

⁵⁸⁴ Said Al-Gahtani (n 10) 59.

⁵⁸⁵ Sulin Ba and Paul Pavlou, ‘Evidence of the Effect of Trust in Electronic Markets: Price Premiums and Buyer Behaviour’ (2002) 26(3) MIS Quarterly 243.

Existing literature confirm that e-commerce transactions require an element of trust due to the uncertain technology-mediated environment in which they are conducted.⁵⁸⁶

Mayer *et al* describe trust as the firm belief possessed by a trusting party showing that another party with whom it intends to establish an exchange relationship with, will act in a socially responsible manner, in such a way that the other party fulfils the expectations of the trusting party without exploiting its vulnerabilities.⁵⁸⁷ Gefen generally defines trust as the “confidence a person has in his or her favourable expectations of what other people will do.”⁵⁸⁸ Lack of trust and confidence is widely affirmed to be the key reason why consumers are sometimes, apprehensive over placing online orders as they would rather avoid interacting with an online merchant who does not evince a sense of trustworthiness.⁵⁸⁹ Mohiuddin *et al* specifically note that consumer confidence in online transactions,⁵⁹⁰ which is needed to encourage further adoption of e-commerce, is largely dependent on how trustworthy and reliable online merchants appears.⁵⁹¹ For McKnight and Chervany, trust is a psychological belief which makes consumers willingly vulnerable to online merchants.⁵⁹²

⁵⁸⁶ Ray L Benedictus and Melinda L Andrews, ‘Building Trust with Consensus Information: The Effects of Valence and Sequence Direction’ (2006) *Journal of Interactive Advertising* 15-25, Harrison D McKnight *et al*, ‘The Impact of Initial Consumer Trust on Intentions to Transact with a Website: A Trust Building Model’ (2002) 11(3/4) *Journal of Strategic Information Systems* 297-323; Sulin Ba and Paul A Pavlou, ‘Evidence of the Effect of Trust Building Technology in Electronic Markets: Price Premiums and Buyer Behaviour’ (2002) 26(3) *MIS Quarterly* 243-268.

⁵⁸⁷ Roger C Mayer, James H Davis, and David F Schoorman, ‘An Integrative Model of Organisational Trust’ (1995) 20(3) *Academy of Management Review* 709, 712.

⁵⁸⁸ David Gefen, ‘E-Commerce: The Role of Familiarity and Trust’ (2000) 28 *Omega* 725, 726.

⁵⁸⁹ Roozbeh Habibi and Zahra Hajati, ‘Trust in E-commerce’ (2015) 10(3) *International Journal of Innovation and Applied Studies* 917; Brian J Corbitt, Theerasak Thanasankit, and Han Yi, ‘Trust and E-commerce: A study of Consumer Perceptions’ (2003) 2(3) *Electronic Commerce Research and Applications* 203-215; Marke Kivijärvi, Tommi Laukkanen, and Pedro Cruz, ‘Consumer Trust in Electronic Service Consumption: A Cross-cultural Comparison between Finland and Portugal’ (2007) 16(3) *Journal of Euromarketing* 51-65.

⁵⁹⁰ For more on consumer confidence, see discussion in section 2.3 of chapter two.

⁵⁹¹ Ahmad Mohiuddin *et al*, ‘Building Consumers’ Confidence in Adopting E-commerce: A Malaysian Case’ (2007) 2(1) *International Journal of Business and Systems Research* 236.

⁵⁹² Harrison D McKnight and Norman L Chervany, ‘What Trust Means in E-commerce Customer Relationships: An Interdisciplinary Conceptual Typology’ (2001) 6(2) *International journal of Electronic Commerce* 35, 42.

Some researchers affirm that trust exerts a considerable degree of influence on the commencement and completion of online transactions. For example, Stewart *et al* opine that trust is critical to the success of the consumer-trader relationship.⁵⁹³ For Keen *et al*, trust serves as the foundation to any e-commerce transaction.⁵⁹⁴ Jarvenpaa and Tractinsky empirically study trust in different cultures and confirm that consumer purchase intention is directly impacted trust,⁵⁹⁵ while Palmer *et al* aver that consumer trust in merchants is critical to greater adoption of e-commerce.⁵⁹⁶ Hong and Cha also confirm the mediating role of trust in online merchants in predicting consumer purchasing decision.⁵⁹⁷

With respect to the influence of trust on PU, Pavlou confirms that consumer trust in online merchants significantly influences the perceived usefulness of the services provided through their websites.⁵⁹⁸ Gefen *et al* adds that trust in online merchants enhance the perceived usefulness of e-commerce where “proven guarantees that the e-vendor will not engage in harmful opportunistic behaviour... [such as] ...[the inclusion of unfair terms], unfair pricing, conveying inaccurate information, violations of privacy, unauthorised use of credit card information, and unauthorised tracking of transactions” are lacking.⁵⁹⁹ The authors opine that since human beings are free agents whose behaviour and conduct are not necessarily predictable or rational, it breeds social complexity in their ability to understand others.⁶⁰⁰ As such, “when a social environment cannot be regulated through rules and customs, people adopt trust as a central social complexity reduction strategy.”⁶⁰¹ The authors, thus, conclude that where there is lack of an effective regulation on internet activities such e-commerce, humans naturally tend to rely on the trust they have with an

⁵⁹³ David W Stewart, Paul Pavlou, and Scott Ward, ‘Media Influences on Marketing Communications’ in Jennings Bryant and Dolf Zillmann (eds), *Media Effects: Advances in Theory and Research* (Routledge 2002) 353.

⁵⁹⁴ Peter Keen *et al*, *Electronic Commerce Relationships: Trust by Design* (Prentice Hall 1999).

⁵⁹⁵ Sirkka L Jarvenpaa, Noam Tractinsky, and Lauri Saarinen (n 593).

⁵⁹⁶ Jonathan W Palmer, Joseph P Bailey and Samer Faraj, ‘The Role of Intermediaries in the Development of Trust on the WWW: The Use and Prominence of Trusted Third Parties and Privacy Statements’ (2000) 5(3) *Journal of Computer-Mediated Communication* 532.

⁵⁹⁷ Ilyoo B Hong and Hoon S Cha, (n 137).

⁵⁹⁸ Paul A Pavlou, (n 32). Also see Frederick Reichheld and Phil Scheffer, (n 32)

⁵⁹⁹ Gefen *et al* (n 32) 55.

⁶⁰⁰ Ibid.

⁶⁰¹ Ibid.

online merchants to make purchases and assume that those merchants will behave in a legally, ethically and socially responsible manner.⁶⁰²

Drawing on Gefen *et al* and Pavlou's submissions, as well as other existing TAM literature, we hypothesise the following:

H6: Trust in online merchants positively influences the perceived usefulness of e-commerce (H6₁) and consumer behavioural intention to make online purchases (H6₂).

H7: Law heightens consumers' trust in online merchants.

1.1 Discussion

In an empirical research conducted by Iriobe and Ayotunde investigating consumer intention to shop online in Nigeria, the authors find that trust in online merchants positively influences consumer PU and BI.⁶⁰³ However, trust has a negative relationship with consumer intention to make online purchases in Nigeria.⁶⁰⁴ This means that most consumers in Nigeria do not trust online merchants. Correspondingly, lack of trust negatively impacts on consumer behavioural intention to make online purchases in Nigeria. This is confirmed in 2018 by the Nigerian Consumer Protection Council (CPC)⁶⁰⁵ which expressed that over 70% of consumers are sceptical of making online purchases.⁶⁰⁶ Similarly, the earlier 2018 research by Khan and Uwemi further finds that 77% of consumers do not trust online merchants and would rather go into physical stores.⁶⁰⁷ These empirical findings validate hypothesis (6₁) and (6₂).

⁶⁰² Ibid.

⁶⁰³ Ofunre Iriobe and Afolabi Ayotunde (n 550)187-188.

⁶⁰⁴ Ibid.

⁶⁰⁵ The CPC is a regulatory institution created by the repealed Consumer Protection Council Act 2004 to enforce the provisions of the Act. The CPC has been repealed by the FCCPA 2019 and replaced with the FCCPC as an equivalent regulatory commission.

⁶⁰⁶ Sylvester Ugwuanyi, '70% of Nigerians are Afraid of Shopping Online- CPC' (*Daily Post News*, 16 March 2018) <<https://dailypost.ng/2018/03/16/70-nigerians-afraid-shopping-online-cpc/>> accessed 11 May 2021.

⁶⁰⁷ Habib U Khan and Stellamaris Uwemi (n 13) 466.

To justify hypothesis (7), reference to China and the UK will once again, be made since the Nigerian FCCPA does not cover online transactions. With respect to China, Wei notes that one of the objectives of promulgating the China Consumer Protection Law 2013 is to promote trust and confidence in online transactions⁶⁰⁸ while in the UK, the Consumer Rights Act 2015 and the CCR 2013 aim to promote consumer confidence.⁶⁰⁹ Indeed, the OECD notes that online consumer protection is a precursor of trust in e-commerce and the services provided by online merchants.⁶¹⁰ This can be proven using the 2018 European Commission survey which finds that 79.6% of UK consumers trust online merchants since they believe that online merchants generally comply with the law.⁶¹¹ This is in addition to the 87.5% who admitted to being confident in online transactions.⁶¹²

Therefore, one can conclude that the law heightens consumer trust in online merchants and their confidence in e-commerce, which has its corresponding impact on PU and BI.

2. Perceived Risk

Perceived risk is defined as “the nature and amount of uncertainty or consequences experienced by the consumer in contemplating a particular purchase decision.”⁶¹³ The uncertainty is derived from consumers’ inability to ascertain whether their actual expectations from the planned purchase will be fulfilled.⁶¹⁴ Risks play a pivotal role in altering online consumer behaviour.⁶¹⁵ Hoffman *et al* note that online transactions are more susceptible to risks than face-to-face transactions due to the impersonal nature of

⁶⁰⁸ Dan Wei, (n 189)

⁶⁰⁹ See discussion in Section 4.2.1 of chapter four and section 2.3 of chapter three, respectively.

⁶¹⁰ OECD, ‘Toolkit for Protecting Digital Consumers- A Resource for G20 Policy Makers’ (OECD 2018) p 22 <<https://www.oecd.org/digital/consumer/toolkit-for-protecting-digital-consumers.pdf>> accessed 8 July 2021.

⁶¹¹ European Commission, (293) 51.

⁶¹² Ibid, 72.

⁶¹³ Donald F Cox and Stuart U Rich, ‘Perceived Risk and Consumer Decision-Making—The Case of Telephone Shopping’ (1964) 4(1) *Journal of Marketing Research* 32, 39.

⁶¹⁴ Leonard I Rotman, ‘Trust, Loyalty, and E-commerce’ in Daniel E Palmer, *Ethical Issues in E-business: Models and Frameworks* (IGI global) 58.

⁶¹⁵ Lingying Zhang *et al*, ‘Dimensions of Perceived Risk and Their Influence on Consumers’ Purchasing Behaviour in the Overall Process of B2C’ in L Zhang and C Zhang (eds) *Engineering Education and Management- Lecture Notes in Electrical Engineering* (Vol III, Berlin: Springer 2012).

transactions, and as a result, a higher degree of trust is required to drive consumers into making more purchases.⁶¹⁶ As e-commerce is conducted in a technologically-mediated uncertain environment, studies confirm that consumers perceive risks when interacting with online merchants' websites and whilst placing online orders.⁶¹⁷

Perceived risks can assume different forms in the context of e-commerce, with performance and security risks, identified as significant in most literature.⁶¹⁸ Hassan *et al* describe performance risks as risks which raise "concerns over the functionality of the communication channel" such of the websites.⁶¹⁹ For Mitchell, performance risks is linked to consumers' concerns over whether the purchased product will be fit for purpose, owing to their inability to physically verify the functionality of the product prior to purchase.⁶²⁰ Hong links performance risks to delivery issues, problems surrounding the delivery of damaged/substandard goods and non-performance of expected obligations,⁶²¹ while Aminu *et al* confirm product and delivery risks as huge performance barriers to consumer intention to shop online in Nigeria.⁶²² Consumer policies regulating sale of goods contracts often tend to protect consumers against these performance risks by for

⁶¹⁶ Donna L Hoffman, Thomas P Novak, and Marcos Peralta., 'Building Consumer Trust Online' (1999) 42(4) Communications of the ACM 80-85.

⁶¹⁷ Yehoshua Liebermann and Shmuel Stashevsky, 'Perceived Risks as Barriers to Internet and E-Commerce Usage' (2002) 5(4) Qualitative Market Research: An International Journal 291-300; Didier Soopramanien, Robert Fildes and Alastair Robertson, 'Consumer Decision Making, E-Commerce and Perceived risks' (2007) 39(17) Applied Economics 2159-2166; M Panjaitan, *et al*, 'Examining Generation X Experiences on Using E-commerce: Integrating the Technology Acceptance Model and Perceived Risks, (2019) 1361(1) Journal of Physics: Conference Series 1-7.

⁶¹⁸ Vinhal M Nepomuceno, Michel Laroche and Marie-Odile Richard, 'How to Reduce Perceived risk When Buying Online: The Interactions Between Intangibility, Product Knowledge, Brand Familiarity, Privacy and Security concerns' (2014) 21(4) Journal of Retailing and Consumer Services 619-629; Ilyoo B Hong, 'Understanding the Consumer's Online Merchant Selection Process: The Roles of Product Involvement, Perceived Risk, and Trust Expectation' (2015) 35(3) International Journal of Information Management 323-336; R Thakur and M Srivastava, 'A Study on the Impact of Consumer Risk Perception and Innovativeness on Online Shopping in India (2015) 43(2) International Journal of Retail and Distribution Management 148-166.

⁶¹⁹ Ahmad M Hassan *et al*, 'Conceptualisation and Measurement of Perceived Risk in Online Shopping' (2006) 16(1) Marketing Management Journal 138, 139.

⁶²⁰ Vincent-Wayne Mitchell *et al*, 'Risk Perception and Reduction in the Purchase of Consumer Services' (2003) 23(5) Services Industry Journal 1, 2-3.

⁶²¹ Ilyoo B Hong 'Understanding the Consumer's Online Merchant Selection Process: The Roles of Product Involvement, Perceived risk, and Trust Expectation' (2015) 35(3) International Journal of Information Management 323, 326-7.

⁶²² Suraju A Aminu, Olusegun P Olawore and Adesina E Odesanya, (n 18).

instance, requiring online merchants to comply with their contractual obligations, whilst also providing necessary remedies to consumers where their legal rights are violated.

Security risk is also a critical form of perceived risk factor exacerbated by the uncertain nature of the environment in which orders are created and payments for transactions, completed.⁶²³ Payment fraud and privacy concerns are common security risks which limit the perceived usefulness of e-commerce and consumer behavioural intention.⁶²⁴ On e-payment security, Hoffman *et al* observe that consumers are usually sceptical about providing their credit card information through a website or payment portal either because they do not trust the online merchant to engage in any money exchange relationship from a distance, or they are not confident in the existence of security measures employed to safeguard payments made through the e-payment infrastructure.⁶²⁵ Once again, this is where the law can play a critical role in building the confidence of consumers who are aware of its existence. Here, rules which for instance, protect users against fraudulent e-payments, can help mitigate the adverse impact of this risk on a consumer.

Overall, where perceived risks (such as performance and security risks) are reduced, there is a strong likelihood that consumers will appreciate the usefulness of e-commerce and their associated websites and will be more willing to use them in making online purchases.⁶²⁶ This is because existing TAM literature confirm perceived risk as having a negative impact on consumer behavioural intention to make online purchases.⁶²⁷

⁶²³ Chariri M Ardiansah, S Rahardja and U Udin, (n 117); Yu Wang *et al*, 'An Empirical Study of Consumers' Intention to Use Ride-sharing Services: Using an Extended Technology Acceptance Model' (2020) 47 Transportation 397, 401-402.

⁶²⁴ Steven Furnell, 'E-Commerce Security: A Question of Trust' (2004) 10 Computer Fraud & Security 10-14; Mark Ackerman and Donald T Davis Jr, 'Privacy and Security Issues in E-commerce' (2003) New Economy Handbook 911-930.

⁶²⁵ Donna L Hoffman, Thomas P Novak, and Marcos Peralta (n 616).

⁶²⁶ Sirkka L Jarvenpaa, Noam Tractinsky, and Michael Vitale, 'Consumer Trust in An Internet Store: A Cross-Cultural Validation' (2006) 5(2) Journal of Computer-Mediated Communication 1-35; Caroline Martins, Tiago Oliveira and Aleš Popovič, 'Understanding the Internet banking Adoption: A Unified Theory of Acceptance and Use of Technology and Perceived Risk Application' (2014) 34(1) International Journal of Information and Management 1-13.

⁶²⁷ Il Im, Yongbeom Kim, and Hyo-Joo Han, 'The Effects of Perceived Risk and Technology Type on Users' Acceptance of Technologies' (2008) 45(1) Information & Management 1-9; Paul Pavlou (n 841); Sirkka L Javenpaa and Noam Tractinsky (n 626).

One can notice a correlation between trust and perceived risks and how they influence PU and the BI. Thus, drawing on the forgoing discussion, we propose the following:

H8: Perceived e-commerce risks negatively influence the perceived usefulness of e-commerce (H8₁) and consumer behavioural intention to make online purchases (H8₂).

H9: Perceived e-commerce risks negatively impact on consumer trust in online merchants.

H10: Law reduces consumers' perception of e-commerce risks.

2.1 Discussion

To confirm hypothesis (8₁) and (8₂) in Nigeria, an empirical study conducted by George *et al* on consumers' perception of trust and risk in online shopping confirm that perceived risks negatively influence the perceived usefulness of e-commerce and users' behavioural intention to make further online purchases.⁶²⁸ Similarly, in the same 2018 study by Khan and Uwemi on the possible obstacles to e-commerce adoption in Nigeria, 60% of consumers indicated that they rarely make online purchases due to security risks, while only 18% of the consumers expressed confidence in online transactions.⁶²⁹ This demonstrates the negative impact of risk perceptions on consumer behavioural intention.

Using e-payment security risk to justify hypothesis (9), an earlier study conducted by Adeyeye on Nigeria shows that 84% of the participant consumers⁶³⁰ consciously avoid placing online orders in Nigeria, and for those who do, only 16% admit to effecting payments through e-payment channels.⁶³¹ Majority, however, opt for cash on delivery (COD) method of payment.⁶³² Those who make payments with their credit cards mostly place orders from foreign suppliers whom they perceive to be more reliable and

⁶²⁸ Olusoji George *et al*, 'Risk and Trust in Online Shopping: Experience from Nigeria' (2015) 11 International Journal of African Studies 71, 75.

⁶²⁹ Ibid.

⁶³⁰ In this research, about 1006 participants from a tertiary institution in Lagos state Nigeria were randomly selected for this survey.

⁶³¹ Michael Adeyeye, 'E-Commerce, Business Methods and Evaluation of Payment Methods in Nigeria' (2008) 11(1) Electronic Journal Information Systems Evaluation 1, 4-5.

⁶³² Ibid.

trustworthy than domestic service providers in Nigeria.⁶³³ This affirms that perceived risks negatively impact on consumer trust in online merchants.

To validate hypothesis (10) which is associated with the law's influence in reducing the impact of perceived risks, reference to the UK and China is once again, made. On performance risks, chapter 2 of the UK CRA 2015 provides consumers with extensive statutory rights and remedies under a goods contract which can guard against some performance risks. Same applies to Articles 23 to 26 of China's CPL 2013. With regards to delivery and returns, Khan *et al* explored the effect of return policies on consumer online purchasing decision in China.⁶³⁴ They find that contractual return policies enhance online decision making because they provide greater benefits and pose less risks.⁶³⁵ By posing less risks, the usefulness of e-commerce is reinforced. Same applies to Oghazi *et al*' empirical research investigating the link between return policy and consumer purchase decision, where it finds that return policies not only promote consumer trust, but also enhance future online purchase intentions.⁶³⁶ Therefore, where consumers are informed of these rules, their perception on the impact of performance risks will most likely reduce.

3. Awareness

According to Sathye, before consumers engage with a product, service or idea, they undergo "a process of knowledge, persuasion, decision and confirmation."⁶³⁷ Thus, their rejection or use of such product, service or idea commences when the consumer is made aware of their existence.⁶³⁸ Molla and Licker define awareness in the context of e-commerce as "the perception, comprehension, and projection of the benefits and risks of

⁶³³ Ibid.

⁶³⁴ A Khan, Y Liang and S Shahzad, 'An Empirical Study of Perceived Factors Affecting Customer Satisfaction to re-Purchase Intention in Online Stores in China' (2015) 8(3) Journal of Service Science and Management 291–305.

⁶³⁵ Ibid.

⁶³⁶ Pejvak Oghazi *et al*, 'Online Purchase Return Policy Leniency and Purchase Decision: Mediating Role of Consumer Trust' (2018) 41 Journal of Retailing and Consumer Services 190. Also see Sanjo Sanalkumar and Hari Krishnan, 'Consumer Product Returns Post Online Purchases: Systematic Research' (2020) 11(9) International Journal of Management 171.

⁶³⁷ Milind Sathye, (n 8).

⁶³⁸ Rahmath Safeena *et al* (n 7).

e-commerce.”⁶³⁹ For Roger, awareness about an information system, together with its benefits and risks, is an initial critical step to accepting or rejecting such IT systems.⁶⁴⁰

Alghamdi observes that where consumers become aware of the benefits of e-commerce, they find it useful utilising existing information systems to make online purchases.⁶⁴¹ This assertion is confirmed by Alqatani *et al* in their empirical study which links lower consumer adoption of e-commerce systems in Saudi Arabia to limited awareness of its benefits and use. Sathye, when investigating the adoption of online banking services in Australia, adds that awareness positively impacts on the perceived usefulness, perceived ease of use, and user behavioural intention to adopt electronic banking.⁶⁴² The author avers that where customers are aware of the benefits of online banking services, they are encouraged to learn about its features, thereby exhibiting a stronger intention to use such services in the future. Howcroft *et al* conducted a similar study where the lack of knowledge and awareness of internet banking services and their benefits was linked to consumers’ reluctance towards adopting such services in the UK.⁶⁴³ It is submitted that this situation is equally applicable to e-commerce transactions since they are usually conducted using information systems similar to online banking.

This research is also hinged on the idea that consumer awareness of laws reduces their perception of risks, increases trust in online merchants, ultimately improving their behavioural intention to make online purchases. One can notice the effect of the law on the already discussed external variables of perceived risks and trust in online merchants, as well as on the independent variable, BI. These are validated as hypotheses (7), (10) and

⁶³⁹ Alemayehu Molla and Paul S Licker, ‘Perceived E-Readiness Factors in E-Commerce Adoption: An Empirical Investigation in a Developing Country’ (2005) 10(1) International Journal of Electronic Commerce 83, 86.

⁶⁴⁰ Everett M Rogers, *Diffusion of Innovations* (5th edn: New York, Free Press 2003) 177-178.

⁶⁴¹ M Alghamdi, ‘*Factors Affecting E-Commerce Adoption in Saudi Arabia from the Consumer’s Perspective*’ (University of East Anglia 2011).

⁶⁴² Milind Sathye (n 8) 324-333.

⁶⁴³ Barry Howcroft, Robert Hamilton and Paul Hower, ‘Consumer Attitude and the Usage and Adoption of Home-based Banking in the United Kingdom’ (2002) 20(3) 111-121.

(5₂), respectively. Accordingly, the influence of laws on these variables depends on consumer awareness.

Recall from section 2.3 of chapter two that an average/confident consumer under the EU law depicts an individual who is “reasonably *well-informed* and reasonably observant and circumspect, [...]”⁶⁴⁴ This means that consumers who are reasonably aware of the law are presumed to be confident and empowered to enforce their rights when infringed upon by online merchants. However, when unaware of their rights, they are most likely to remain unempowered in the face of perceived risk factors, and this may have its adverse effect on their behavioural intention.

Thus, based on the foregoing discussion, we hypothesise the following:

H11: Awareness of e-commerce positively influences consumers’ perception of the usefulness (H11₁) and ease of use (H11₂) of making online purchases.

H12: Awareness of laws regulating consumer e-commerce reduces consumer perceived risk (H12₁), increases trust in online merchants (H12₂) and enhances consumer behavioural intention to make online purchases (H12₃).

3.1 Discussion

On validating hypothesis (11₁) and (11₂), section 3.2.4.1 of this chapter already establishes that most Nigerians are aware of the usefulness of e-commerce, and the ease with which online orders can be placed online, and as a result, have expressed the intention to make online purchases in the future.⁶⁴⁵ However, despite their awareness of the benefits of e-commerce and the resultant positive impact on their behavioural intention, knowledge of its use is sometimes, hampered due to for instance, limited infrastructural support and low level ICT skills acquisition.⁶⁴⁶ This ultimately limits the possibility of actual adoption.

⁶⁴⁴ (Emphasis mine) See Recitals 4, 13 and 18 of the Unfair Commercial Practices Directive 2005/29/EC

⁶⁴⁵ S C Chiemeké and A E Ewuekpae (n 571); Ann Ogbo *et al.*, (n 571); Paul A Aidonojie, Odojor O Anne and Odetokun O Oladele (n 25).

⁶⁴⁶ Solomon Oluyinka *et al.*, ‘A Study of Electronic commerce Adoption Factors in Nigeria’ (2013) 6(4) International Journal of Information Systems and Change Management 293-315.

Thus, although the ‘awareness-perceived usefulness’ correlation is applicable to Nigeria as proposed under hypothesis (11₁), contrary to existing TAM-related literature, awareness of e-commerce and its benefits does not in all cases, influence the perceived ease of making online purchases in Nigeria. As a result, hypothesis (11₂) is not necessarily valid in Nigeria.

On hypothesis (12), Nigerian consumers are generally unaware of the law. This is confirmed in a 2014 report published by Consumers International⁶⁴⁷ investigating the state of consumer protection in Nigeria.⁶⁴⁸ Here, it was found that consumers would rather rely on the personal trusting relationships that exist with merchants when making repeat purchases from physical stores.⁶⁴⁹ As a result, most consumers in Nigeria are less perturbed about the enforcement of his legal rights since they are more confident in the services provided by merchants with whom they can have face-to-face negotiations with.⁶⁵⁰ Thus, the distant nature of online transactions, perhaps, explains why the data by Khan and Uwemi reveal that only about 18% of consumers are confident in online transaction.⁶⁵¹

With regards to the UK, the 2018 survey conducted by the European Commission finds that 88.5% of consumers are active online shoppers in the UK.⁶⁵² Although 53.5% expressed awareness of their withdrawal/cancellation rights,⁶⁵³ only 40% indicated general awareness of their rights.⁶⁵⁴ Similarly, an earlier survey conducted in 2014 by the UK Citizens Advice Bureau shows that of the 84% UK consumers who were active online

⁶⁴⁷ Consumers International is a non-governmental membership organisation for consumer groups across the world, with registered location in England.

⁶⁴⁸ Consumers International, ‘Research on the State of Consumer Protection in Nigeria: A Review of Consumer Protection in the Telecommunications Sector in Nigeria’ <<http://www.consumersinternational.org/media/2255/consumer-protection-in-nigeria-research-report-eng.pdf>> accessed 11 May 2021.

⁶⁴⁹ Ibid, 156.

⁶⁵⁰ Ibid.

⁶⁵¹ Habib U Khan and Stellamaris Uwemi (n 13) 466.

⁶⁵² European Commission, (n 293) 17.

⁶⁵³ Ibid, 38.

⁶⁵⁴ Ibid, 35.

shoppers, only 69% confirmed awareness of their legal rights.⁶⁵⁵ From these data, one can infer that all UK online shoppers are not influenced by the guarantees provided by the law. Consumers may, however, be more significantly influenced by other extra-legal factors (as will be discussed in the part 3 of this section) than the law. That notwithstanding, it can be argued that the moderate percentage of the UK consumers who are aware of their legal rights, are to a certain degree, influenced by laws. This is for instant evident in the UK report on the CCR 2013 which credits the 14-day cancellation right period as having contributed to building consumer confidence in the UK.⁶⁵⁶

With regards to China, a 2020 survey conducted by the China Consumer Association (CCA)⁶⁵⁷ shows that 71.5% of the consumers acknowledge the importance of consumer protection legislations.⁶⁵⁸ They however, stress the need to strengthen their enforcement mechanisms due to the prevalence of duplicate goods in the market.⁶⁵⁹ This, perhaps, explains why 30% of the consumers expressed general satisfaction with enforcement institutions in the country.⁶⁶⁰ It also shows that Chinese consumers are generally dependent on the law to offer protective measures against counterfeit products and as a result, some can be deemed to be reasonably aware of its existence.

⁶⁵⁵ Citizens Advice Bureau, 'Measuring Consumer Awareness of Online Delivery Rights' (*Populus Research Strategy*, March 2015) 14

<https://www.citizensadvice.org.uk/global/migrated_documents/corporate/online-delivery-rights-report-final-230315--2-.pdf> accessed 1 May 2021.

⁶⁵⁶ Department for Business, Energy & Industrial Strategy (n 136) 19.

⁶⁵⁷ CCA is a quasi-government organisation which protects consumer rights and interests, monitors goods and services and provides guidance on the development of consumer activities within the Chinese market economy. Consumers International, 'China Consumer Association' <<https://www.consumersinternational.org/members/members/china-consumers-association-cca/>> accessed 10 May 2021.

⁶⁵⁸ China Consumer Association, 'Consumer Rights Protection Awareness and Behaviour Survey Report on "Consolidating Your Strength"' (March 2020), cited in Fu Yu, 'China Consumers Association: Only 30% of Consumers Surveyed are Satisfied with the Results of Rights Protection' (China News, 15 March 2020) <<https://www.chinanews.com/cj/2020/03-15/9125661.shtml>> accessed 10 May 2021.

⁶⁵⁹ Ibid.

⁶⁶⁰ Ibid.

Thus, where consumers are unaware of laws, their influence in reducing the perception of risks, improving trust in online merchants, and steering a positive behavioural intention will less likely be felt, hence, the need to facilitate consumer responsiveness to laws.

3.2.4.3 Extra-Legal Variables

Since laws are intrinsically bound by their contexts, this section aims to discuss and analyse two additional variables, namely ‘facilitating conditions’ and ‘culture’, which demonstrate the influence of socio-economic and cultural contexts, respectively.

I. Facilitating Conditions

Facilitating conditions refers to a user’s perception of the support and resources received to encourage further use of a particular information system.⁶⁶¹ Verkijika defines the term in the context of m-commerce adoption as “the perceptions of consumers regarding environmental barriers or available resources that ease the use of m-commerce solutions.”⁶⁶² For Datta, “facilitating conditions highlight user perceptions of the macro-level socio-economic state of affairs, portraying the overall adoption climate that is independent of the individual adopter.”⁶⁶³ Thus, irrespective of a consumer’s intention to adopt e-commerce, such intention does not necessarily materialise where facilitating conditions, which are macro-level contingencies, are deficient.⁶⁶⁴ This is because “the conduciveness of the macro-level climate is often a critical factor in e-commerce adoption and is independent of user-level perceptions of e-commerce.”⁶⁶⁵

⁶⁶¹ Alain Y Chong, ‘Predicting M-Commerce Adoption Determinants: A Neural Network Approach’ (2013) 40(2) *Expert Systems with Applications* 523, 525; Viswanath Venkatesh, James Y Thong and Xin Xu, ‘Consumer Acceptance and Use of Information Technology: Extending the Unified Theory of Acceptance and Use of Technology’ (2012) 36(1) *MIS Quarterly* 157, 159.

⁶⁶² Silas F Verkijika, ‘Factors Influencing the Adoption of Mobile Commerce Applications in Cameroon’ (2018) 35 *Telematics and Informatics* 1665, 1667.

⁶⁶³ Prattim Datta, ‘A Preliminary Study of E-Commerce Adoption in Developing Countries’ (2011) 21 *Journal of Information Systems* 3, 13.

⁶⁶⁴ *Ibid.*

⁶⁶⁵ *Ibid.*

Taylor and Todd note that facilitating conditions eliminate the barriers to adoption by aligning information system usage with the national environment.⁶⁶⁶ Facilitating conditions are said to depict the preconditions for a favourable level of e-commerce adoption.⁶⁶⁷ Kirman *et al* aver that facilitating conditions could assume four dimensions namely, favourable legal and regulatory policies, access to infrastructural capabilities, education and training of nationals and economic external controls.⁶⁶⁸ These dimensions are seen as catalysts to actual e-commerce usage.⁶⁶⁹

Lu, Yu and Liu, when investigating the correlation between facilitating condition, trust and adoption intention, note that trust represents a feeling of security which is visible due to the presence of legal guarantees, trainings and other socio-economic structures (facilitating conditions) which act as safety nets for a user of an information system.⁶⁷⁰ Thus, they aver that facilitating conditions in terms of available legal frameworks and technical support, will have a significant impact on consumer behavioural intention to make online purchases.⁶⁷¹ This also confirms that laws are inextricably linked to their socio-economic context, and as a dimension to facilitating conditions, they play an influential role on user behavioural intention.

Facilitating conditions is a usage measure which influences both user behavioural intention and actual e-commerce adoption due to the education, training, and infrastructural dimensions to the variable.⁶⁷² Where a user, for instance, has limited or no access to ICT infrastructure or lacks adequate technical skills and training needed to commence the transaction process, this negatively impacts user behavioural intention and

⁶⁶⁶ Shirley Taylor and Peter A Todd, 'Understanding Information Technology Usage: A Test of Competing Models' (1995) 6(2) Information Systems Research 137, 140.

⁶⁶⁷ Ibid.

⁶⁶⁸ Geoffery Kirkman, Carlos Osorio and Jeffery Sachs, 'The Networked Readiness Index: Measuring the Preparedness of Nations for the Networked World' (Harvard University Publications, 26 June 2002) <https://cyber.harvard.edu/publications/2002/The_Global_Information_Technology_Report_2001-2002> accessed 25 June 2021.

⁶⁶⁹ Ofunre Iriobe and Ojo A Ayotunde, (n 550)183.

⁶⁷⁰ June Lu, Chun-Sheng Yu and Chang Liu, 'Facilitating Conditions, Wireless Trust and Adoption Intention' (2005) 46(1) Journal of Computer Information Systems 17, 19

⁶⁷¹ Ibid.

⁶⁷² Prattim Datta (n 663); Ofunre Iriobe and Ojo A Ayotunde, (n 550)183.

more importantly, actual adoption.⁶⁷³ Thus, a consumer may appreciate the perceived usefulness and ease of making online purchases, subsequently exhibiting a positive behavioural intention. However, where facilitating conditions are deficient, such intention may not materialise into actual adoption.

Therefore, based on the foregoing discussion, we propose that:

H13: Facilitating conditions impact on consumer behavioural intention to make online purchases (H13₁) as well as its actual adoption (H13₂).

1.1 Discussion

On hypothesis (13), Iriobe and Ayotunde find that limited infrastructural support available especially, in the rural parts of Nigeria, adversely impacts on consumer behavioural intention and actual e-commerce use.⁶⁷⁴ This is in addition to their lower level of ICT knowledge and the minimal skills acquisition training obtainable in the country.⁶⁷⁵ As a result, facilitating conditions cannot be said to have a significant relationship with BI and actual e-commerce use in Nigeria. However, looking at the higher rate of innovation, accessibility to ICT infrastructure, skills training and other support systems widely known to be available in the UK and China, one can logically link these macro elements to increased e-commerce adoption rate in both countries. For instance, Datta notes that China's educated tech-savvy population explains why the country adopts e-commerce faster than the Nigerian population where skilled users are few, with little or no support and training.⁶⁷⁶

Law is already established in this section as component of facilitating conditions.⁶⁷⁷ Section 3.2.4.2 of this chapter also validates the link between law and perceived risks, trust in online merchants and awareness, all of which affect user behavioural intention.

⁶⁷³ James Jiang *et al*, (n 48).

⁶⁷⁴ Ofunre Iriobe and Afolabi Ayotunde (n 550).

⁶⁷⁵ Solomon Oluyinka *et al*, (n 646).

⁶⁷⁶ Prattim Datta (n 663) 13.

⁶⁷⁷ Geoffery Kirkman, Carlos Osorio and Jeffery Sachs (n 668).

Therefore, the arguments made to support the influence of laws in those sub-sections can equally be adapted to this section. As a facilitating condition, laws can further integrate rules which enhance innovation of commercial activities, thereby indirectly encouraging consumers to engage in such activities. This is for instance, evident in Article 3 of China E-Commerce Law 2018 which encourages the innovative development of e-commerce for consumers to satisfy their “ever-growing desire [...] for good life.”

Therefore, as a usage measure, the four dimensions to facilitating conditions namely favourable legal and regulatory policies, access to infrastructural capabilities, education and training of nationals and economic external controls⁶⁷⁸ ought to exist to improve consumer behavioural intention and actual e-commerce adoption in Nigeria.

2. Culture

The influence of culture on e-commerce adoption is demonstrated by analysing the impact of Hofstede’s dimensions to national culture on consumer online purchasing behaviour.

Hofstede defines culture as the collective belief held by a distinct group of people that distinguishes the members of that group from other groups.⁶⁷⁹ He developed a cultural framework which proposes that national cultures could differ from other cultures using some cultural dimensions measured on a high-low continuum.⁶⁸⁰ This section will analyse and discuss five dimensions to Hofstede’s national culture.⁶⁸¹

⁶⁷⁸ Ibid.

⁶⁷⁹ Geert Hofstede, *Culture's Consequences: Comparing Values, Behaviours, Institutions, and Organisations Across Nations* (2nd edn, Sage Publications 2001) 21. It is important to note that prior to the introduction of Hofstede’s framework, Hall classified cultures as high and low-context cultures based on the simplicity of communication. See Edward T Hall, *Beyond Culture* (New York: Anchor Press 1976).

⁶⁸⁰ Heli Hallikainen and Tommi Laukkanen, ‘National Culture and Consumer Trust in E-commerce, (2018) 38(1) International Journal of Information Management 97, 98-9.

⁶⁸¹ Hofstede introduced a sixth cultural dimension called ‘indulgence’ and ‘restraint.’ This dimension is rarely employed in literature since it is akin to the ‘individualist and collectivist’ dimension. For more, see Monica Fraoni *et al*, ‘Cultural Dimensions in Online Purchase Behaviour: Evidence from a Cross-cultural Study’ (2021) Italian Journal of Marketing [online] <<https://doi.org/10.1007/s43039-021-00022-z>> accessed 28 June 2021.

I. Power Distance:

Power distance refers to the extent to which the less powerful members of a society accept the unequal distribution of power within the society.⁶⁸² In high power distant societies, superiors consider themselves as being unequal to their subordinates, with the latter expected to comply with instructions of the former.⁶⁸³ On the other hand, low power distance societies are interdependent, with less inequality amongst them.⁶⁸⁴ Due to this even relationship, members of low power-distant societies are said to be more vulnerable to each other, consequently exhibiting greater interpersonal trust in their commercial dealings.⁶⁸⁵ This is compared to high power distant societies where consumers usually perceive service providers as being more likely to engage in illegal and unethical commercial practices.⁶⁸⁶ Consequently, consumers from high power distant countries exhibit less trust and confidence towards online merchants and e-commerce broadly speaking, than consumers from low distant countries.

The behaviour of users in high power distant societies are more likely to be influenced by the decision of their superiors compared to low power distant societies, who are more at liberty to express their own subjective judgement on the perceived usefulness of an information system.⁶⁸⁷ Tarhini *et al*, therefore, aver that power distance moderates the relationship between perceived usefulness (PU) and the behavioural intention (BI) to use, such that low power distant societies are more likely to freely use an information system based on their own perception of its importance, without relying on the opinion of those

⁶⁸² Hyungjoon Kim, 'A Study of the Factors of National Cultural Values Influencing Intention of E-commerce Use' (2017) 20(6B) International Information Institute 4295.

⁶⁸³ Cheolho Yoon, 'The Effects of National Culture Values on Consumer Acceptance of E-Commerce: Online shoppers in China' (2009) 46 Information and Management 294, 295.

⁶⁸⁴ Geert Hofstede, Gert Jan Hofstede and Michael Minkov, *Cultures and Organisations: Software of the Mind- Intercultural Cooperation and Its Importance for Survival* (revised and expanded 3rd edn, 2005) 60.

⁶⁸⁵ Cheolho Yoon (n 683).

⁶⁸⁶ Ibid.

⁶⁸⁷ Manuel J Sánchez-Franco *et al*, 'Exploring the Impact of Individualism and Uncertainty Avoidance in Web-based Electronic Learning: An Empirical Analysis in European Higher Education' (2009) 52(3) Computers & Education 588-598.

with perceived power.⁶⁸⁸ Accordingly, one may infer that the perceived usefulness and the behavioural intention to make online purchases may be stronger in low power distant societies than in high distant cultures.

II. Individualism versus Collectivism:

Individualism explains the extent to which a society emphasises on the separate roles of individuals as opposed to their collective roles.⁶⁸⁹ Collectivist societies are interdependent and believe in the formation of strong trusting relationships, thus, making them conscious of the in-group and out-group boundaries.⁶⁹⁰ This means that they view trust as the ultimate criterion for their in-group members and as such, are more likely to not only perceive risks from out-group members, but are also less trusting of someone who does not belong to their in-group.⁶⁹¹ Lim *et al* further observe that individuals in collectivist cultures may avoid online shopping if a majority of their population prefer offline shopping.⁶⁹²

Contrastingly, individualistic societies embrace universalism by being open and friendlier with broader groups.⁶⁹³ They enjoy engaging with new people and are more inclined to trust and rely on strangers.⁶⁹⁴ However, they carefully gauge and evaluate the risks involved in shopping from an unknown online merchant before placing an order.⁶⁹⁵ For instance, they may browse websites, check for merchant reliability, compare prices,

⁶⁸⁸ Ali Tarhini *et al*, 'Examining the Moderating Effect of Individual Level Cultural Values on Users' Acceptance of E-learning in Developing Countries: A Structural Equation Modelling of an Extended Technology Acceptance Model (2017) 25(3) Interactive Learning Environment 306-328.

⁶⁸⁹ Dayne Frost, Sigi Goode and Dennis Hart, 'Individualist and Collectivist Factors Affecting Online Repurchase Intentions' (2010) 20(1) Internet Research 6, 9.

⁶⁹⁰ Jung-Soo Yi, 'In-group and Out-group Perspectives' (2019) 50 Journal of Intercultural Communication 1404-1634.

⁶⁹¹ Jennifer L Glanville and Qianyi Shi, 'The Extension of Particularized Trust to Generalized and Out-group Trust: The Constraining Role of Collectivism' (2020) 9(4) Social Forces 1801-1828.

⁶⁹² Kai Lim *et al* 'Is E-Commerce Boundary-less? Effects of Individualism, Collectivism and Uncertainty Avoidance on Internet Shopping' (2004) 35(6) Journal of International Business Studies 545-550.

⁶⁹³ Harry C Triandis, *Individualism and Collectivism* (Routledge 2018) 9-10.

⁶⁹⁴ Ibid.

⁶⁹⁵ Jun Xu and Chen Cheng, 'Uncertainty Avoidance, Individualism and the Readiness of Business-to-Consumer E-commerce' (2021) 8(1) Journal of Asian Finance, Economics and Business 791, 794.

delivery time, terms and conditions and refund policies.⁶⁹⁶ Where the perceived risks do not outweigh benefits like price and convenience, they proceed with placing the order.⁶⁹⁷ Therefore, when shopping online, an individualist will be more willing to trust an unknown online merchant after thorough assessment of risks than a collectivist, who would need to rely on previous experiences, proof or recommendation from members of their in-group due to the existing interpersonal trust within the group.

Some authors suggest that individualism has a directive positive impact on PU and PEOU.⁶⁹⁸ Others hypothesise that individualist cultures have a moderating effect on the causal relationship between PU and BI because such cultures extol the performance of individual tasks and the achievement of individual goals.⁶⁹⁹ Zhang *et al* add that online shopping is more of an individualistic activity than the less individualistic scenario obtainable in physical stores.⁷⁰⁰ This is because collectivists rely on recommendation from peers within their in-group and the limited social cues in the online environment may further make online shopping less attractive for collectivists.⁷⁰¹ This explains why Yu and Cheng suggest that consumer e-commerce appeals more to individualistic cultures than to collectivist cultures.⁷⁰² Additionally, since individualistic society are more open to establishing commercial relationships and meeting new people, consumers in these societies will be more open to engaging in e-commerce than those in collectivist societies.

⁶⁹⁶ Sarah Shek *et al*, 'A Preliminary Assessment of Different Trust Formation Models: The Effect of Third-Party Endorsements on Online Shopping' (In Proceedings of the 36th Annual Hawaii International Conference on System Sciences, 2003) 1, 5.

⁶⁹⁷ Ibid.

⁶⁹⁸ Inseong Lee *et al*, 'Culture-technology Fit: Effects of Cultural Characteristics on the Post-adoption Beliefs of Mobile Internet Users' (2007) 11(4) International Journal of Electronic Commerce 11-51.

⁶⁹⁹ Scott McCoy, Andrea Everard and Brian M Jones, 'An Examination of the Technology Acceptance Model in Uruguay and the US: A Focus on Culture' (2005) 8(2) Journal of Global Information Technology Management 27-45; Manuel J Sánchez-Franco, Francisco J Martínez-López, and Félix A Martín-Velicia, 'Exploring the Impact of Individualism and Uncertainty Avoidance in Web-based Electronic Learning: An Empirical Analysis in European Higher Education' (2009) 52(3) Computers & Education 588-598.

⁷⁰⁰ Liyi Zhang, Jing Zhu, and Qihua Liu. 'A Meta-analysis of Mobile Commerce Adoption and the Moderating Effect of Culture' (2012) 28(5) Computers in Human behaviour 1902-1911.

⁷⁰¹ Jun Xu and Chen Cheng, (n 695) 793.

⁷⁰² Ibid.

III. Masculinity versus Femininity:

This explains the degree to which a society is deemed as possessing masculine values such as ambition, achievement, and competition, as opposed to feminine values such as helping and nurturing others and valuing a stress-free quality life.⁷⁰³ Gender roles are said to be quite distinctive in masculine societies while these roles overlap in feminine societies.⁷⁰⁴ Stafford *et al* further posit that consumers in masculine cultures are more disposed to shopping online than consumers in more feminine cultures.⁷⁰⁵

Recall that perceived usefulness (PU) describes the extent to which an individual believes that using a particular information system to complete tasks will ‘enhance the performance’ of such tasks or ‘yield expected utility’.⁷⁰⁶ This, therefore, means that masculinity is closely related to PU. On the other hand, perceived ease of use (PEOU) refers to the extent to which a person believes that using an information system will be ‘free from effort.’⁷⁰⁷ Thus, femininity is closely associated with PEOU.⁷⁰⁸ When adapted to e-commerce, the explanation presupposes that the higher the degree of masculine values a society possesses, the higher the impact of PU on behavioural intention (BI) and consequent adoption.⁷⁰⁹ Conversely, a society with less masculine values will be more influenced to adopt e-commerce based on the ease with which online purchases are initiated and concluded.⁷¹⁰ This aligns with the findings of Srite and Karahanna who observe the moderating effect between PU and BI in masculine societies and between PEOU and BI in feminine societies.⁷¹¹

⁷⁰³ Cheolho Yoon (n 683) 295.

⁷⁰⁴ Osama Sohaib and Kyeong Kang, ‘Cultural Aspects of Business-to-Consumer E-Commerce: A Comparative Analysis of Pakistan and Australia’ (2014) 61(2) *The Electronic Journal of Information Systems in Developing Countries* 1, 2.

⁷⁰⁵ Thomas F Stafford, Aykut Turan and Mahesh S Raisinghani, (2004) 7(2) ‘International and Cross-Cultural Influences on Online Shopping Behaviour’ *Journal of Global Information Technology Management* 70-87.

⁷⁰⁶ Richard Chinomona, (n 34).

⁷⁰⁷ Dennis A Adams, R Ryan Nelson and Peter A Todd (n 35).

⁷⁰⁸ Cheolho Yoon (n 683) 295.

⁷⁰⁹ *Ibid.*

⁷¹⁰ *Ibid.*

⁷¹¹ Mark Srite and Elena Karahanna, ‘The Role of Espoused National Cultural Values in Technology Acceptance’ (2006) *MIS Quarterly* 679-704.

IV. Uncertainty Avoidance:

Uncertainty avoidance explains the extent to which members of a society feel threatened by ambiguities, uncertainties, and unstructured situations.⁷¹² Based on earlier discussions around ‘trust in online merchants’ and the ‘perceived risk’ variables, it is apparent that uncertainty avoidance is closely related to trust and risk.⁷¹³ This means that uncertain situations or perceived risk factors which limit trust in online merchants, worsen the prospects of e-commerce adoption in high uncertainty avoidance societies than low uncertainty avoidance cultures.

Steenkamp, Hofstede and Wedel observe that low uncertainty avoidance countries are more open to accepting change and innovation,⁷¹⁴ and as a result, are willing to try new information systems, products and services subject to rules that can be flexibly adapted to situations.⁷¹⁵ Contrastingly, high uncertainty avoidance cultures are more hesitant towards accepting new information and products, are more conservative, require more firm institutional structures and assurance in the form of laws, and consequently, are slower to embracing innovation.⁷¹⁶ Additionally, due to information asymmetry, privacy risks and consumer inability to examine products prior to placing an order, such societies would require a standard legal framework to protect consumers against these risks.⁷¹⁷ This once again, demonstrates how law is bound to the socio-cultural context of a country.

⁷¹² Zakariya Belkhamza and Syed A Wafa, ‘The Role of Uncertainty Avoidance on E-commerce Acceptance Across Cultures’ (2014) 7(5) *International Business Research* 166, 167.

⁷¹³ Bart Frijns *et al*, ‘Uncertainty Avoidance, Risk Tolerance and Corporate Takeover Decisions’ (2013) 37(7) *Journal of Banking & Finance* 2457-2471.

⁷¹⁴ Dianne P Ford, Catherine E Connelly, and Darren B Meister, ‘Information Systems Research and Hofstede's Culture's Consequences: An Uneasy and Incomplete Partnership’ (2003) 50(1) *IEEE Transactions on Engineering management* 8, 9-11.

⁷¹⁵ Harry C Triandis *et al*, (n 693) 324-5.

⁷¹⁶ Patricia M Doney, Joseph P Cannon and Michael R Mullen, ‘Understanding the Influence of National Culture on the Development of Trust’ (1998) 23(3) *Academy of management review* 601-620.

⁷¹⁷ Jun Xu and Chen Cheng (n 695).

High uncertainty avoidance culture is found to adversely affect consumer online purchasing behaviour,⁷¹⁸ and their use of technology products to complete tasks.⁷¹⁹ It is also found to have a negative impact on PU, trust and BI to use e-commerce information systems, thereby, decreasing the acceptance rate of online shopping within the affected society.⁷²⁰ Using Japan as an example, Straub *et al* aver that the perceived usefulness of e-mails did not exert the expected impact on Japanese workers because Japan has a high uncertainty avoidance culture.⁷²¹

Therefore, it can be inferred from the forgoing discussion that greater e-commerce adoption is more feasible in countries with low uncertainty avoidance culture than those with a high uncertainty avoidance culture.

V. Long-term versus Short-term Orientation:

This cultural dimension explains the ‘time’ orientation for fostering virtues within a society.⁷²² Virtues geared towards yielding future rewards are regarded as ‘long-term,’ while those related to the past and present are regarded as ‘short term’.⁷²³ As future reward is expected, members of long-term oriented societies usually seek to build deeper trusting commercial relationships beginning with the initial identification of the merchant partner before commencing any transactional dealing with the merchant. Hallikainen and Laukkanen note that commercial “relations in long-term oriented cultures are typically built on long-lasting grounds and as such, mutual trust is fundamental.”⁷²⁴ To this end,

⁷¹⁸ Kai Lim *et al*, ‘Is eCommerce Boundary-less? Effects of Individualism–Collectivism and Uncertainty Avoidance on Internet Shopping,’ (2004) 35(6) *Journal of International Business Studies* 545-559.

⁷¹⁹ Kallol Bagchi, Paul Hart, and Mark F Peterson, ‘National Culture and Information Technology Product Adoption’ (2004) 7(4) *Journal of Global Information Technology Management* 29-46.

⁷²⁰ Cheolho Yoon (n 1062); Wen Gong, ‘National Culture and Global Diffusion of Business-to-Consumer E-commerce’ (2009) *Cross Cultural Management: An International Journal* 83-101.

⁷²¹ Detmar Straub, Mark Keil, and Walter Brenner, ‘Testing the Technology Acceptance Model across Cultures: A Three Country Study’ (1997) 33(1) *Information & Management* 1-11.

⁷²² Geert Hofstede, Gert Jan Hofstede and Michael Minkov (n 684) 236-237.

⁷²³ *Ibid*.

⁷²⁴ Heli Hallikainen and Tommi Laukkanen, (n 680) 99.

members of long-term societies usually take risks in uncertain situations with the expectation of securing future rewards, as opposed to short-term gains.⁷²⁵

Long-term orientation societies are said to be quite pragmatic since they encourage modern education in preparation for the future.⁷²⁶ On the other hand, short-term societies uphold time-honoured traditions and norms as they view changes in the society as suspicious.⁷²⁷ Consequently, long-term societies are said to be more open to accepting and engaging in more online transactions than short-term oriented societies.⁷²⁸

To weigh the overall impact of these cultural dimensions on consumer behaviour using the TAM, Straub *et al* developed the 'Computer-based Media Support Index' (CMSI) as a statistical model which uses Hofstede's index scores to compute the aggregate effect of power distance, individualism, masculinity and uncertainty avoidance on the acceptance or rejection of computer-based media.⁷²⁹ The authors find that national cultures high in uncertainty avoidance, masculinity and power distance, but low in individualism, are less likely to be accepting of computer-based media such as e-mails.⁷³⁰ Slyke *et al* adapted the CMSI equation to e-commerce, confirming Straub *et al*'s findings and reiterating that culture has a direct impact on PU and consumer BI to make online purchases.⁷³¹

The need to consider the influence of cultural differences on e-commerce adoption cannot be overemphasised. Suh and Kwon observe that differences in national culture can impact on consumer behavioural intention to engage in e-commerce.⁷³² Tian and Lan adds that

⁷²⁵ Cheolho Yoon (n 683) 296.

⁷²⁶ Hofstede's Insights, 'Country Comparison'[online] <<https://www.hofstede-insights.com/country-comparison/china,nigeria,the-uk/>> accessed 28 June 2021.

⁷²⁷ Ibid.

⁷²⁸ Ibid.

⁷²⁹ Detmar Straub, Keil Mark and Brenner Walter (n 721).

⁷³⁰ Ibid.

⁷³¹ Craig V Slyke *et al*, 'The Influence of Culture on Consumer Oriented Electronic Commerce Adoption' (2010) 11 (1) Journal of Electronic Commerce Research 30-40.

⁷³² Taewon Suh and Ik-Whan G Kwon, 'Globalisation and Reluctant Buyers' (2002) 19(6) International Marketing Review 663-680. See also Tommi Laukkanen, 'How Uncertainty Avoidance affects Innovation Resistance in Mobile Banking: The Moderating Role of Age and Gender' (In 2015 48th Hawaii International Conference on System Sciences, 2015) 3601-3610; Soo Y Chung and Cheol Park, 'Online Shopping Behaviour Model: A Literature Review and Proposed model' (11th International Conference on Advanced Communication Technology, Vol 3, 2009) 2276-2282.

the perceived usefulness of e-commerce is no longer as evident as is expected in developing countries compared to developed countries due to cultural differences, hence the need to consider the impact of these differences on e-commerce adoption.⁷³³ Cyr and Trevor-Smith note that an understanding of the impact of culture will help guide an online merchant into designing its website in a way that evinces trust and shows a sense of security needed especially in high uncertainty avoidance societies.⁷³⁴ Same applies to ensuring that legal structures exist in high uncertainty avoidance cultures which depend on rules to build trust beyond their in-group.⁷³⁵ Since high uncertainty avoidance cultures depend on structured institutions in the form of law and order, to demonstrate trust before making purchases online,⁷³⁶ it is necessary to create greater awareness of laws and the existing mechanisms that guarantee their enforcement to help mitigate the perceived negative influence of culture.

In the light of the forgoing, we propose that:

H14: Culture generally influences consumer perceived usefulness (H14₁) and behavioural intention to make online purchases (H14₂).

2.1 Discussion

To validate hypothesis (14), Hofstede's index scores for Nigeria, China and the UK are analysed and their impact on PU and BI discussed. The aim is to understand how the similarities and differences in the cultural context of each of these countries may impact on consumer purchasing behaviour and consequently, e-commerce adoption.

⁷³³ Robert G Tian and Xuehua Lan, 'E-commerce Concerns: Cross-cultural Factors in Internet Marketing' (International Conference on Electronic Commerce and Business Intelligence, 2009) 83-86.

⁷³⁴ Dianne Cyr and Haizley Trevor-Smith, 'Localisation of Web design: An Empirical Comparison of German, Japanese, and United States Website Characteristics' (2004) 55(13) *Journal of the American Society for Information Science and Technology* 1199-1208. See also Wan A Mohd, Nor L Noor, and Shafie Mehad, 'Culture Design of Information Architecture for B2C E-commerce Websites' in M Kurosu (ed) *Human Centred Design* (Berlin: Springer, 2009) 805-814.

⁷³⁵ Jun Xu and Chen Cheng (n 695).

⁷³⁶ *Ibid.*

Figure 13 below summarises the extent to which Hofstede's cultural dimensions can be adapted to Nigeria, the UK and China.

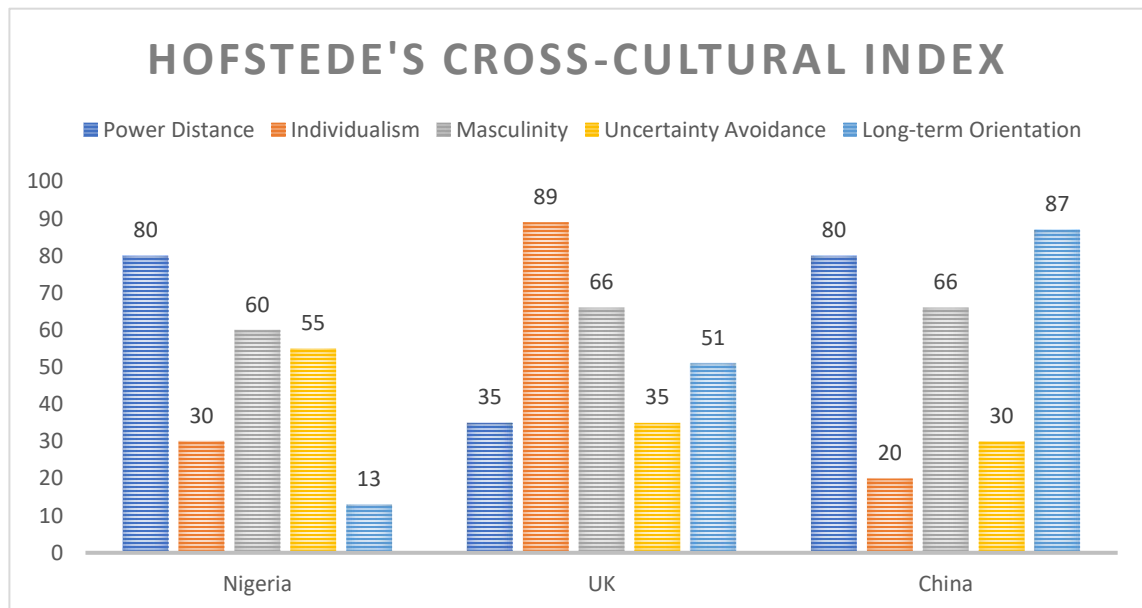


Figure 13: Hofstede's Cross-Cultural Index⁷³⁷

I. Power Distance

Figure 13 shows that Nigeria and China are adjudged high power distant societies unlike the UK.⁷³⁸ This means that Nigeria and China are polarised by societal inequalities compared to the UK.⁷³⁹ Individuals in the UK are also deemed to be more vulnerable to each other and as a result, exhibit greater interpersonal trust in their commercial dealings,⁷⁴⁰ unlike in Nigeria and China where consumers perceive online merchants as more likely to engage in opportunistic and unethical business practices.⁷⁴¹ Perhaps, this

⁷³⁷ Hofstede Insights, 'Country Comparison'[online] <<https://www.hofstede-insights.com/country-comparison/china,nigeria,the-uk/>> accessed 28 June 2021.

⁷³⁸ Ibid.

⁷³⁹ Ibid.

⁷⁴⁰ Cheolho Yoon (n 683).

⁷⁴¹ Ibid.

explains why a higher percentage of UK consumers trust online merchants compared to what is obtainable in China and Nigeria.⁷⁴²

As a long power-distance oriented culture, Nigerians are presumed to be influenced by the commands of their superiors (such as legislators and enforcement authorities) or the opinion and decisions of those in authoritative positions. This implicitly suggests that where e-commerce-related laws are promulgated by persons in authoritative positions, there is a greater probability that market actors in Nigeria will comply with their provisions and by so doing, the laws would have directly impacted on consumer behavioural intention. On the other hand, where such laws are non-existent (especially judging by the fact that the Electronic Transaction Bill is yet to make it into the statute books since the first version was drafted in 1999), it can be inferred that less awareness and emphasis is currently placed on e-commerce adoption in Nigeria, hence, its lower rate of adoption.

To this end, it is suggested that legal measures which protect consumers against exploitative online business practices ought to be implemented in Nigeria since it is more likely that such measures will be complied with and relied upon by market actors and consumers who are aware of the law's existence.

II. Individualism versus Collectivism

With a score of 89, figure 13 shows that the UK is an individualist society, compared to Nigeria (30) and China (20) which are collectivist societies. Since adoption of e-commerce by consumers is more of an individualistic activity,⁷⁴³ UK consumers will most likely exhibit a more favourable intention to adopt e-commerce than consumers from Nigeria, which have a high collectivist cultural orientation. Recall that Lim *et al* aver that individuals in collectivist national cultures may avoid engaging in online purchases if

⁷⁴² See specifically, European Commission (n 293), China Consumer Association (n 658); Habib U Khan and Stellamaris Uwemi (n 13).

⁷⁴³ Jun Xu and Chen Cheng (n 695).

majority of the population prefer offline shopping.⁷⁴⁴ This means that as the majority of Nigerians prefer face-to-face shopping, the collectivist nature of the culture can obstruct further adoption of e-commerce. Same analogy applies to China, which is also has a collectivist national culture. However, since China has an innovation culture with educated tech-savvy population, Chinese consumers are more likely to make online purchases than Nigeria. This distinguishes the China's shopping orientation from Nigeria, whose consumption population prefers offline transactions.

In addition, since collectivists rely on social cues within the online environment to build trust,⁷⁴⁵ online merchants could for instance, promote transparency and fairness in their dealings by providing genuine online reviews, full contact details, lenient delivery and return policies, payment protection guarantees, and other related measures.⁷⁴⁶ Once again, laws can be promulgated to ensure that online merchants comply with these protective measures.

III. Masculinity versus Femininity

Figure 13 shows that all three countries have high levels of masculine cultural values.⁷⁴⁷ With a score of 66 for the UK and China and 60 for Nigeria, the three countries are said to be highly driven, goal-oriented and competitive societies.⁷⁴⁸ More importantly, they exhibit greater intention to make online purchases by virtue of the usefulness perceived as derivable from the activity.⁷⁴⁹ In addition, businesses which operate in economies that allow competition often tend to engage in unfair commercial practices that are detrimental to the interests of consumers.⁷⁵⁰ This explains why most goal and competitive oriented economies need consumer protection policies to build consumer confidence.

⁷⁴⁴ Kai Lim *et al* (n 692).

⁷⁴⁵ Jun Xu and Chen Cheng, (n 695).

⁷⁴⁶ Harrison D McKnight, Vivek Choudhury and Charles Kacmar, 'Developing and Validating Trust Measures for E-commerce: An Integrative Typology' (2002) 13(3) Information systems research 334-359.

⁷⁴⁷ Hofstede Insights (n 737).

⁷⁴⁸ Ibid.

⁷⁴⁹ Cheolho Yoon (n 683).

⁷⁵⁰ Sutatip Yuthayotin (n 189) 26-32.

IV. Uncertainty Avoidance

With a score of 55, Nigeria is said to have an intermediate level of uncertainty avoidance, compared to UK and China which have lower scores of 35 and 30, respectively.⁷⁵¹ This means that Nigerian's level of apprehension towards uncertain situations varies, with no clear preference,⁷⁵² compared to the UK and China which are clearly more willing to try new products and services.⁷⁵³ However, since empirical data shows that only 18% of consumers are confident when making online purchases, with a majority showing preference for offline transactions, one can infer that Nigeria has a high uncertainty avoidance culture when it relates to e-commerce.⁷⁵⁴ Therefore, to encourage greater adoption, Nigeria needs institutional structures which provide legal assurance in the face of uncertainty and perceived risk factors.⁷⁵⁵ This is because a high uncertainty avoidance culture has a negative impact on perceived usefulness, trust and BI unlike low uncertainty cultures.⁷⁵⁶

V. Long-term versus Short-term Orientation

With a score of 13, Nigeria is said to have a short-term orientation culture.⁷⁵⁷ China, on the other hand, has a long-term orientation culture with a score of 87 while the UK is moderate and scores 51 on Hofstede's index.⁷⁵⁸ This means that Nigeria is less keen on fostering virtues that yield future rewards, with the country viewing changes in the society as suspicious.⁷⁵⁹ Perhaps, this further adds to the reason why the country's laws do not cover online transactions, considering that its residents are more accustomed to face-to-face shopping and are therefore, less willing to change. This cultural orientation also explains why Nigeria is known to be a very late adopter of innovative technologies,

⁷⁵¹ Hofstede Insights (n 737).

⁷⁵² Ibid.

⁷⁵³ Harry C Triandis *et al.*, (n 693); Zakariya Belkhamza and Syed A Wafa, (n 712).

⁷⁵⁴ Habib U Khan and Stellamaris Uwemi (n 13).

⁷⁵⁵ Jun Xu and Chen Cheng, (n 695).

⁷⁵⁶ Wen Gong, National Culture and Global Diffusion of Business-to-Consumer E-commerce' (2009) *Cross Cultural Management: An International Journal* 83-101.

⁷⁵⁷ Hofstede Insights (n 737).

⁷⁵⁸ Ibid.

⁷⁵⁹ Geert Hofstede, Gert Jan Hofstede and Michael Minkov (n 684).

compared to the UK and China.⁷⁶⁰ The suspicious belief towards change could, therefore, negatively impact on consumer PU and BI to make online purchases.

Recall that using the CMSI index, Straub *et al*⁷⁶¹ and Slyke *et al*'s research⁷⁶² find national cultures which are high in uncertainty avoidance, masculinity, and power distance, but low in individualism, as less likely to engage in e-commerce. Slyke *et al* further aver that culture has a direct impact on PU and consumer BI.⁷⁶³ Therefore, since Hofstede's index shows that unlike the UK and China, Nigeria has a high uncertainty avoidance culture, is a masculine society, has a high power distant culture, and is also low in individualism, culture, regrettably, has a negative influence on consumer PU and BI to adopt e-commerce in Nigeria. Consequently, hypothesis (14₁) and (14₂) have been validated.

The foregoing notwithstanding, it is also clear that Nigeria shares a cultural affinity with the UK and China in two respects. Firstly, the three countries are all masculine societies, underscoring their drive for high performance, productivity, and growth. This means that their consumption population will most likely be influenced into making online purchases where greater awareness on the usefulness of e-commerce is promoted. Secondly, their mutual performance/goal-oriented goals gauged from the objectives of their respective consumer protection legislations,⁷⁶⁴ make transplantation more feasible. Therefore, borrowing laws from the UK and China will less likely obstruct "the social discourse to which [the Nigerian] law is, under certain circumstances, closely coupled."⁷⁶⁵

In summary, Table 2 below highlights the results for hypotheses 1 to 14. This table demonstrates whether each hypothesis is validated or rejected in this thesis, regard being

⁷⁶⁰ Hart Okorie Awa, Nsobiari Festus Awara, and Eeba Dumka Lebari, 'Critical Factors Inhibiting Electronic Commerce (EC) Adoption in Nigeria: A study of Operators of SMEs' (2015) 6(2) Journal of Science & Technology Policy Management 143-164.

⁷⁶¹ Detmar Straub, Keil Mark and Brenner Walter (n 721).

⁷⁶² Craig V Slyke *et al*, (n 731).

⁷⁶³ Ibid.

⁷⁶⁴ The UK CRA 2015, the Chinese CPL 2013 and the Nigerian FCCPA all aim to promote economic growth by protecting consumer interests. The UK and China also hopes to promote innovation through their respective laws, while Nigeria has demonstrated same interest through its pending Electronic Transaction Bill 2017. For more, see discussion on sections 4.1, 4.2 and 4.3 of chapter four below.

⁷⁶⁵ Gunther Teubner, (n 49) 18.

had to law and TAM and their likely influence on consumer adoption of e-commerce in the three jurisdictions. Emphasis is particularly placed on the subject jurisdiction, Nigeria.

HYPOTHESES	RESULTS		
	Nigeria	UK	China
<u>Legal-related Variables</u>			
1- The perceived usefulness of e-commerce positively impacts on consumer behavioural intention to make online purchases.	Valid	Valid	Valid
2- The perceived ease of use of making online purchases using e-commerce websites positively impacts on consumer behavioural intention to make such purchases.	Valid	Valid	Valid
3- The perceived ease of use of making online purchases using e-commerce websites positively influences the perceived usefulness of e-commerce.	Valid	Valid	Valid
4- The behavioural intention to make online purchases positively impacts on actual e-commerce use.	Rejected	Valid	Valid
5 ₁ - Law indirectly influences the perceived ease of use of making online purchases using e-commerce websites.	Undetermined (due to absence of law)	Valid	Valid
5 ₂ - Law directly impacts on consumer behavioural intention to make online purchases.	Undetermined	Valid	Valid

H6 ₁ : Trust in online merchants positively influences the perceived usefulness of e-commerce; and	Valid	Valid	Valid
H6 ₂ : consumer behavioural intention to make online purchase.	Valid	Valid	Valid
H7: Law heightens consumers' trust in online merchants.	Undetermined	Valid	Valid
H8 ₁ : Perceived e-commerce risks negatively influence the perceived usefulness of e-commerce; and	Valid	Valid	Valid
H8 ₂ : consumer behavioural intention to make online purchases.	Valid	Valid	Valid
H9: Perceived e-commerce risks negatively impact on consumer trust in online merchants.	Valid	Valid	Valid
H10: Law reduces consumers' perception of e-commerce risks.	Undetermined	Valid	Valid
H11 ₁ : Awareness of e-commerce positively influences consumers' perception of the usefulness; and	Valid	Valid	Valid
H11 ₂ : ease of use of making online purchases.	Rejected	Valid	Valid
H12 ₁ : Awareness of laws regulating consumer e-commerce reduces consumer perceived risk,	Undetermined	Moderately valid	Moderately valid

H12 ₂ : increases trust in online merchants; and	Undetermined	Moderate validity	Moderate validity
H12 ₃ : enhances consumer behavioural intention to make online purchases.	Undetermined	Moderate validity	Moderate validity
<u>Extra-Legal Variables</u>			
13 ₁ : Facilitating conditions impact on consumer behavioural intention to make online purchases	Negative validity	Positive validity	Positive validity
H13 ₂ : as well as its actual adoption.	Negative validity	Positive validity	Positive validity
H14 ₁ : Culture generally influences consumer perceived usefulness; and	Negative validity	Positive validity	Positive validity
H14 ₂ : behavioural intention to make online purchases	Negative validity	Positive validity	Positive validity

Table 2: Result of Hypotheses

3.2.4.4 Limitations and Practical Contributions of TAM

Two flaws of the TAM framework are worth highlighting.

A. Limitations:

I. Coherency of Theory:

While it has been insightful to modify the TAM by integrating new variables that more accurately predict user behavioural intention to use an information system in different

contexts, this flexibility has led to lack of standardisation of influencing factors.⁷⁶⁶ Holden and Karsh observe that no two studies tested the validity of same model; rather the original TAM was adapted to different research backgrounds and tested with different impact variables, thereby producing limited standardised qualitative and quantitative comparison across several research areas.⁷⁶⁷ Although this limitation clearly derives from the variations in the original TAM, TAM 2 and TAM 3, it has been argued that the haphazard addition of variables has reduced TAM to a less coherent theory that limits its reliability.⁷⁶⁸ Benbasat and Barki specifically opine that “the independent attempts by several researchers to expand TAM in order to adapt it to the constantly changing IT environments has led to a state of theoretical chaos and confusion in which it is not clear which version of the many iterations of TAM is the commonly accepted one.”⁷⁶⁹

Although this research introduces the law as an underlying external factor, the influence of the law is not applied independently of other impact variables, to help mitigate the effect of this limitation on the validity of the research findings. Rather, its validity is linked to trust, perceived risk and awareness, which are common influencing factors validly tested and confirmed as reliable in practically most TAM-related research.⁷⁷⁰ Similarly, the influence of facilitating factors and culture have been empirically studied by other researchers.⁷⁷¹ While the reliability of this research approach may be doubted on the basis of this limitation, future empirical research on the legal connection, is therefore, recommended.

⁷⁶⁶ William Ratjeana Malatji, Rene V Eck, Tranos Zuva, ‘Understanding the usage, Modifications, Limitations and Criticisms of Technology Acceptance Model (TAM),’ (2020) 5(6) *Advances in Science, Technology and Engineering Systems Journal* 113, 116.

⁷⁶⁷ Richard J Holden and Ben-Tzion Karsh, ‘The Technology Acceptance Model: Its Past and its Future in Health Care’ (2010) 43(1) *Journal of Biomedical Informatics* 159, 166-167.

⁷⁶⁸ Rudy Hirschheim, ‘Introduction to the Special Issue on “Quo Vadis TAM” – Issues and Reflections on Technology Acceptance Research,’ (2008) 8(4) *Journal of the Association for Information Systems* 9.

⁷⁶⁹ Izak Benbasat and Henri Barki, ‘Quo Vadis TAM’ (2007) 8(4) *Journal of the Association for Information Systems* 211.

⁷⁷⁰ See sections 3.3.1 and 3.3.2 on the application of TAM to other research areas and to e-commerce, respectively.

⁷⁷¹ *Ibid.*

II. Accurate Prediction of Actual Usage:

Some authors argue that there is limited literature measuring the relationship between PU, PEOU and BI on actual system use.⁷⁷² Rather, most studies focus on TAM constructs and their impact on behavioural intention to use, apparently presuming behavioural intention to be a high determinant of actual usage.⁷⁷³ This criticism is tenable in view of the reality that some consumers may browse through items online, but eventually end up visiting a physical store to complete the purchase.⁷⁷⁴ They may also acknowledge the usefulness of e-commerce and the perceived ease of shopping online, without placing orders online. Thus, there is need to confirm the factual relationship between TAM constructs and behavioural intention with actual e-commerce adoption.

The above criticism notwithstanding, some studies find a significant positive relationship between BI and actual usage⁷⁷⁵ while some note that facilitating conditions influence the relationship between BI and actual usage.⁷⁷⁶ To mitigate the impact of this limitation on the research findings, this research relies on literature explaining the impact of facilitating conditions on both BI and actual usage,⁷⁷⁷ as well as some literature explaining the influence of BI as an independent variable, on actual usage.⁷⁷⁸

⁷⁷² Mostafa Al-Emran and Andrina Granić, (n 561) L C Hai and Alam Kazmi, 'Dynamic Support of Government in Online Shopping' (2015) 11(22) Asian Social Science 1-9.

⁷⁷³ Mark Turner *et al*, 'Does the Technology Acceptance Model Predict Actual Use? A Systematic literature Review' (2010) 52(5) Information and software technology 463-479.

⁷⁷⁴ Prattim Datta, (n 663).

⁷⁷⁵ Linda G Wallace and Steven D Sheetz, (n 560); Detmar Straub, Moez Limayem, and Elena Karahanna-Evaristo, (n 560); Bernadette Szajna, (n 560); Viswanath Venkatesh *et al* (n 661). Jen-HerWu and Shu-ChingWang, (n 47).

⁷⁷⁶ Pauline Patnasingam *et al*, 'The Role of Facilitating Conditions and Institutional Trust in Electronic Marketplaces' (2005) 3(3) Journal of Electronic Commerce in Organisations 69-82. Viswanath Venkatesh *et al*, 'Predicting Different Conceptualisations of System Use: The Competing Roles of Behavioural Intention, Facilitating conditions, and Behavioural Expectation' (2008) MIS Quarterly 483-502; Harryadin Marhadika *et al*, 'Experience and Facilitating Conditions as Impediments to Consumers' New Technology Adoption' (2019) 29(1) The International Review of Retail, Distribution and Consumer Research 79-98;.

⁷⁷⁷ Shirley Taylor and Peter A Todd (n 666); Ofunre Iriobe and Ojo A Ayotunde (n 550); Alain Y Chong (n 661); Viswanath Venkatesh, James Y Thong and Xin Xu (n 661); Silas F Verkijika, (n 662).

⁷⁷⁸ Charles K Ayo, *et al* (n 32); Rima Fayad and David Paper (n 36); Paul A Pavlou (n 32); A Khan, Y Liang and Shahzad (n 634); Barry Howcroft, Robert Hamilton and Paul Hewer (n 643).

III. Less Significance of the Perceived Ease of Use (PEOU) Belief Construct

Some academics argue that PEOU is less likely to serve as a direct determinant of BI; rather PU provides a more accurate predictive power for behavioural intention to use.⁷⁷⁹ Indeed, Wang and Wu in their study on m-commerce adoption find that PEOU showed no significant effect on BI, thereby, discrediting the direct influence of PEOU on BI.⁷⁸⁰ This is likely down to the reality that most customers are now internet users, own mobile phones for convenience, use computer devices and are now more tech-savvy, compared to the earlier years when the TAM framework was introduced.⁷⁸¹ As a result, using these information systems to place online orders have become relatively easier and consequently, are less likely to play a significant role in influencing consumer BI.

The above notwithstanding, some other studies find a strong effect of PEOU on BI.⁷⁸² while some observe that PU have a greater effect on BI than PEOU.⁷⁸³ Therefore, due to the inconsistent predictive power of PEOU, BI and actual e-commerce use are more influenced by PU than the PEOU construct, and this is evident from the research framework illustrated in figure 12 above. More so, Ayo *et al* note that PEOU does not have a direct impact on BI since system use is not an underlying feature of a purchased product.⁷⁸⁴

B. Practical Implications

Despite these limitations, TAM findings have some significant implications for practice.⁷⁸⁵ For example, since trust in online merchants reduces consumer perception of risks whilst also improving their behavioural intention, merchants can learn from the findings by implementing policies (such as lenient delivery and return policies) which

⁷⁷⁹ Jen-Her Wu and Shu-Ching Wang, (n 47); Rima Fayad and David Paper (n 36); Marios Koufaris (n 5300); Caroline L Miltgen, Ales Popovic and Taigo Oliveira (n 31); Zhongqing *et al* (n 519).

⁷⁸⁰ Jen-HerWu and Shu-ChingWang, (n 47).

⁷⁸¹ Ibid 726.

⁷⁸² Nazire B Hamutoghi (n 39); Lemohang Molobi, Sajal Kabirai and Nur A Siddik (n 39).

⁷⁸³ David Gefen, Elena Karahanna and Detmar W Straub (n 32); Paul A Pavlou (n 32).

⁷⁸⁴ Charles K Ayo, J O Adewoye and Aderonke a Oni (n 32) 5116.

⁷⁸⁵ For more, see section 8.7 of chapter seven below.

lower the impact of perceived risks factors. Regulatory authorities can also help improve consumer trust in merchants by diligently enforcing compliance with laws which help curtail the impact of the perceived risk factors on consumers. On facilitating conditions, the Nigerian government may better appreciate the need to provide necessary macro support systems for consumers, especially to those who live in the rural parts of the country. With regards to culture, legislators can further understand the different cultural dimensions applicable to Nigerians, knowing that the country has for instance, a high uncertainty avoidance culture and would need to build trust by relying on legal structures which guarantee certainty of rights and remedies in the face of perceived risk. Most importantly, the need to create awareness of consumer rights as a key to boosting their confidence is justified, seeing that consumer reliance on laws and the law's consequent effectiveness in fulfilling its function, are mostly dependent on legal awareness.

Therefore, a holistic understanding of influencing variables to e-commerce adoption is needed. Same variables ought to be factored into consideration in the law-making process since this will act as a contributory catalyst to improving e-commerce adoption in Nigeria.

3.3 Conclusion

This chapter has fulfilled its objective of developing a bespoke research framework which merges the comparative law theories of functionalism and legal transplant with a practical framework derived from the extended TAM. To guide the conduct of this thesis using the research framework, several steps are followed but categorised into two major sections.

The first section commences by exploring the benefits of comparative law technique. Here, the 'functionalist' and 'legal transplant' comparative law theories are discussed to help simplify the structuring and integration of different resources from the compared legal systems of Nigeria, the UK and China. Whilst discussing the relevance of functionalism, it was found that the 'problem-solution' approach proposed by functionalist as ideal to understanding the normative function of law aligns with the research objectives. This is because this thesis firstly identifies the central issues for resolution, proceeds with justifying the choice of the UK and Chinese as comparative

economies, and then clarifies how the solutions to the central issues will be derived from the comparative analyses made in other chapters of this thesis. However, due to the flawed belief by functionalists that legal solutions should be totally stripped of national and contextual undertones, the legal transplant theory is discussed to mitigate the impact of this limitation and provide deeper context to this research.

From the review of several transplant literature, it is observed that compatibility of legal, political, socio-economic, and cultural contexts in both originating and adopting countries is theoretically needed for successful transplantation since transplants are either loosely or tightly bound by their contexts. It is also found that since a transferred law cannot be expected to function or fit within an adopting country as it did in the originating country, such transplants could either act as legal or social irritants which obstruct the course of development in the adopting country. This, therefore, justifies the need to at least establish a commonality of contexts between the comparative jurisdictions. It further explains why the legal culture and socio-economic contexts of Nigeria, the UK and China are analysed and compared in subsequent chapters of this thesis.

Despite the significance of the transplant theory to this research, existing literature are faulted for giving limited attention to testing whether the purpose for which a transplant is borrowed in the first place, is fulfilled by the transplant. Rather, heavy focus is placed on national contexts, with little proof provided to show how commonality of such contexts may have in indeed, contributed to successful transplantation or effectiveness of a transplant. To this end, a practical element to the research background is introduced to help ensure that a transplant from the UK or China will gain high receptivity when implemented in Nigeria, in such a way that Nigerians who become aware of the new law will be willing to depend on the law and by so doing, increase the law's effectiveness.

This leads to the second major section of this chapter extensively discussing the TAM framework. It was found that through this framework, one can predict more accurately, the likely effectiveness of a borrowed law, judging by its actual influence on consumer online purchasing behaviour. As a sector-specific framework more suited to e-commerce

research than other consumer behavioural studies, a research framework is developed based on the extended TAM 2 to help provide rule makers with insights into factors which ought to be considered when drafting policies that regulate business and consumer conduct in the market. It also provides market actors and relevant stakeholders with insight into extra-legal measures that can be taken to mitigate the adverse effect of risks associated with e-commerce transactions.

To achieve the forgoing policy outcome, it was necessary to gauge the likely influence of laws using three empirically tested and validated TAM variables namely, awareness, trust in online merchants, and perceived risks. Since laws are not totally detached from their contexts, two additional variables, namely ‘facilitating conditions’ and ‘culture’ are employed to represent the both the socio-economic and cultural contexts of Nigeria, the UK and China. The findings prove that other extra-legal factors which make the law more effective in regulating human behaviour, also have an impact on the perceived usefulness of e-commerce, consumer behavioural intention to adopt e-commerce, and actual e-commerce adoption. It further finds consumer legal awareness as the key to rationalising the influence of laws on online purchasing decisions since the influence of laws on ‘perceived risks’ and ‘trust in online merchants’ is mostly predicted on consumer awareness of laws. Therefore, this research framework not only guides the researcher into deducing measures that provide a sense of security to the online consumer in their own unique context, but it also serves as a comprehensive guide that provides the practical background upon which all arguments in this thesis are based.

Ultimately this chapter provides an even more robust insight into how regulation can be used as a tool to encourage consumers in Nigeria to engage in e-commerce, despite perceived transaction risk factors. This is because lessons derived from existing TAM literature and other statistical data on consumer protection in Nigeria, the UK and China, suggest that laws will most likely be effective in fulfilling their function of encouraging greater participation of consumers in e-commerce where a holistic understanding of the impact of TAM variables on consumer e-commerce adoption is gained, and same is factored into considering in the rule-making process.

CHAPTER FOUR

BACKGROUND TO LEGISLATIVE FRAMEWORKS

This chapter extends the discussion on the research background by focusing exclusively on some key legal frameworks which can be applied to regulate online consumer sales and supply contracts in the compared jurisdictions. The aim is to provide a more comprehensive overview of some of the legislations which are employed in Part 2 of this thesis to address the central research issues identified in chapter one as constituting possible risk factors to consumer adoption of e-commerce in Nigeria. It further seeks to establish more semblance of contexts between the subject jurisdictions with a view to providing more justification for the possible borrowing of laws.

To achieve these objectives, this chapter will be divided to four major sections. Section 4.1 focuses on Nigerian laws by looking at the legal background, purpose, socio-economic background and few provisions of the Federal Competition and Consumer Protection Act (FCCPA) 2018, the Sale of Goods Act (SOGA) 1893 and the Electronic Transaction Bill (ETB) 2017. Same steps are taken in section 4.2 where the UK Consumer Rights Act (CRA) 2015 is discussed. Section 4.3 follows the same approach when providing a background discussion of the China Consumer Protection Law (CPL) 2013 and E-Commerce Law (ECL) 2018. Lastly, to identify possible commonalities of contexts which may exist between the Nigerian, Chinese and UK legal regimes, section 4.4 provides a comparative analysis of the three jurisdictions.

4.1 Nigeria

This section is sub-divided into three parts, with each part discussing the background to the FCCPA 2018, the SOGA 1893 and the ETB 2017, respectively. Although the ETB is yet to make it into the statute books as stated earlier in section 1.3 of chapter one, the Bill is discussed proactively with a view to understanding the extent to which its provisions can be applied to supplement any gaps that may exist within the FCCPA and the SOGA, if eventually signed into law.

4.1.1 Federal Competition and Consumer Protection Act (FCCPA) 2018

4.1.1.1 Legal Background

The FCCPA 2018 was passed by the Nigerian National Assembly⁷⁸⁶ on 20 December 2018, subsequently receiving presidential assent on 30 January 2019 after 10 years of deliberations.⁷⁸⁷ The Act repeals the Consumer Protection Council Act (CPCA) 1992,⁷⁸⁸ a law which established the Consumer Protection Council (CPC).⁷⁸⁹ The CPCA 1992 did not codify consumer rights; rather, it established the CPC and outlined their official duties as a governmental body responsible for overseeing the enforcement of consumer protection-related rules embedded in various sector-specific legislations in Nigeria.⁷⁹⁰ This means that prior to the promulgation of the FCCPA 2018, there was no single comprehensive law devoted solely to addressing the wide-range of issues affecting consumer interests. Thus, the Nigerian government sought to consolidate different consumer laws found in other sector-specific legislations.⁷⁹¹

⁷⁸⁶ The National Assembly is the central and highest legislative body in the country. It consists of a 190-member Senate (upper chamber) and a 360-member House of Representatives (lower chamber), with each member, elected from Constituencies within the thirty-six states at the regional level. For more, see C E Okeke, 'Law Reform Process and Practice in Nigeria: Issues and Challenges' (2020) 2(1) International Review of Law and Jurisprudence 57, 62.

⁷⁸⁷ Akebong S Essien, 'A Critique of the Federal Competition and Consumer Protection Act 2018' (2019) 1(2) International Journal of Comparative Law and Philosophy 16; World Bank Group, 'Federal Republic of Nigeria: Diagnostic Review of Financial Consumer Protection Key-Findings and Recommendations (June 2017)' <<https://documents1.worldbank.org/curated/en/820711525451341303/pdf/125964-WP-P160136-PUBLIC-NIGERIADiagnosticReviewofFinancialConsumerProtection.pdf>> accessed 31 June 2021.

⁷⁸⁸ An Act to Provide for the Establishment of the Consumer Protection Council and for Matters Connected therewith, 1992. According to Section 17 of the CPCA 1992, the CPC is responsible for resolving consumer complaints, eliminating unsafe products from the market, protecting consumer interests and promoting awareness of consumer rights. On repealing the CPCA, see FCCPA 2018, Section 165.

⁷⁸⁹ The Federal Competition and Consumer Protection Commission (FCCPC) repealed and replaced the Consumer Protection Council (CPC).

⁷⁹⁰ Ibid, Preamble. Examples of some sector-specific legislations which empowered their institutions to enact some consumer-related legislations include the Trade Malpractices (Miscellaneous Offences) Act 1992, the Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act 1999, the Nigerian Communications Act 2003, Investments and Securities Act 2007, the Central Bank of Nigeria Act 2007, and the Standards Organisation of Nigeria Act 2015

⁷⁹¹ Felicia Monye, 'An Overview of Consumer Law in Nigeria and Relationship with Laws of Other Countries and Organisations' (2018) 41 Journal of Consumer Policy 373, 377.

Perplexing as this may sound, enacting the CPCA 1992 shows that Nigeria's legislature leans more towards institutional regulation as opposed to codifying the substantive matters affecting the consumer interests which they purport to protect. As law-making powers are usually granted to regulatory institutions by their establishing Acts, the resultant effect is the drive towards promulgating subsidiary legislations on specific matters regulated by those institutions.⁷⁹² Since subsidiary legislations are inherently limited by insufficient public consultation, publicity and priority given to Acts of Parliament, the effectiveness of protecting consumer interests through this process remains questionable. That notwithstanding, the degree of regulatory activism exercised by those institutions is also important in this regard.⁷⁹³ The CPCA did not utilise its power to enact a secondary legislation on consumer protection, thus, further necessitating the drafting of the FCCPA.

Like Nigeria's consumer policy prior to the FCCPA, competition laws were also incorporated into several sector-specific legislations prior to being merged with consumer protection under the FCCPA.⁷⁹⁴ Competition laws are generally important for consumer protection since they optimise consumer interests and help mitigate restrictive trade practices likely to harm consumer choices in the market.⁷⁹⁵ Thus, both areas of law complement each other, and this perhaps, explains why the Nigerian government opted to consolidate both areas of law into a single legislative document.

⁷⁹² Ibid.

⁷⁹³ Ibid.

⁷⁹⁴ For instance, the Nigerian Communication Commission promoted competition in the Telecommunication sector through the Nigerian Communication Commissions Act 2003 while mergers and acquisitions were regulated by the Securities and Exchange Commission through the Investment and Securities Act 2007. See Job O Odion, 'Competition Law as a Platform for Consumer Protection: A Nigerian Perspective' (2015) 33 *New Media and Mass Communication* 32.

⁷⁹⁵ Max Huffman, 'Bridging the Divide? Theories for Integrating Competition Law and Consumer Protection' (2010) 6(1) *European Competition Journal* 7; Neil W Averitt and Robert H Lande, 'Consumer Choice: The Practical Reason for Both Antitrust and Consumer Protection Law' (1997) 10(3) *Loyola Consumer Law Review* 46; Simbarashe Tavuyanago, 'The Interface Between Competition Law and Consumer Protection Law: An Analysis of the Institutional Framework in the Nigerian Federal Competition and Consumer Protection Act of 2019' (2020) *South African Journal of International Affairs*, <<https://doi.org/10.1080/10220461.2020.1837231>> accessed 31 May 2021.

The writer, however, argues that although both areas of law share a common purpose, both legal regimes ought to have been separated for more clarity of scope, application, and enforcement. Additionally, consolidating both areas of laws may give rise to competing interests, with one receiving more attention under the Act than the other.⁷⁹⁶ This point is aptly captured by Howells, Ramsay and Wilhelmson who note that “competition law has one of its concerns the interests of consumers ... [However,] at a practical level, many consumer protection agencies deal with both consumer and competition policy, and there is a danger that the consumer protection is viewed as the Cinderella branch of the agency.”⁷⁹⁷ To this end, this thesis argues that the interests of consumers in Nigeria will be better safeguarded where a separate, but more comprehensive consumer protection law is enacted.

4.1.1.2 Purpose of FCCPA

The FCCPA aims to “promote and maintain competitive markets in the Nigerian economy, promote economic efficiency, promote and protect the interest and welfare of consumers by providing customers with wider variety of quality products at competitive prices, prohibit restrictive or unfair business practices which prevent, restrict or distort competition, contribute to the sustainable development of the Nigerian economy,”⁷⁹⁸ and establish a regulatory institution (Federal Competition and Consumer Protection Commission ‘FCCPC’) to oversee compliance with the provisions of the Act.⁷⁹⁹

It can be inferred from the above objectives that the FCCPA is more devoted to sustaining market competition and promoting economic development than protecting consumer rights and interests, thereby, illustrating the issue of competing interests mentioned in the preceding sub-section. Here, consumer rights and interests are protected by “providing quality products at competitive prices.”⁸⁰⁰ Even where unfair business practices are

⁷⁹⁶ See the brief discussion in section 4.1.1.3 below.

⁷⁹⁷ Geraint Howells, Iain Ramsay and Thomas Wilhelmson (eds), *Handbook of Research on International Consumer Law* (2nd edn, Edward Elgar 2018) 4.

⁷⁹⁸ FCCPA 2018, Section 1.

⁷⁹⁹ Ibid, Section 3(1) & (2).

⁸⁰⁰ FCCPA, Section 1.

abhorred, such prohibition mostly relates to those “practices which prevent, restrict and distort competition.”⁸⁰¹ Although consumer and competition laws are fused and both laws complement each other, it is contended that the focus on consumer interest is quite limited. Therefore, the ‘comprehensiveness’ of this Act is doubted and an updated legislation specifically devoted to protecting consumer rights may be needed.

The scope of the FCCPA extends to all Nigerian commercial activities and business deals which have effect within Nigeria.⁸⁰² The law binds government agencies and parastatals that conduct commercial activities, government corporations involved in economic activities, and all profit-motivated commercial activities.⁸⁰³ The Act also regulates cross-border activities which relate to a Nigerian citizen or resident, an incorporated Nigerian company or companies operating within Nigerian borders, the supply of goods and services within Nigeria by any person despite nationality, and the acquisition of shares or assets outside Nigeria by any person which results “in the change of control of a business, part of a business or any asset of a business in Nigeria.”⁸⁰⁴ From the foregoing, it is clear that the FCCPA applies to both B2B and B2C transactions, especially, due to its competition law-related scope. That notwithstanding, the law remains silent on its application to online transaction, further justifying the need for reform.

The FCCPA applies concurrently with other federal statutes⁸⁰⁵ while the Act overrides all existing sectoral competition and consumer protection-related subsidiary legislations, in the event of any inconsistency.⁸⁰⁶ With regards to the latter, the FCCPA authorises the FCCPC to negotiate with relevant agencies to harmonise overlapping provisions affecting matters that are also covered under the Act to ensure consistency of application in Nigeria.⁸⁰⁷ This means that the FCCPA can be interpreted in conjunction with the Sale of Goods Act 1893, while the actual relevance of the CBN Consumer Protection Framework

⁸⁰¹ Ibid.

⁸⁰² Ibid, Section 2(1).

⁸⁰³ Ibid, Section 2(2).

⁸⁰⁴ Ibid, Section 2(3).

⁸⁰⁵ Ibid, Section 164

⁸⁰⁶ Ibid, Section 104.

⁸⁰⁷ Ibid, Section 105 (2) & (4).

(CPF) 2016 and other consumer protection-related subsidiary legislation are called into question where the laws are not coordinated and harmonised accordingly. That notwithstanding, recourse could still be had to the CBN Guidelines on Operation of Electronic Payment Channels in Nigeria 2020, which as highlighted in section 1.4.2 of chapter one, caters to all matters pertaining to electronic payments, including consumer e-payment transactions.

Recall from section 1.4.2 of this thesis that CPF 2016 was drafted by the Central Bank of Nigeria (CBN) by virtue of the powers conferred upon the institution by the CBN Act 2007. The CPF broadly aims to promote consumer confidence in the financial services industry, facilitate financial stability, enhance innovation, and drive further growth of the sector.⁸⁰⁸ Additional specific objectives of the CPF include protecting consumer assets, resolving disputes, ensuring that financial service providers adopt effective consumer risk management practices, clarifying consumer rights and obligations, and improving consumers' economic wellbeing through financial education and awareness.⁸⁰⁹ Although the effectiveness of the CPF's risk mitigation provisions remain questionable since e-payment security is not adequately addressed,⁸¹⁰ the law is highly important since several CBN Guidelines and Frameworks are mostly focused on operational matters of withdrawals and transfers as opposed to protection consumer interests within the industry.

The above notwithstanding, the FCCPA 2018, being an Act of Parliament, regrettably takes precedence over the CPF 2016 and other skilfully drafted laws. This issue is worsened by the fact that the FCCPA applies to all economic activities in Nigeria,⁸¹¹ with no provision either excluding the FCCPA's regulation of financial service transactions or a provision incorporating the CPF into the FCCPA by reference. The overall implication

⁸⁰⁸ Central Bank of Nigeria, 'Release of Consumer Protection Framework for Banks and other Financial Institutions Regulated by the Central Bank of Nigeria' (7 November 2016) para 1.1 <[https://www.cbn.gov.ng/Out/2016/CFPD/Consumer%20Protection%20Framework%20\(Final\).pdf](https://www.cbn.gov.ng/Out/2016/CFPD/Consumer%20Protection%20Framework%20(Final).pdf)> accessed 25 May 2021.

⁸⁰⁹ Ibid.

⁸¹⁰ See brief argument in section 1.4.2 of this thesis.

⁸¹¹ Ibid, Section 2.

of the complementary and overriding effects of the FCCPA is that its initial objective of consolidating existing consumer-related laws has not been achieved.

4.1.1.3 Socio-economic Background

Recall from section 4.1.1.1 of this chapter that the FCCPA is a largely economic-driven piece of legislation which pays lesser attention to consumer rights than competition matters. That notwithstanding, some socio-economic conditions which existed before the drafting of the Act may have been factored into consideration when drafting the FCCPA, presumably to increase consumer responsiveness to the provisions of the Act.

Generally, the responsiveness of Nigerian consumers towards laws is said to be partly hampered by illiteracy and limited consumer education.⁸¹² This observation is supported by a report presented in a 2017 Education Conference titled ‘Achieving Inclusive Education through Innovative Strategies’, where the former Minister of Education confirmed that about 30% of the Nigerian population are generally uneducated.⁸¹³ Similarly, a report published by Consumers International on the state of consumer protection in Nigeria also recognises ‘consumer apathy’ as an inhibitive factor to consumer responsiveness to laws.⁸¹⁴

Monye observes that other factors which have the potential to deter consumers from enforcing their rights include “fear of litigation, inability to match the corporate might of big corporations in relation to proof and disproof of liability, and low economic and social status of many consumers,” especially in the rural parts of Nigeria.⁸¹⁵ The last identified factor is worsened by the fact that some Nigerians live below the poverty line, earning a minimum wage of N30,000 (about GBP 50) per month.⁸¹⁶ Poverty affects not only the

⁸¹² Felicia Monye (n 791) 374.

⁸¹³ Azeezat Adedigba, ‘60 million Nigerians are Illiterates- Minister’ (Premium Times Newspaper, 23 November 2017) <<https://www.premiumtimesng.com/news/more-news/250397-60-million-nigerians-are-illiterates-minister.html>> accessed 31 May 2021.

⁸¹⁴ Consumers International, (n 648) p 140-143,

⁸¹⁵ Felicia Monye (n 791).

⁸¹⁶ National Bureau of Statistics, ‘Nigerian National Minimum Wage’ (Trading Economics 2021) <<https://tradingeconomics.com/nigeria/minimum-wages>> assessed 31 May 2021.

consumer disposable income and spending pattern, but also their decision to pursue litigation and other high-cost dispute resolution mechanisms to enforce their rights.⁸¹⁷

Consumer responsiveness to laws is also affected by the limited number of regulatory and enforcement authorities in the country.⁸¹⁸ As a country that leans more towards institutional regulation, one doubts the potency of this legislative approach. Nigeria is a Federation of 36 states with 774 local governments and an enormous population size.⁸¹⁹ Some states do not have direct access to regulatory institutions or consumer rights agencies that can assist in creating legal awareness or helping consumers enforce their rights.⁸²⁰ None also exist at the local government level.⁸²¹ As a result, consumers in the rural parts of the country are less responsive to laws, with the level of awareness and enforcement of rights higher in urban areas than in rural areas.⁸²²

The FCCPA, nevertheless, factors some of these issues into consideration in several ways. Firstly, the Act establishes a consumer protection and enforcement institution called the Federal Competition and Consumer Protection Commission (FCCPC) which has the mandate to assign representatives to each autonomous state and local government as it deems fit.⁸²³ This could help limit the urban-rural disparity in the level of consumer rights awareness and enforcement if the regulatory agency remains active in the performance of its duties.

Secondly, non-governmental consumer rights organisations (NGOs) are encouraged to work with the FCCPC to educate consumers about their rights and their available means of enforcement.⁸²⁴ This can contribute to mitigating the low level of consumer education in the country since the implementation of this provision will have the potential to increase

⁸¹⁷ Consumers International (n 648) 144.

⁸¹⁸ Felicia Monye (n 791) 375.

⁸¹⁹ As stated in the previous chapters, Nigeria has the largest population in Africa and is the 7th most populous country in the world.

⁸²⁰ Ibid.

⁸²¹ Ibid.

⁸²² Consumers International (n 648) 143.

⁸²³ FCCPA 2018, Sections 3-4.

⁸²⁴ FCCPA 2018, Section 151.

consumer access to relevant agencies and institutions located at different parts of the country, including the rural areas. The NGOs could also institute class actions on behalf of consumers, thereby reducing the associated cost burden of litigation.⁸²⁵

Thirdly, as evident from the objectives, the FCCPA contains rules which tend to limit exploitative tendencies of businesses that exert a dominant position in the market. This could help reduce the fear of filing complaints against big corporations.

Lastly, the Act acknowledges possible sources of consumer vulnerability by requiring that businesses desist from exploiting vulnerabilities that arise due to illiteracy, ignorance, physical or mental health disability and language barriers.⁸²⁶

As the FCCPA only became effective in 2019, it appears too soon to weigh the practical impact of the consumer protection provisions of the Act on consumers and the economy. This is more so as there is no known empirical report or literature which analyses the consumer part of the Act. That notwithstanding, the FCCPA remains a significant piece of legislation, being Nigeria's first attempt at passing an arguably comprehensive legislation on consumer protection.

4.1.1.4 Overview of Provisions

The purpose of this section is to briefly describe the structure and key provisions of the FCCPA. This section does not purport to provide a detailed analysis of the Act. However, as with other laws discussed in this chapter, a more in-depth discussion of the provisions which relate to the central issues identified in chapter one of this thesis will be provided in Part 2 of this thesis.

The FCCPA is divided into 18 parts with a total of 168 sections. Part 1 of the Act outlines its objectives and scope of application,⁸²⁷ while parts 2 and 3 focus on the establishment

⁸²⁵ FCCPA 2018, section 152.

⁸²⁶ FCCPA, Section 124(2).

⁸²⁷ FCCPA 2018, Sections 1 & 2.

and role of the FCCPC.⁸²⁸ Since Nigeria leans more towards institutional regulation, parts 4 to 6 outlines the extensive powers and duties of the FCCPC in relation to administering and enforcing the provisions of the Act.⁸²⁹ In part 7, the Competition and Consumer Protection Tribunal (CCPT) is established to exercise adjudicative powers over all matters covered by the Act.⁸³⁰ Parts 8 to 11 generally abhor restrictive commercial practices,⁸³¹ resale of patented products,⁸³² abuse of a business' dominant position in the market,⁸³³ monopolies,⁸³⁴ and cartel activities or price fixing of products and services.⁸³⁵ Mergers and acquisitions are covered under part 12,⁸³⁶ while part 13 restates the supremacy of the Act over other consumer protection and competition-related subsidiary legislations.⁸³⁷

Part 14 outlines offences that violate competition law, together with their penalties⁸³⁸ while part 15 focuses on rules regulating consumer right matters.⁸³⁹ Part 16 highlights the duties of manufacturers, importers, distributors and suppliers with regards to executing service contracts, placing the right labels on goods for easy identification, their duty to withdraw hazardous products from the market and their liability for defective goods which cause personal injury or damage to consumer's property.⁸⁴⁰ In part 17, different means of enforcing consumer rights are outlined. Here, the consumer may either file a complaint with the FCCPC or go to court.⁸⁴¹ The FCCPC may also work with consumer NGOs to educate consumers about their legal rights, represent consumers in courts either individually or through class actions, or encourage consumers to employ alternative

⁸²⁸ Section 3.

⁸²⁹ Section 17-38

⁸³⁰ Sections 39-58.

⁸³¹ Sections 59-63.

⁸³² Sections 64-66.

⁸³³ Sections 70-75.

⁸³⁴ Sections 76-87.

⁸³⁵ Section 70(1).

⁸³⁶ Sections 92-103.

⁸³⁷ Ibid, Sections 105-106 and 164.

⁸³⁸ Ibid, Sections 107-113.

⁸³⁹ Ibid, Sections 114-127.

⁸⁴⁰ Ibid, Sections 134-144.

⁸⁴¹ Ibid, Sections 146-150.

dispute resolution processes.⁸⁴² Finally, part 18 covers steps involved in filing civil or criminal proceedings against members of the FCCPC and the CCPT.⁸⁴³

In summary, the FCCPA is a significant piece of legislation which attempts to consolidate different competition and consumer protection-related rules found in various sector-specific laws. Its provisions on consumer protection are to a reasonable extent, commendable, being the first statute in Nigeria that considers in principle, some socio-economic issues affecting consumer responsiveness to laws. That notwithstanding, the consolidation of distinct but related areas of law as a single statute is highly likely to complicate enforcement of consumer rights matters. This is because under the Act, six parts are exclusively dedicated to competition law issues while consumer rights matters are only covered under three parts. The rest of the Act mainly focuses on the functions of the FCCPC and the CCPT. Therefore, a distinct legal framework specifically devoted to addressing consumer rights matters and whose scope clearly extends to online transactions, is necessary.

4.1.2 Sale of Goods Act (SOGA) 1893

The SOGA 1893 is a statute of general application which was in force in England before 1900.⁸⁴⁴ As all former British colonies were subjects of transplantation of the common law, principles of equity, and statutes of general application (also known as ‘received English laws’), the SOGA 1893 became immediately applicable to Nigeria.⁸⁴⁵ The basis for these transplanted laws is described as feudalistic, meaning that a conquered or ceded colony was made to retain its former laws, subject to possible change by the sovereign.⁸⁴⁶

Since the SOGA was not drafted by the Nigerian National Assembly, the background of the law clearly reflects the situation in pre-1900 England as opposed to that of Nigeria.

⁸⁴² Ibid, Sections 151-154.

⁸⁴³ Ibid, Sections 156-162.

⁸⁴⁴ In force on 20 February 1894.

⁸⁴⁵ Section 32 of Nigeria’s Interpretation Act 2004 acknowledges the status of received English laws as primary sources of law in Nigeria.

⁸⁴⁶ John H Beckstrom, (n 516) 558.

This means that the Act does not reflect Nigeria's socio-economic condition at that point in time. Consequently, a brief legal background, purpose, and descriptive overview of the 1893 Act will only be provided in this sub-section.

4.1.2.1 Legal Background

The move to codify commercial law in England intensified towards the late nineteenth century, resulting in the preparation and drafting of some statutes, one of which is the SOGA 1893.⁸⁴⁷ In drafting the SOGA, legal principles from earlier decided cases were written down as statements of law, hence, the reason why the SOGA does not necessarily address every potential question that could arise from disputes related to sale of goods.⁸⁴⁸ This means that the SOGA codifies issues that had already been decided by the courts prior to 1893 and as such, did not envisage potential issues that could arise in the future over matters that were yet to be decided by the courts. Therefore, the significant socio-economic transformations which have occurred through the years and have introduced new legal issues that were not contemplated by the 1893 Act, once again, supports the writer's argument that the SOGA cannot be sufficiently stretched to cover online sale contracts in Nigeria.

As a law which codifies legal principles from pre-1893 cases, the SOGA mostly reflects disputes which derive from old forms of trade such as those between merchants.⁸⁴⁹ This explains why the Act is regarded as a "a nineteenth century mercantile code."⁸⁵⁰ Thus, modern consumer law which recognises the separate legal identity of consumers⁸⁵¹ is far beyond the Act's contemplation. This once again, supports the writer's arguments that the Act is not totally suitable for consumer transactions, let alone online contracts.

⁸⁴⁷ Other statutes include the Bills of Exchange Act 1882, the Partnership Act 1890, and the Marine Insurance Act 1906, all of which were drafted by Sir MacKenzie Chalmers. See Law Commission, (n 79)

⁸⁴⁸ Ibid.

⁸⁴⁹ Ibid, para 1.6.

⁸⁵⁰ Ibid.

⁸⁵¹ Modern consumer law was first recognised in the Moloney Report on Consumer Protection (HL Deb 14 November 1962, vol 244) <https://api.parliament.uk/historic-hansard/lords/1962/nov/14/the-moloney-report-on-consumer-protection-1#column_653> accessed 2 June 2021.

4.1.2.2 Purpose of the SOGA 1893

Like the full title of the Act denotes,⁸⁵² the SOGA 1893 generally codifies laws relating to the sale of goods by replicating existing common law and statutory rules on sale of goods, and codifying it in a legislative document.⁸⁵³ The purpose of the Act is to define and delineate the scope of parties' rights and obligations where such is not expressly agreed upon, whilst also preserving relevant contract law principles.⁸⁵⁴ These rights and obligations specifically relate to contracts for the sale of goods alone. A sale of goods contract is defined as "a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price."⁸⁵⁵ This definition potentially excludes other forms of contract from its scope of application.⁸⁵⁶ Additionally, the scope of the Act's provisions extends to B2B and B2C transactions, although as highlighted in the preceding section, the modern notion of a consumer is not reflected under the Act.

4.1.2.3 Overview of Provisions

The 1893 Act is divided into 6 parts which have a total of 64 sections. Part 1 preserves the common law principles of contract by outlining the rules governing contractual capacity and the different modes of contract formation.⁸⁵⁷ Implications of a breach of condition and warranty are clarified, together with implied condition as to title, sale by description, quality or fitness of goods, and sale by sample.⁸⁵⁸ In part 2 rules governing the transfer of property in goods from a seller to a buyer are restated⁸⁵⁹ whilst part 3 outlines rules which clarify when goods are deemed to have been delivered by the seller

⁸⁵² "An Act for Codifying the Law relating to the Sale of Goods."

⁸⁵³ SOGA 1893.

⁸⁵⁴ Judah P Benjamin and Michael G Bridge, (n 77).

⁸⁵⁵ SOGA 1893, section 1.

⁸⁵⁶ These forms of contract include, but are not limited to contracts of bailment, barter or exchange, hire-purchase, supply of services and agency. See Christian Twigg Flesner and Rick Canavan, *Atiya and Adam's Sale of Goods* (14th edn, Pearson 2020) 8.

⁸⁵⁷ SOGA 1893, sections 1-9.

⁸⁵⁸ sections 10-15.

⁸⁵⁹ Section 18.

and accepted by the buyer.⁸⁶⁰ Part 4 covers rules which guide a seller's implied rights to retain the goods, to stop delivery of goods in transit and that of resale where goods have not been paid for.⁸⁶¹ In part 5, the remedies which accrue to a seller due to a buyer's failure to pay for and accept delivery of goods, are outlined.⁸⁶² This part also lists the remedies available to a buyer where the seller fails to fulfil his delivery obligations⁸⁶³ or where a breach of warranty is alleged.⁸⁶⁴ Lastly, part 6 covers supplementary provisions which re-state the preservation of common law principles and parties' rights to expressly exclude or vary implied terms and conditions.⁸⁶⁵

To conclude, the SOGA 1893 is in dire need of revision in Nigeria. The Act has been in existence for over a century and Nigeria has not yet deemed it necessary to revise the law, despite significant socio-economic changes that have occurred through the years. Although the 1893 Act is still applicable in some countries such as Ireland, the law has been updated a few times by the country,⁸⁶⁶ while the UK repealed and replaced the law with the SOGA 1979, later consolidating its consumer-related provisions into the Consumer Rights Act 2015.⁸⁶⁷ The legal background to the Act further justifies the need for its revision, while section 1.4.3 has already critiqued some of its provisions with respect to delivery and passage of risks. Consequently, extending the Act's provisions to cover online consumer transactions seems less feasible in practice.

4.1.3 The Nigerian Electronic Transactions Bill (ETB) 2017

The ETB is a pending bill introduced and passed by the Nigerian Assembly on 4 April 2017, to regulate both B2B and B2C electronic transactions in Nigeria.⁸⁶⁸ As at the time of writing, the Bill is yet to make it into the statute books, having failed to receive the

⁸⁶⁰ Section 27-33.

⁸⁶¹ Sections 38-48.

⁸⁶² Sections 49-50.

⁸⁶³ Sections 51-52.

⁸⁶⁴ Section 53.

⁸⁶⁵ Sections 55-57 & 61.

⁸⁶⁶ Sale of Goods Act 1893 (Revised), updated to 28 May 2019, [online], available at <<https://revisedacts.lawreform.ie/eli/1893/act/71/front/revised/en/html>> accessed 21 May 2021.

⁸⁶⁷ SI 2015/1629.

⁸⁶⁸ See Fn 80.

required presidential assent to become effective. Nonetheless, since this Bill represents Nigeria's first attempt at enacting an electronic transaction law whose substantive provisions are more suited to e-commerce transactions than any other existing Nigerian law, the Bill is proactively discussed in this thesis. The purpose of this discussion is to identify whether the provisions of the pending law, being a potential Act of parliament, can be applied to supplement the gaps that exist within the FCCPA 2018 and the SOGA 1893. Where gaps exist within the Bill, applicable laws in the UK and China will be assessed with a view to identifying the most ideal provisions in their laws which can be adapted to provide a better regulatory cushion for online consumers in Nigeria.

4.1.3.1 Legal Background

Nigeria's first attempt at enacting a law which regulates all forms of electronic transactions dates to 1999 with the introduction of the first version of the ETB.⁸⁶⁹ Subsequent attempts were made in 2011 and 2015.⁸⁷⁰ However, none of these Bills made it to the statute books due to administrative and procedural upheavals.⁸⁷¹ Nonetheless, in 2017, a more improved version of the Bill was re-introduced into the National Assembly with an extended scope which acknowledges the relevance of existing secondary legislations made by specialised institutions like the Central Bank of Nigeria (CBN). Senator Abdulfatai, a member of the upper Nigerian legislative house opined that the ETB is borne out of the necessity to upgrade Nigeria's e-commerce sector to be at par with economically advanced and developing countries.⁸⁷² Despite acknowledging the importance of this potential law to Nigeria, the Bill has remained dormant.

⁸⁶⁹ O Bali, 'The Emerging Trend in E-commerce: The Nigerian Legal Perspective', in Kevin N Nwosu (ed), *Legal Practice Skills and Ethics in Nigeria* (Lagos, DCON Consulting 2004) 119.

⁸⁷⁰ Oluchi Aniaka, 'Analyzing the Adequacy of Electronic Transactions Bill 2015 In Facilitating E-Commerce in Nigeria' [2015] *Innovation Law & Policy eJournal* <<https://ssrn.com/abstract=2651120>> accessed 4 May 2020.

⁸⁷¹ Muhammad Nuruddeen, 'Analysis of The Legal Framework for The Operations of E-Commerce: A Nigerian Perspective' (2014) 6(7) *Ahmadu Bello University Zaria Journal of Private and Comparative Law* 255-286.

⁸⁷² National Assembly, 'Senate Moves to Legalise Electronic Transactions, Criminalise Online Fraud' (27 February 2020) <<https://www.nassnig.org/news/item/1408>> accessed 11 May 2020.

Although there are no laws exclusively regulating e-commerce transactions in Nigeria, there are existing Nigerian statutes which either infer the validity of electronic transactions or tackle cybercrimes. The first law is the Nigerian Evidence Act 2011.⁸⁷³ Through this law, Nigeria recognises the potency of electronic documents and the procedure for their admission in courts.⁸⁷⁴ However, as a procedural law, the substantive rules which regulate parties' rights and obligations in an online contract for the sale or supply of goods and services is far beyond the scope of the law. The second law is the Cybercrimes Act 2015.⁸⁷⁵ This law generally aims to punish offenders who perpetuate fraud on computer networks, safeguard potential victims of such fraud, promote cybersecurity, and protect electronic communications in Nigeria.⁸⁷⁶ The Cybercrimes Act is a highly important regulatory instrument which has the potential to build consumer trust in e-commerce, (having identified perceived risk of fraud as one of the obstacles to e-commerce adoption in the country). However, since the law does not directly control the central research issues identified in section 1.4 of chapter one, a detailed analysis of its provisions is not provided in this thesis.

4.1.3.2 Purpose of the Bill

The ETB aims to regulate transactions conducted using electronic or related media, protect consumer rights and those of other parties involved in electronic transactions, protect personal data, and facilitate the adoption of electronic commerce in Nigeria.⁸⁷⁷ From these objectives, it is apparent that the goal of promoting greater adoption of e-commerce by consumers can be facilitated through the Bill if their corresponding provisions are adequate.

The scope of the ETB covers transactions or relationships between parties who use "information in the form of electronic or other media."⁸⁷⁸ This means that the ETB applies

⁸⁷³ Repealing the Evidence Act, Cap E14, Laws of the Federation of Nigeria 2004.

⁸⁷⁴ Evidence Act 2011, Sections 34(1), 84 & 258.

⁸⁷⁵ Cybercrimes (Prohibition, Prevention, Etc.) Act 2015.

⁸⁷⁶ Ibid, section 1.

⁸⁷⁷ Ibid, section 1

⁸⁷⁸ Section 2(1).

to transactions initiated using a broad range of ICT and networked devices such as mobile and telephones, desktops and laptops, fax machines and similar electronic devices. The Bill further confirms that no document or information shall be denied legal effect, validity, and enforceability due to the technology employed in creating or communicating the information.⁸⁷⁹ Additionally, the admissibility of such information will not be denied on the basis that the document cannot be confirmed due to the form of technology used in creating.⁸⁸⁰ The Bill goes a step further to affirm the validity of electronic signatures contained in such documents.⁸⁸¹ Through these provisions, the ETB complements the Nigerian Evidence Act 2011 by according validity to electronic transactions and records. The scope of the Bill also extends to other forms of e-commerce aside B2C e-commerce since one of its objectives alludes to protecting the rights of ‘other parties’ involved in electronic transactions.⁸⁸²

It is important to note that the ETB acknowledges the possibility of overlapping laws being made by other sector-specific agencies such as the National Information Technology Development Agency (NITDA),⁸⁸³ the Nigerian Communications Commission (NCC)⁸⁸⁴ and the Central Bank of Nigeria (CBN), with these institutions, further allowed to enforce the provisions of the Bill with respect to sector-specific matters. Thus, contrary to the approach followed by the FCCPA 2018, the ETB recognises these institutions’ law-making functions and affirms that they can make rules on specific matters within their legislative competence.⁸⁸⁵

⁸⁷⁹ Section 3(1) (a)

⁸⁸⁰ Section 3 (3).

⁸⁸¹ Section 11.

⁸⁸² Section 1(b).

⁸⁸³ The NITDA is a Nigerian government agency set up specifically to plan, develop and promote the wide and consistent adoption of ICT in Nigeria and was established pursuant to sections 17 and 18 of the NITDA Act 2007. The agency promulgated the NITDA Data Protection Regulation 2019.

⁸⁸⁴ The NCC is a government regulatory agency that was established by the NCC Act 2003 to oversee the management of the telecommunication sector and its industry players in Nigeria.

⁸⁸⁵ Electronic Transaction Bill 2017, section 3(3).

4.1.3.3 Socio-economic Background

In 2017, the Nigerian Senate adopted a legislative agenda which focuses on improving livelihood, businesses and governance.⁸⁸⁶ The law makers recognised that the country was facing a period of economic instability which necessitated a review of business-related legislations as one of the key steps to stabilising the economy.⁸⁸⁷ They were also of the view that such step would enhance the ease of conducting business operations in Nigeria, whilst also providing an enabling legal environment for the economy to thrive.⁸⁸⁸ To this end, a review of pending legislations at the time, which affected businesses and consumers were suggested,⁸⁸⁹ hence the swift re-introduction and passage of the ETB.

The drafting of the ETB is “predicated on the need to upgrade Nigeria’s commercial system to align with the global digital economic system occasioned by the Information and Communication Technology [ICT] revolution”.⁸⁹⁰ This need was triggered by an increase in internet penetration rate and greater accessibility and affordability of mobile networks in the country.⁸⁹¹ As a result, an enabling online business environment was created, which subsequently paved the way for the emergence of prominent e-commerce platforms such as ‘Konga’, ‘Jiji’ and ‘Jumia’.⁸⁹² These developments led to a corresponding increase in the number of fraudulent commercial practices perpetuated by online merchants which were detrimental to the interest of consumers.⁸⁹³ Therefore,

⁸⁸⁶ 8th Senate of the Federal Republic of Nigeria, ‘8th Senate Report: Reviving the Economy, Creating Opportunities for Nigerians (All Africa, 29 May 2019) <<https://allafrica.com/stories/201905290876.html>> accessed 5 June 2021.

⁸⁸⁷ Ibid.

⁸⁸⁸ Ibid.

⁸⁸⁹ Ibid, Preamble. Examples of the new and pending Bills considered at the time are the Company and Allied Matters (CAMA) 2004 (Repeal and Re-Enactment Bill) 2018, now CAMA 2020, and the Federal Competition & Consumer Protection (FCCP) Bill 2016 No SB257, now FCCPA 2018, respectively.

⁸⁹⁰ Ibid.

⁸⁹¹ Aliyu S Abubakar, ‘Analysis of Electronic Transactions Bill in Nigeria: Issues and Prospects’ (2014) 5(2) Mediterranean Journal of Social Sciences 215; Simon Kemp, ‘Digital 2021: Nigeria’ (Data Reportal, 11 February 2021) <<https://datareportal.com/reports/digital-2021-nigeria>> accessed 5 June 2021.

⁸⁹² Oxford Business Group, Nigeria’s E-Commerce Industry Shows Growth Potential’ (*Oxford Business Group*, 2016) <<https://oxfordbusinessgroup.com/news/nigeria’s-e-commerce-industry-shows-growth-potential>> accessed 3 March 2020.

⁸⁹³ Aliyu S Abubakar (n 876) 215-216; All Africa, ‘Creating a Legal Framework for Electronic Transactions to Protect Nigerians - Looking Back at the Achievements of the 8th Senate of Nigeria’ (8th Senate of the

although the drafting of the ETB is essentially borne out of country's desire to stabilise and upgrade its economy, the increased use of ICT systems by a majority of the Nigerian population propelled the need to control its use in commercial transactions and eliminate further incidents of fraud.

4.1.3.4 Overview of Provisions

The ETB is divided into 9 parts with a total of 44 sections. Part 1 restates the objectives of the Bill while part 2 validates electronic documents and outlines rules that guide the document's admissibility.⁸⁹⁴ Part 3 focuses on e-signatures and the functions and liabilities of certification authorities⁸⁹⁵ while part 4 provides exhaustive rules for protecting online personal data.⁸⁹⁶ In part 5, the validity of electronic contracts is affirmed.⁸⁹⁷ This part also explains the meaning of an offer and how acceptance of an offer can be confirmed.⁸⁹⁸ Part 6 generally outlines a list of activities that should be performed while performing a carriage of goods contracts.⁸⁹⁹

In part 7, consumer protection matters are addressed. Here, online merchants and service providers are required to provide consumers with relevant and sufficient information "clearly presented in a language the consumer understands, conspicuously displayed at appropriate stages of consumer decision making and capable of being saved and printed."⁹⁰⁰ This part of the Bill also abhors unsolicited electronic messages, misleading marketing practices, and fraudulent commercial practices.⁹⁰¹

In part 8, conditions for liability of merchants and service providers (like online platforms), who control information systems, but are not directly involved in initiating a

Federal Republic of Nigeria, 13 June 2019) <<https://allafrica.com/stories/201906130322.html>> accessed 5 June 2021.

⁸⁹⁴ Electronic Transaction Bill 2017, sections 3-7.

⁸⁹⁵ Sections 11-15.

⁸⁹⁶ Sections 17-24.

⁸⁹⁷ Section 26 (1)-(5).

⁸⁹⁸ Ibid.

⁸⁹⁹ Section 31-32.

⁹⁰⁰ Section 32(1).

⁹⁰¹ Sections 34-35.

transaction, selecting the addressee of an electronic communication, or modifying the contents of such communication, are outlined⁹⁰² while part 9 acknowledges the relevance of secondary legislations that establish standards of conduct for online merchants and service providers who conduct business operations in Nigeria.

In summary, since the ETB is yet to receive presidential assent, its practical impact on consumers and online merchants cannot be determined. However, drawing on the research framework (figure 12), one may be able predict the likely effect its provisions will have on an informed consumer. The ETB is a welcome development since it not only accords validity to online contracts and signatures, but also aims protect the interest of consumers and other entities who engage in electronic transactions. It differs from the FCCPA in terms of their legislative approach since contrary to the FCCPA, the Bill acknowledges the role of sector-specific secondary legislations in complementing its objectives. That notwithstanding, it is presumptuous to assume that ETB will provide the needed legislative solution to the central issues identified in this research, if eventually signed as law. Thus, subsequent chapters of this thesis will reveal the adequacy or otherwise of its provisions in relation to the identified issues.

4.2 The UK

Like the section on Nigeria, this section briefly discusses the general background to the Consumer Rights Act 2015 as a major law which regulates consumer sale and supply contracts.⁹⁰³

⁹⁰² Sections 36-40.

⁹⁰³ It is important to add that the Electronic Commerce (EC Directive) Regulations (ECR) 2002 is a UK legislation which implements the E-commerce (EC) Directive 2000/31/EC and is also applicable to B2C e-commerce. Prior to Brexit, its main objective was to eliminate obstacles to online cross-border services within the EU and to provide regulatory certainty for customers needed to facilitate greater use of e-commerce. Nevertheless, the Electronic Commerce (Amendment etc.) (EU Exit) Regulations 2019 has introduced a few changes to the ECR, solely to reflect UK's exit from the EU. A background to the ECR is not provided in this research since the CRA 2015 and other more recent complementary laws are employed in discussing the central research issues in part 2 of this thesis.

4.2.1 The Consumer Rights Act (CRA) 2015

4.2.1.1 Legal Background

The CRA received royal assent on 26 March 2015, subsequently coming into force on 1 October 2015.⁹⁰⁴ The Act firmly applies to B2C transactions whilst also introducing some significant changes to UK consumer law regime.⁹⁰⁵ The CRA primarily serves as a consolidating statute, which amongst other statutes, replaces the consumer rights provisions in the Unfair Contract Terms Act (UCTA) 1977, the Sale of Goods Act (SOGA) 1979, the Supply of Goods and Services Act (SGSA) 1982 and the Unfair Terms in Consumer Contracts Regulations (UTCCR) 1999.⁹⁰⁶

Prior to the adoption of the CRA, common law or case-based rules of contract, tort and property mostly regulated the realm of private law, except in few cases where those rules made it into the statute books.⁹⁰⁷ One of such cases is the codification of the Sale of Goods Act (SOGA) 1979, which repealed and replaced the 1893 version of the Act. As can be gleaned from the discussion on the 1893 version of the Act, the SOGA 1979 did not provide express rules for consumer sales contracts since it was enacted prior to the era of renewed interest in consumer matters. That notwithstanding, the law applied to such contracts in practice.⁹⁰⁸

In 1977, the Unfair Contract Terms Act (UCTA) was enacted by the UK Parliament, with the Act offering some degree of protection to consumers.⁹⁰⁹ This UCTA provided more protection for consumers by regulating the extent to which parties can evade liability for breach of contractual obligations using exclusion clauses. It also delimited the scope of

⁹⁰⁴ CRA 2015 Explanatory Note 1.

⁹⁰⁵ For scope, see Article 1(1) of the Act. For the significant changes, see the Overview of the Act in section 4.2.1.4 below.

⁹⁰⁶ Explanatory Notes 24. Other statutes include Supply of Goods (Implied Terms) Act 1973, Sale and Supply of Goods Act 1994 and Sale and Supply of Goods to Consumers Regulations 2002.

⁹⁰⁷ Christian Twigg-Flesner, (n 33) 2.

⁹⁰⁸ Ibid. Other pieces of legislation which provided some degree of protection to consumers include the Trade Descriptions Act 1968, the Consumer Protection Act 1987 and the Sale and Supply of Goods Act 199.

⁹⁰⁹ Unfair Contract Terms Act 1977 now applies to Business-to-Business transactions.

parties' liabilities. Under this Act, terms limiting liability were rendered ineffective. The unreasonableness of a term was ascertained by considering the nature of the contractual obligation sought to be excluded and whether the party who sought to exclude such liability is acting against a consumer. However, despite its title, contract terms which were deemed 'unfair' were practically not policed under the Act, thereby, demonstrating that the Act was rather restricted in purpose.⁹¹⁰

Besides these two significant pieces of legislation, the UK had been implementing several consumer protection policies which derive from EU laws and Directives since 1985. The implementation of the EU Directives, nonetheless, created further complexities for UK consumer policy.⁹¹¹ These complexities are linked to the manner in which new EU Consumer Directives were transposed into the UK prior to Brexit.⁹¹² According to rule 5(d) of the withdrawn Guiding Principles for EU legislation, a 'copy out' approach was mostly used in transposing the Directives.⁹¹³ This approach requires the UK draftsman to reproduce the wordings of the Directives as a separate statutory instrument,⁹¹⁴ unless such approach adversely affects UK interests.⁹¹⁵

To illustrate the complications associated with implementing some EU Directives on consumer protection into the UK, some academic commentaries on the Consumer Sales and Guarantees Directive 99/44/EC (CSGD) and the Unfair Contract Terms Directive 93/13/EEC (UCTD) will be considered.

When describing the negative effect the implementation method for CSGD could have on UK consumer law regime, Miller states that the such method has proven "troublesome, converting English sales law into a tortuous web of legal provisions, impenetrable to those

⁹¹⁰ Christian Twigg-Flesner (n 33) 2.

⁹¹¹ Ibid.

⁹¹² Ibid; Transposition of EU Directives is required under a proviso to Article 288 of the Treaty of the Functioning of the European Union (TFEU), which makes a Directive binding on EU member states, although national authorities are at liberty to choose the form and method of transposition.

⁹¹³ Guiding Principles for EU Legislation, rule 5(d), withdrawn on 1 January 2021.

⁹¹⁴ The EU Directives were implemented as a free-standing secondary legislation pursuant to Section 2(2) of the European Communities Act 1972.

⁹¹⁵ Ibid.

unversed in the particular area of sales law.”⁹¹⁶ In relation to its impact on the Sale of Goods Act (SOGA) 1979, Miller adds that the law has become a “disjointed, often incoherent, amalgam of [the] 20th century consumer protection provisions grafted onto commercially rooted, and orientated rules.”⁹¹⁷ More specifically, the introduction of new consumer-friendly remedies to the SOGA 1979 and the Supply of Goods and Services Act 1982,⁹¹⁸ in addition to the remedies already existing in these UK laws, implies that consumers are now left with confusing sets of overlapping remedies.⁹¹⁹

Same overlapping regime is evident where a set of regulations implementing the UCTD was used to supplement the already existing UCTA 1977.⁹²⁰ Here, the UCTA was not amended despite the existence of overlapping provisions in the UCTD. Rather, the Unfair Terms in Consumer Contracts Regulations (UTCCR) 1999 (as amended), implemented the UCTD, leaving two identical legal regimes existing alongside each other.⁹²¹ Recognising the issues created by parallel regimes, the Law Commission subsequently recommended the consolidation of the UCTA 1977 and the UTCCR.⁹²²

In the light of the foregoing concerns, the CRA 2015 was promulgated, replacing some earlier UK laws which implemented the EU Directives.⁹²³

4.2.1.2 Purpose of the Act

The CRA aims to simplify, modernise and strengthen consumer rights in the UK by consolidating into a single legislative document, the key consumer rights notably derived

⁹¹⁶ Lucinder Miller, ‘After the Unfair Contract Terms Directive; Recent European Directives and English Law’ (2007) 3(1) *European Review of Contract Law* 88, 91.

⁹¹⁷ *Ibid.*

⁹¹⁸ Cap 29

⁹¹⁹ Paula Giliker (n 318) 79.

⁹²⁰ *Ibid.*

⁹²¹ *Ibid.*

⁹²² Law Commission, *Unfair Terms in Contracts* – LC292 (TSO, 2005). For more, see Christian Twigg-Flesner (n 692) 3.

⁹²³ The CRA only repeals the B2C provisions of the Supply of Goods (Implied Terms) Act 1973, the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982 and the Unfair Contract Terms Act 1977, amending their respective provisions to cover B2B and C2C transactions. Additionally, the CRA replaces the Sale and Supply of Goods to Consumers Regulations 2002 and the Unfair Terms in Consumer Contracts Regulations 1999. See Consumer Rights Act 2015, Explanatory Notes 23-24.

from EU Directives, and covering the essential areas of unfair contract terms, contracts for goods, services and digital content.⁹²⁴ The explanatory note to the CRA confirms that prior to the Act's adoption, UK consumer law was needlessly complex, fragmented, in pieces and unclear for instance, in places where it had not been updated to align with technological developments, was imprecise and was phrased in legalistic language.⁹²⁵ As explained in the preceding sub-section, there was a lack of coherence between the implemented EU laws and existing UK legislations which resulted in the creation of parallel regimes and more fragmented pieces of legislations. Therefore, the simplification of the UK consumer law regime necessitated the drafting of the CRA.⁹²⁶

It is important to note that the CRA does not implement the Consumer Rights Directive 2011/83/EU (CRD),⁹²⁷ despite the semblance in titles.⁹²⁸ However, the provisions of the CRD which relates to off premises and distance contracts can be found in earlier UK laws such as the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations (CCR) 2013⁹²⁹ and the Consumer Rights (Payment Surcharges) Regulations (CRR) 2012.⁹³⁰

The CCR 2013 applies to off-premises and distance sales contracts for goods, services, and digital content, subject to some exemptions and exclusions.⁹³¹ It complements the CRA 2015, especially with regards to the former's provisions on mandatory information

⁹²⁴ Paula Giliker, (n 318) 78.

⁹²⁵ Explanatory Note 5.

⁹²⁶ Consumer Rights Act, Explanatory Note 5.

⁹²⁷ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on Consumer Rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC and repealing Council Directive 85/577/EEC and Directive 97/7/EC, OJ L 304/64.

⁹²⁸ However, However, Part 1 of the CRA implemented some parts of Articles 5, 6, 18, 20 and 23 of the CRD. For more, see Paula Giliker, 'The Transposition of the Consumer Rights Directive into UK Law: Implementing a Maximum Harmonization Directive' (2015) 23(1) *European Review of Private Law* 5.

⁹²⁹ SI 2013/3134.

⁹³⁰ SI 2012/3110; Consumer Rights Act 2015, Explanatory Note 12

⁹³¹ For instance, section 6 of the CCR excludes contracts connected to gambling, creation of property rights, travel packages and some financial products, as well as contracts concluded using automatic vending machines or telephones. Additionally, some other contracts are partially exempted under sections 7, 27 and 28.

requirements and consumer right of cancellation and withdrawal.⁹³² By partly implementing the CRD, the CCR 2013 fulfils these five objectives: (i) sets out the pre-contractual information requirements that a trader must comply with, (ii) clarifies how such information should be given, (iii) provides cancellation rights for consumers in off-premises and distance contracts, (iv) prohibits the inclusion of additional hidden costs by default, and (v) disallows customer service helplines from charging above the basic call rate for calls made by consumers.⁹³³ On the other hand, the CRR 2012 has now been amended by the UK Payment Services Regulation (PSR) 2017.⁹³⁴ The PSR 2017, amongst other objectives, increases consumer rights in e-payment transactions, introduces a total ban on surcharges for payments made in B2C transactions and outlines technical measures to improve general online payment security.⁹³⁵

Although the CRA does not directly implement the CRD, the UK considered “the definitions and measures contained within the CRD and, as far as appropriate, made the [CRA] consistent with the CRD, with the intention of achieving a simple, coherent framework of consumer legislation.”⁹³⁶ This means that the major purpose of the CRA is to simplify UK consumer law, whilst also giving effect to the EU law.

4.2.1.3 Socio-Economic Background

The UK government acknowledges that competitive markets like the UK, thrive where incentives are created for businesses to become more efficient, innovative and able to competitively attract more customers.⁹³⁷ They recognise that sustaining market

⁹³² For example, Section 12 of the CRA refers to Regulation 9, 10 and 13 of the CCR for pre-contractual information requirements under a goods contract. Also see Consumer Rights Act, Explanatory Note 11.

⁹³³ SI 2013/3134.

⁹³⁴ SI 2017/752, in force 13 January 2018. See Section 12. The PSR implements the Revised Payment Services Directive (EU) 2015/2366 (PSD 2) and has now been amended by Part 2 of the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, solely to reflect UK’s exit from the EU.

⁹³⁵ The PSR 2017 was also adopted to bring the payment services market up to date with current technological developments. The Regulation generally covers the use of credit cards, debit cards and some online forms of payments. More on the PSR 2017 is discussed in chapter six of this thesis.

⁹³⁶ Consumer Rights Act 2015, Explanation Note 13.

⁹³⁷ Consumer Rights Bill: Statement on Policy Reform and Responses to Pre-Legislative Scrutiny (January 2014) 7-8

competition requires consumers to be empowered, active and confident in the market.⁹³⁸ To this end, the government made some inquiries on existing consumer laws and institutions in 2012,⁹³⁹ eventually publishing a report which highlights areas of uncertainty, complexity and duplication in the law, as well as evidence that the laws have been detrimental to consumer interest.⁹⁴⁰ The outcome of this report led to the drafting of the CRA 2015. Thus, the socio-economic need to sustain a competitive market by making consumers more empowered, active, and confident contributed to the passage of the CRA.

As noted by the Department of Business, Information and Skill (BIS), the long-term goal of formulating the CRA is to enhance economic productivity and growth while the objective of boosting consumer confidence through legal awareness and empowerment, serves as the means to this end⁹⁴¹ Devenney further adds that the desire to strengthen the UK economy in view of the impact of global financial crisis “fuelled a market-driven approach to consumer law.”⁹⁴²

To achieve these goals, there was a further need to restructure existing consumer institutions and create new ones. The aim is to tackle rogue traders and internet scams,⁹⁴³

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/274912/bis-14-566-consumer-rights-bill-statement-on-policy-reform-and-responses-to-pre-legislative-scrutiny.pdf> accessed 18 May 2021.

⁹³⁸ Ibid.

⁹³⁹ Department for Business Innovation and Skills, ‘Empowering and Protecting Consumers – Government Response to the Consultation on Institutional Reform’ (April 2012)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/253701/bis-12-510-empowering-protecting-consumers-government-response-1.pdf> accessed 18 May 2021.

⁹⁴⁰ Lorraine Conway, ‘New Consumer Landscape’ (Briefing Paper Number CBP 6759, 11 May 2017) <<https://commonslibrary.parliament.uk/research-briefings/sn06759/>> accessed 18 May 2021.

⁹⁴¹ Mark Peacock *et al*, ‘Consumer Rights and Economic Growth- Final Report’ (GHK Consulting, 11 January 2013) p 8-11

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/274805/bis-13-915-ghk-report-Consumer-rights-and-economic-growth.pdf> accessed 18 May 2021.

⁹⁴² James Devenney, ‘The Consumer Rights Act 2015 and Related Reforms: An Epic Disappointment’ in Roger Halson and David Campbell (eds) *Research Handbook on Remedies in Private Law* (Edward Elgar 2019) 257.

⁹⁴³ Discharged by the National Trading Standards Board (NTSB). This organisation was established in April 2012 by the then Department for Business, Innovation and Skills (BIS), now Department of Business, Energy and Industrial Strategy (BEIS). This organisation also enforces consumer laws, together with the Citizens Advice Bureau and the Competitions and Markets Authority.

educate consumers and offer advice,⁹⁴⁴ protect consumer rights,⁹⁴⁵ and promote market competition for consumer benefit.⁹⁴⁶ The overall objective of these wide-range reforms is to “strengthen the framework in which markets operate,” to enforce compliance of laws by businesses, to promote greater consumer rights awareness, and to encourage more consumer understanding and responsiveness to laws.⁹⁴⁷

It is important to note that the goal of improving consumer confidence appears to have been partly fulfilled in practice looking at the 2019 empirical report on the CCR 2013 which complements the provisions of the CRA 2015.⁹⁴⁸ Here, the respondents, which consist of a mix of consumer representatives, trade associations, businesses and enforcement experts, opine that “the Regulations had made and were continuing to make an important contribution to the availability of information and a consequent impact on consumer confidence.”⁹⁴⁹ They further confirm the importance of creating consumer rights awareness and education, although some suggest that such awareness should also be extended to businesses.⁹⁵⁰ Though the respondents acknowledge that the 14-day window for the exercise of withdrawal/cancellation rights has contributed to improving consumer confidence, they further suggest that additional flexibility in the exercise of rights should be provided to more vulnerable consumers, especially those with mental health concerns.⁹⁵¹

The CCR report ultimately concludes by revealing that “consumers’ willingness and propensity to engage in e-commerce has increased since the Regulations came into

⁹⁴⁴ Accomplished by the Citizens Advice Bureau (CAB).

⁹⁴⁵ Discharged by the Local Authority Trading Standards Services (TSS). This body is further supervised by the NTSSB.

⁹⁴⁶ Discharged by the Competition and Markets Authority (CMA). The Office of Fair Trading (OFT) and the Competition Commission were merged to form the CMA in March 2012. Since this body ensures that consumers are treated fairly in the market, they oversee the enforcement of unfair terms and conditions, in addition to tackling other anti-competitive practices in the market. Other institutions include the Chartered Trading Standards Institute (CTSI), the Office of Communications (Ofcom) and the National Trading Standards Estate Agency Team of Powys County Council.

⁹⁴⁷ Consumer Rights Bill (n 937) 8.

⁹⁴⁸ Department for Business, Energy & Industrial Strategy, (n 136).

⁹⁴⁹ Ibid, 7.

⁹⁵⁰ Ibid.

⁹⁵¹ Ibid, 16.

force...[and] they are more important to UK consumers than ever. They would also appear to be providing the reassurance consumers need to operate and purchase online. Accordingly, online sales have grown strongly over the period since the Regulations came into force.”⁹⁵² This conclusion is supported by data which shows that as of January 2018, 95% of the UK population (63.4 million people) were reported to be internet users, representing a 5.7% growth (approximately 3.4 million people) from January 2017.⁹⁵³ Furthermore, 77% had smart phones for internet access and 74% had laptops or desktop computers.⁹⁵⁴ In addition, 77% of adults were reported to have made online purchases in January 2017, with total monthly visits to Amazon and eBay websites in the same year peaking at 836,400,000. By January 2019, it was reported that 19.3% of total retail sales were made online compared to 15.4% recorded two years earlier.⁹⁵⁵

These pieces of data show that the confidence needed to encourage more adoption of e-commerce by consumers has been strengthened since the promulgation of consumer protection legislations in UK. This, in addition to other favourable macro-economic and technological factors, may have had a corresponding positive impact on the UK economy.

4.2.1.4 Overview of Provisions

The CRA is divided into 3 parts which cumulatively consist of 101 sections. It also has 10 schedules which outline provisions and amendments to some existing legislations. Part 1 of the Act is sub-divided into four chapters, with each chapter containing provisions on rules regulating contracts for goods, digital content and services, respectively. Chapter 2 covers supply of goods. The chapter consolidates existing laws on the subject by restating certain minimum standards and implied terms which ought to be met by consumer goods.⁹⁵⁶ Extensive remedies for the breach of the implied terms are also covered under

⁹⁵² Ibid, 19.

⁹⁵³ Ibid.

⁹⁵⁴ Ibid.

⁹⁵⁵ Statista, ‘Internet Retail Sales as a Percentage of Total Retail Sales in the United Kingdom (UK) from May 2017 to June 2021’ (4 August 2021) <<https://www.statista.com/statistics/286384/internet-share-of-retail-sales-monthly-in-the-united-kingdom-uk/>> accessed 20 August 2021.

⁹⁵⁶ CRA, Sections 9-18.

this chapter.⁹⁵⁷ In chapter 3, significant provisions on the rights and remedies of consumers with respect to digital contents are introduced and tailored to fit within the digital spectrum, where some existing statutory rights and remedies become inadequate.⁹⁵⁸ Chapter 4 generally covers terms implied into supply service contracts, essentially replicating the provisions previously contained in the Supply of Goods and Service Act 1982.

Part 2 of the CRA focuses on unfair contract terms by removing the overlapping and conflicting provisions of the UTCCR 1999 and the consumer ambit of the UCTA 1977, and consolidating both under this part of the Act.⁹⁵⁹ It is important to note that contrary to the limited approach employed in drafting the UCTA, the CRA applies the ‘fairness test’ to consumer contracts and notices.⁹⁶⁰ Like the UCTD, an indicative list of terms which may be regarded as being ‘unfair’ is also contained in Schedule 2 of the CRA.

Part 3 of the Act covers a distinct list of topics broadly dubbed ‘miscellaneous and general.’ This part is sub-divided into five major chapters, each dealing with enforcement, private action in competition law, letting fees, student complaints scheme and secondary ticketing, respectively. Some of these provisions do not directly derive from the consolidated legislations; rather, they are introduced into the CRA, having been seen as significant areas of concern to consumers.⁹⁶¹ Although these miscellaneous provisions are commendable, it nevertheless, gives the impression that the Act has an unclear purpose and is somewhat disjointed from its original focus on consumer private rights.⁹⁶²

In summary, the CRA remains a very important piece of legislation which is largely market-driven in its approach to regulating consumer rights. Although the objective of promoting consumer confidence may have contributed to a corresponding increase in the volume of B2C sales, the Act’s objective of simplifying the consumer law regime remains

⁹⁵⁷ Ibid, sections 19-24.

⁹⁵⁸ Sections 42-45.

⁹⁵⁹ Consumer Rights Act 2015, Explanatory Notes 287-294.

⁹⁶⁰ Section 62.

⁹⁶¹ Christian Twigg-Flesner, (n 33) 31.

⁹⁶² Ibid.

questionable. This is because the CCR 2013 and the CRA still have complementary but overlapping provisions. More so, the CRA did not consolidate the Consumer Protection Act 1987.⁹⁶³ Nonetheless, by separating consumer contracts from most other legislations, the CRA may have, to a certain degree, contributed to simplifying the UK consumer law.

4.3 China

Like the discussion on the UK, this section is sub-divided into two parts, with each part discussing the general background to the China Consumer Protection Law 2013 and the E-Commerce Law of 2018, respectively.

4.3.1 Consumer Protection Law (CPL) 2013

4.3.1.1 Legal Background

The CPL 2013 was passed into law by the Chinese National People's Congress (NPC) on 31 October 2013, subsequently entering into force on 1 January 2014.⁹⁶⁴ The law amended the 1993 version which was initially adopted "to protect the legitimate rights and interests of consumers, maintain social and economic order, and promote the healthy development of the socialist market economy."⁹⁶⁵ Prior to the enactment of the first CPL in 1993, China had no comprehensive consumer protection policy. This is notably due to the ideological belief that "consumerism implied reliance upon capitalist means of production, rather than upon the collective norms of socialist production."⁹⁶⁶ Thus, China, being a renowned socialist state, did not feel a sense of urgency to regulate private production, distribution and exchange of goods and services.

⁹⁶³ This Act holds manufacturers liable for producing unsafe/defective products for consumers. For more on some consumer laws omitted made by the CRA, see Christian Twigg-Flesner, (n 33) 9-11.

⁹⁶⁴ 'Decision on Amending the Law of the People's Republic of China on the Protection of Consumer Rights and Interests', adopted at the 5th session of the Standing Committee of the Twelfth National People's Congress (NPC) on 25 October 2013.

⁹⁶⁵ China Consumer Protection Law 2013, Article 1.

⁹⁶⁶ Capitalism is an economic system which supports ownership, distribution and exchange of means of production by private individuals while socialism advocates for their collective ownership and distribution by the community. See Mark Williams, 'Foreign Business and Consumer Rights: A Survey of Consumer Protection Law in China', (2000) 18 UCLA Pacific Basin Law Journal 252, 253.

However, from 1978, a modern ‘reform and opening-up period’ characterised by the steady deviation from the strict socialist doctrine of public ownership into a preliminary stage of a market economy, was initiated in China.⁹⁶⁷ This modern reform was triggered by an increase in the consumption pattern of consumers and the resultant need for economic liberalisation of the Chinese economy through legal reforms. Accordingly, China witnessed the first wave of preliminary reforms between 1978 and 1990, with the laws focused on protecting consumer interest and promoting the development of the Chinese economy.⁹⁶⁸

On 1 January 1987, the “General Principles of the Civil Law of the Peoples Republic of China (PRC) was formally promulgated.”⁹⁶⁹ This is China’s first civil law that laid the foundation for the recognition of personal rights and interests,⁹⁷⁰ including those of consumers.⁹⁷¹ That notwithstanding, China has recently promulgated the Civil Code of the People’s Republic of China (Civil Code) 2020, which updates and consolidates previous standalone civil laws like Contract Law, General Principles of Civil Law and Tort Liability Law.⁹⁷² The Civil Code generally aims to “protect the lawful rights and interests of the persons of the civil law, regulate civil law relations, maintain social and economic order, meet the needs for developing socialism with Chinese characteristics, and carry forward the core socialist values”.⁹⁷³

⁹⁶⁷ Jörg Binding, ‘Consumer Protection Law in the People’s Republic of China’ (2014) 3 China-EU Law Journal 223, 225.

⁹⁶⁸ Ibid. Some of these reforms include the Chinese Joint Venture Law 1979, Civil Procedure Law 1982, Food Hygiene Law 1982, and Drug Management Law 1984.

⁹⁶⁹ General Principles of the Civil Law of the People’s Republic of China (promulgated by Order No 37 of the President of the People’s Republic of China, 12 April 1986, and effective 1 January 1987). Recently, the Civil Code of the People’s Republic of China was adopted at the third Session of the Thirteenth National People’s Congress on 28 May 2020. The law came into force on 1 January 2021.

⁹⁷⁰ Ibid, Article 2.

⁹⁷¹ Mary Ip, ‘Chinese Consumer Law: Recent Development and Implication’ (2001) 6(2) International Journal of Business 111, 113.

⁹⁷² Adopted at the Third Session of the Thirteenth National People’s Congress on 28 May 2020, effective 1 January 2021. Other standalone civil laws replaced by the Code are Property Law, Security Law, Marriage Law, Adoption Law and Inheritance Law. For more, see Bing Ling, ‘The New Contract Law in Chinese Civil Code’ (2020) 8(3) The Chinese Journal of Comparative Law 558-634.

⁹⁷³ Chinese Civil Code 2020, Article 1.

Recall from section 1.2 of chapter one that China is known to be an economy in transition.⁹⁷⁴ As an economy in transition, consumers were initially elated due to the sudden new-found freedom to exchange goods and services.⁹⁷⁵ However, such excitement became tainted with frustration on discovering the prevalence of false labels on products and the rapid circulation of harmful, defective and counterfeit goods in the market. These issues propelled the need to enact a far more reaching legal framework on consumer protection.⁹⁷⁶ This led to the beginning of the second wave of legal reforms, commencing in 1990s and extending through the start of the new millennium.⁹⁷⁷ It was within this period that the Product Quality Law (PQL) of the PRC 1993 was promulgated to police manufacturers of substandard and defective products.⁹⁷⁸

Although these fragmented pieces of legislations were formulated to protect consumer rights and interests, the key issue of protecting consumers was yet to be addressed directly. To address the fragmentation in existing consumer-related laws, the CPL 1993 was then adopted as the first centralised law on consumer protection.⁹⁷⁹ This was followed by the enactment of the Advertising Law of the PRC 1994, aimed at protecting consumers from deceptive and misleading advertisements.⁹⁸⁰ Thereafter, the Contract Law of the PRC was enacted on 15 March 1999 to regulate transactional relationships between parties of equal status.⁹⁸¹

⁹⁷⁴ A transition economy is commonly referred to as one which changes from a centrally planned economy (like the socialist economy) to a free market (like the highly competitive capitalist economy). For the growth of China as an East Asian transitional economy, see C Dixon, 'East Asian Miracle' in Rob Kitchin and Nigel Thrift (eds) *International Encyclopedia of Human Geography* (Elsevier 2009) 273-279.

⁹⁷⁵ Kristie Thomas (n 325).

⁹⁷⁶ Ibid.

⁹⁷⁷ Ibid

⁹⁷⁸ Product Quality Law of the People's Republic of China (adopted at the 30th Meeting of the Standing Committee of the Seventh National People's Congress, Feb. 22, 1993), amended in July 2000.

⁹⁷⁹ Junke Xu, 'Who Will Protect Chinese Consumers? The Past, the Present and Future Consumer Protection Legislation in China' (2011) 24(1) *Loyola Consumer Law Review* 22, 27.

⁹⁸⁰ Advertisement Law of the People's Republic of China (adopted at the Tenth Meeting of the Standing Committee of the Eighth National People's Congress, 27 October 1994, in force on 1 February 1995). 27, 1994)

⁹⁸¹ Contract Law of the People's Republic of China, Article 3.

The second wave of regulatory reforms introduced so much laws that in just a single 5-year period (between 1993 to 1998), eighty-five consumer-related laws were implemented in China.⁹⁸² More so, the legislative bodies in each Chinese autonomous region formulated several local laws that clarified, complemented and adapted the CPL 1993 to suit their local condition.⁹⁸³ With 31 autonomous provinces in China, each region applied its own unique local law in implementing the CPL 1993, ultimately resulting in the existence of several fragmented pieces of local consumer protection laws.⁹⁸⁴ This made consumer understanding and the implementation and enforcement of laws more difficult; ultimately necessitating the simplification and consolidation of several other overlapping legislations at the national level.

With regards to the factors which influenced the drafting of the 1993 CPL, it is important to note that China drew inspiration from international experiences and norms of other countries.⁹⁸⁵ More specifically, the country undertook some investigational journey to the UK, the USA and Netherlands, analysing some international and domestic legislations, case laws, scholarly opinions and commentaries from government and consumer NGOs.⁹⁸⁶ Additionally, the law is said to have been influenced by the UN Guidelines on Consumer Protection (UNGCP) 1985.⁹⁸⁷ Thus, China's borrowing of consumer norms and practices from international legislative instruments and the legal systems of other jurisdictions, reinforces the argument made in section 1.2 of chapter one, highlighting the benefits of learning from the Chinese legislative experience. The foregoing

⁹⁸² Mary Ip and Mary Marshall, 'Evolution of Chinese Consumer Protection: Through the Lens of Product Quality Laws' (2014) 26 *Bond Law Review* 35, 36.

⁹⁸³ *Ibid.*

⁹⁸⁴ *Ibid.*

⁹⁸⁵ Kristie Thomas (n 325) 193.

⁹⁸⁶ *Ibid.*

⁹⁸⁷ The UNGCP 1985 was amended twice in 1999 and 2016. The UNGCP 1985 was formulated for two reasons: the first objective is "to create an international framework within which national consumer protection policies and measures can be worked out" and the second goal is "to further international co-operation in this field." See David J Harland, 'The consumer in the Globalised Information Society: The Impact of the International Organizations' in Thomas Wilhelmsson, Salla Tuominen and Heli Tuomola (eds) *Consumer Law in the Information Society* (Kluwer Law International 2001) 3-29.

notwithstanding, the CPL 1993 lacked provisions protecting online consumers. This further necessitated its review.

4.3.1.2 Purpose of the CPL 2013.

Two decades after the initial implementation of the CPL 1993, China underwent critical legal and socio-economic reforms, learning from the practical lessons derived from years of implementing the 1993 law. Most importantly, it was necessary to unify overlapping consumer law regimes and improve the law by acknowledging the impact of technological developments in the digital economy.⁹⁸⁸

Amendments to the 1993 law was published for public consultation with official pronouncements suggesting that the law was being amended to enhance consumer confidence in the market, to strengthen the enforcement of consumer rights, to police emerging issues in the consumption market, to promote sustainable consumption and to prevent and mitigate the occurrence of consumer disputes.⁹⁸⁹ That notwithstanding, Article 1 of the CPL 2013 still retains the provision in the 1993 version, which states that the law is formulated “to protect the legitimate rights and interests of consumers, maintain social and economic order, and promote the healthy development of the socialist market economy.”⁹⁹⁰

4.3.1.3 Socio-economic Background

Consumer revolution⁹⁹¹ in the late 1970s China was triggered by a positive change in the Chinese consumption pattern.⁹⁹² This era witnessed a rise in Chinese gross domestic product (GDP) and a corresponding increase in consumer disposable income and standard

⁹⁸⁸ Kristie Thomas, *Revolution or Evolution? The Development of Consumer Protection Law in Contemporary China* (2017) 3 *Journal of Business Law* 181, 203.

⁹⁸⁹ Dan Wei, '(n 189) 42-5.

⁹⁹⁰ China Consumer Protection Law 2013, Article 1.

⁹⁹¹ Prior to this period, basic consumer goods such as television sets and refrigerators were considered as unobtainable luxuries. Presently, the acquisition of private cars and mobile phones have become common place. See Deborah Davis, 'Urban Consumer Culture' (2005) 183 *The China Quarterly*, Culture in the Contemporary PRC 692.

⁹⁹² *Ibid.*

of living across the country.⁹⁹³ As stated in section 4.3.1.1 of this chapter, prior to this period, China had no consumer protection policy. It was unnecessary to protect consumers in China since consumerism upholds the “opposition of interests between the consumer and the trader,”⁹⁹⁴ with this reality going contrary to the communal ideals of a socialist economy. Additionally, “consumption as an end-in-itself was regarded negatively.”⁹⁹⁵ Thus, since the economic system that existed in China prior to the consumer revolution era abhorred private consumption of factors of production, promulgation of any formal consumer protection law was not a priority.

Following the coming into force of the CPL in 1993, the China Consumer Association (CCA) which was set up by the CPL to oversee the enforcement of the Law,⁹⁹⁶ began to receive a record number of consumer complaints. For instance, in 1998, it was reported that the CCA responded to “667,000 formal complaints, a 6.7% increase from the previous year” and in 1999, over 800,000 complaints were received.⁹⁹⁷ Additionally, in 2000, a survey conducted by Williams on Chinese cities revealed that 84% of surveyed consumers “would complain to the Consumer Association if they suffered from poor quality goods or services and 56% would go on to use the courts if they could not achieve satisfaction.”⁹⁹⁸ The outcome of this survey demonstrates an increased responsiveness and willingness of consumers to enforce their rights, ultimately showing that the 1993 law was having a considerable impact on consumer rights empowerment.⁹⁹⁹ Consumer rights

⁹⁹³ Kristie Thomas, (988)

⁹⁹⁴ Rafał Mańko, ‘Resistance Towards the Unfair Terms Directive in Poland: The Interaction between the Consumer Acquis and a Post-socialist Legal Culture’ in James Devenney and Mel Kenny (eds), *European Consumer Protection: Theory and Practice* (Cambridge: Cambridge University Press 2012) 412, 413.

⁹⁹⁵ Michael B Griffiths, *Consumers and Individuals in China: Standing Out, Fitting In* (Routledge 2013) 1.

⁹⁹⁶ The China Consumer Association (CCA) was granted formal oversight and supervisory powers by the CPL under chapter 5 of the Law. It is important to note that this governmental organisation has been in existence since 26 December 1984. See D Wei, (n 189) 44.

⁹⁹⁷ Mark Williams, (n 966) 270.

⁹⁹⁸ Ibid.

⁹⁹⁹ Christie Thomas (n 973) 195.

awareness is said to have been facilitated by the educative role played by consumer organisations and state-run media.¹⁰⁰⁰

One of the economic reasons for promulgating the CPL 2013 was the government's need to enhance domestic consumption and rebalance the (former) export-dependent and investment-focused economy.¹⁰⁰¹ Emphasis is placed on promoting consumer confidence and improving Chinese domestic consumption in the 2013 law because compared to the USA whose domestic consumption accounted for 69% of its GDP as at 2012, the Chinese market was lagging behind, with only 30% of its GDP derived from domestic consumer sales.¹⁰⁰² In addition to this competitive drive, internet sales grew by 50-folds between 2006 to 2012,¹⁰⁰³ resulting in further attention being placed on e-commerce transactions. Thus, the objectives of promoting consumer confidence and enhancing sustainable domestic consumption are part of a wider Chinese socialist market economic policy.

4.3.1.4 Overview of Provisions

The CPL 2013 is divided into 8 chapters with a total of 63 articles. Chapter 1 outlines the objectives of the law and the principles that guide the conduct of businesses.¹⁰⁰⁴ Here, businesses are obliged to abide by the principles of fairness, equality, credibility, and honesty in their dealing with consumers.¹⁰⁰⁵ This chapter also acknowledges the role played by the state in protecting consumer rights and interests, encouraging consumer rights awareness and education, and supporting the activities of consumer organisations and related mass media.¹⁰⁰⁶ Chapter 2 outlines several inviolable rights that accrue to

¹⁰⁰⁰ The first consumer organisation was established in May 1983, following a string of consumer agitations against socio-economic conditions in the country, while the China Central Television (CCTV) has been publishing reports on consumer empowerment since 1991. See D Wei (n 189).

¹⁰⁰¹ Adam Jourdan, 'China Overhauls Consumer Protection Laws' (Reuters, 25 October 2013) <<https://www.reuters.com/article/idUSBRE99O05E20131025>> accessed 26 May 2021.

¹⁰⁰² Benjamin Robertson, 'China Urged to Increase Domestic Consumption to Rebalance Economy' (South China Morning Post, 20 January 2014) <<http://www.scmp.com/business/economy/article/1409982/china-urged-increased-domestic-consumption-rebalance-economy>> accessed 26 May 2021.

¹⁰⁰³ Kristie Thomas (n 988) 203.

¹⁰⁰⁴ CPL 2013, Article 1.

¹⁰⁰⁵ Article 4.

¹⁰⁰⁶ Articles 5-6.

consumers in the market, such as the right to receive accurate information about products and services and the right to compensation for faulty products.¹⁰⁰⁷ In chapter 3, the obligations of business operators towards consumers are outlined,¹⁰⁰⁸ in addition to rules controlling withdrawal rights and unfair contract terms.¹⁰⁰⁹ Chapter 4 generally covers the role played by the state in ensuring that consumer rights and interests are protected and enforced,¹⁰¹⁰ while chapter 5 amplifies the role of NGOs in educating consumers about their rights.¹⁰¹¹ In chapter 6, various forms of dispute settlement processes available to consumers are outlined.¹⁰¹² This is in addition to the consumer right to seek compensation from online platforms where suppliers cannot be contacted due to invalid names and addresses. Chapter 7 provides exhaustive conditions where an online merchant will be expected to bear civil liability for goods and services provided to consumers,¹⁰¹³ while chapter 8 contains a supplementary provision including farmers as category of persons protected under the law as consumers.

In summary, the CPL 2013 remains a significant piece of legislation which aims to unify existing overlapping consumer-related laws, protect consumer rights and interest, boost consumer confidence in online transactions and further drive the growth of the new socialist market economy. The legal background of the law shows that its provisions are a product of convergence of rules between legal systems. Irrespective of the market-driven purpose of the law, the socio-economic background shows that consumers are still responsive to the personal rights accorded to them by the law. Though issues with enforcement of substandard products remain a thorny unresolved reality in the market, the CPL's provisions demonstrate the government's commendable efforts at promulgating a far-reaching law that can be relied upon generally by consumers who make both online and offline purchases.

¹⁰⁰⁷ Articles 7-15.

¹⁰⁰⁸ Articles 18-22.

¹⁰⁰⁹ Ibid, Articles 25 and 26.

¹⁰¹⁰ Ibid, Articles 30-34.

¹⁰¹¹ Ibid, Article 37 and 38.

¹⁰¹² Ibid, Article 39.

¹⁰¹³ Ibid, Articles 48-61.

4.3.2 E-Commerce Law (ECL) 2018

4.3.2.1 Legal Background

China's regulatory efforts towards e-commerce began in the 1990s with the promulgation of several administrative rules by the then Ministry of Posts and Telecommunications and the Chinese State Council.¹⁰¹⁴ These administrative policies were in place till 2004, when the Electronic Signature Law (ESL) was adopted as the first e-commerce related legislation in China.¹⁰¹⁵ The ESL essentially confirms the parity of handwritten signatures with electronic signatures, whilst also acknowledging that electronic documents have equal validity with handwritten documents.¹⁰¹⁶

In 2010, the Chinese State Administration of Industry and Commerce (SAIC) promulgated the "Interim Measures for the Trading of Commodities and Services through the Internet" as an administrative policy aimed at protecting consumer rights and interests and regulating e-commerce markets.¹⁰¹⁷ This administrative policy covered most aspects of online transactions including but not limited to the obligations of online service providers, market access, trade competition, trading contracts and information, and commodity access.¹⁰¹⁸ This administrative policy was also promulgated to tackle commercial issues associated with electronic transactions, alongside other existing national and local rules, ultimately creating parallel regimes for online transactions.¹⁰¹⁹

¹⁰¹⁴ Examples of these regulations include the 'Interim Regulations of the People's Republic of China on the Management of International Networking of Computer Information 1996, 'Measures for Security Protection Administration of the International Networking of Computer Information Networks 1997 and the 'Implementation Rules for Provisional Regulations of the Administration of International Networking of Computer Information in the People's Republic of China 1998.

¹⁰¹⁵ Electronic Signature Law of the PRC (promulgated by the Standing Committee of the Tenth National Peoples Congress, 28 August 2004, in force 1 April 2005), amended in 2015.

¹⁰¹⁶ Ibid, Articles 3-8.

¹⁰¹⁷ In force 1 July 2010.

¹⁰¹⁸ Ibid.

¹⁰¹⁹ Junke Xu, (n 979) 35.

On realising the complexities associated with monitoring the compliance of several e-commerce related regulations, the Chinese government opted to unify these laws.¹⁰²⁰ It was also important to unify their enforcement standards both at the local and national level, seeing that the efficient enforcement of rights and obligations of parties had been challenging.¹⁰²¹ The enforcement concerns specifically relate to tackling the increasing circulation of counterfeit products in the market, policing fraudulent commercial activities on unsuspecting consumers, protecting general consumer rights, addressing intellectual property theft, promoting fair competition in the market and curtailing tax evasion.¹⁰²² Due to the country's weak enforcement system, most businesses cut corners to maximise profits, hence the proliferation of substandard products being sold at home or abroad.¹⁰²³

Though the Chinese government openly supports regulatory reforms aimed at improving its economy, it is thought that most earlier policies were promulgated when e-commerce development was still at its infancy.¹⁰²⁴ It is also argued that the drafters of the laws had limited knowledge and understanding of the functionalities of technologies employed in commercial transactions.¹⁰²⁵ Additionally, those policies were more suited to e-mail communications, as opposed to more recent technologies used in social marketing sites, interactive websites, and live streams.¹⁰²⁶ As a result, it was agreed that existing regulatory measures were inadequate to sustain trust and confidence in the online marketplace.¹⁰²⁷

¹⁰²⁰ Gal Forer, 'China's Online Retail Market in an Era of Technological Innovations' (2019) 10 Beijing Law Review 698, 709.

¹⁰²¹ Pinghui Xiao, 'Regulating China's E-Commerce: Harmonisation of Laws' (2018) 14(2) Journal of Food Law & Policy 301, 328-36.

¹⁰²² Eugene Clark, 'China's New E-Commerce Law: A Step in the Right Direction' (China.org 9 January 2019) <http://www.china.org.cn/opinion/2019-01/09/content_74355741.htm> accessed 28 May 2021.

¹⁰²³ Wayne M Morrison, 'China's Economic Rise: History, Trends, Challenges, and Implications for the United States' (Congressional Research Service, 25 June 2019) <https://www.everycrsreport.com/files/20190625_RL33534_088c5467dd11365dd4ab5f72133db289fa10030f.pdf> accessed 29 May 2021.

¹⁰²⁴ Chuanman You, 'Law and Policy of Platform Economy in China' (2020) 39 Computer Law and Security Review 105, 6.

¹⁰²⁵ Ibid.

¹⁰²⁶ Mckinsey Global Institute, 'China's Digital Economy: A Leading Global Force' (Mckinsey & Company, 3 August 2017) <<https://www.mckinsey.com/featured-insights/china/chinas-digital-economy-a-leading-global-force>> accessed 29 May 2021.

¹⁰²⁷ Ibid.

To rejuvenate the fragmented regulatory approach to addressing e-commerce issues in China, the National People's Congress thought it necessary to draft a coherent, innovative, and comprehensive law that can improve user confidence in e-commerce whilst also promoting the sustainable growth of its economy. The Congress eventually promulgated the E-Commerce Law (ECL) of the PRC on 31 August 2018, after two series of public consultations and four rounds of lengthy deliberations processes.¹⁰²⁸

4.3.2.2 Purpose of the ECL

The ECL aims to “safeguard the legitimate rights and interests of e-commerce entities, regulate e-commerce conduct, maintain market order, and promote the continuous and sound development of e-commerce.”¹⁰²⁹ From this broad definition, it is evident that the ECL applies to both B2B and B2C e-commerce transactions. The law further applies to e-commerce activities within the Chinese territory, thus, extending its scope to international suppliers who sell and deliver products or services to customers in China.¹⁰³⁰ However, the ECL does not apply to the sale of financial products and services, audio, and video programming services.¹⁰³¹ This is because China has specialised laws that regulate this aspect of electronic communication.¹⁰³²

The ECL generally strives to achieve these six objectives: (i) to promote user confidence in e-commerce by regulating the conduct of e-commerce platform operators, (ii) to clarify the steps involved in the formation and conclusion of online contracts, (iii) to encourage e-commerce innovation, development, and adoption, (iv) to promote the use of technical measures that enhance e-payment security, (v) to safeguard consumer rights and their personal information, and (v) to protect intellectual property rights by combating the circulation of counterfeit products in the online marketplace.¹⁰³³

¹⁰²⁸ Adopted at the Fifth Session of the Standing Committee of the 13th National People's Congress, in force on 1 January 2019.

¹⁰²⁹ E-Commerce Law of the PRC, Article 1.

¹⁰³⁰ Ibid, Article 2.

¹⁰³¹ Ibid.

¹⁰³² An example is the Banking Regulation and Supervision Law of the Peoples Republic of China 2003.

¹⁰³³ E-Commerce Law of the PRC 2018, Articles 5 and 6.

Recall from the legal background that the ECL builds on previous national, administrative, and local e-commerce related legislations, hence the above broad objectives. The drafters of the law further acknowledged the need to incorporate a wide range of issues into the ECL since e-commerce raises new legal issues which require a fresh approach to thinking than what was applicable in old laws.¹⁰³⁴ Ultimately, the major purpose of promulgating the ECL is to strike an equitable balance between commercial innovation, business interest and consumer welfare for the overall growth of the Chinese socialist market economy.

4.3.2.3 Socio-Economic Background

It has been a priority of the Chinese government to transform its economic structure through e-commerce.¹⁰³⁵ This economic objective is linked to the continuous construction of ICT infrastructure, the proliferation of the internet in the country and the steady growth of online consumption market.¹⁰³⁶ For instance, it is reported that 620,000 people had already used the internet by October 1997, with the number increasing to 59.1 million five years later (October 2002).¹⁰³⁷ Similarly, in June 2008, China surpassed the USA by recording a total number of 298 million internet users.¹⁰³⁸ By December 2017, China already had 771 million internet users.¹⁰³⁹ Although China's large population size fuels the increased rate of internet usage,¹⁰⁴⁰ the innovation-oriented technology landscape, coupled with the existence of several online platforms in the country, heightened the

¹⁰³⁴ Pinghui Xiao and Xiaoman Liu, 'The Enactment of the e-Commerce Law in China and its Impact on Food E-Commerce' (2019) 14(3) *European Food and Feed Law Review* 257.

¹⁰³⁵ Chuanman You, (1024) 4.

¹⁰³⁶ *Ibid*, 5.

¹⁰³⁷ *Ibid*.

¹⁰³⁸ *Ibid*.

¹⁰³⁹ The record by Statista shows that China currently has a minimum of 988 million internet users. See Statista, 'Number of Internet Users in China from December 2008 to December 2020' (Statista, 9 February 2021) <<https://www.statista.com/statistics/265140/number-of-internet-users-in-china/>> accessed 29 May 2021.

¹⁰⁴⁰ China's population size reached 1.4 billion by December 2019, with a 0.5% yearly increase in growth from 2013 to 2019 and 0.3% increase from 2018 to 2019. See C Textor, 'Population Growth in China from 2000 to 2019' (Statista, 2 March 2021) <<https://www.statista.com/statistics/270129/population-growth-in-china/>> accessed 29 May 2021.

potential for exploitative business practices. More so, key players in the market were at liberty to advance entrepreneurship, experiment on different business models and commercialise incentive services as they deemed fit, regrettably, without adequate regulatory oversight.¹⁰⁴¹

Incidental to the growth of ICT infrastructure and the increased number of Chinese online platforms, is the corresponding rise in the frequency of consumer rights infringements. Prior to the promulgation of the ECL, there were no clear-cut rules that guided the activities and conduct of e-commerce platforms. The social effect of this is the resultant impact it had on user trust and confidence in transactions emanating from these platforms. For instance, it is reported that between January to August 2016, ‘Consumer Network’, a business service organisation managed by Beijing Consumer Association,¹⁰⁴² received 736 complaints from consumers over fraudulent commercial activities conducted by business suppliers with no genuine contact details, and the refusal by platform operators to assume some degree of responsibility for the action of those suppliers.¹⁰⁴³ The inaction by platform operators, who are intermediaries to the transaction, was attributed to the absence of any clear or coherent rules apportioning liability.¹⁰⁴⁴ This left consumers with no definite course of remedy, thereby accounting for the limited level of satisfaction mostly derived by consumers from services provided by online platforms.¹⁰⁴⁵ Thus, to maintain market order in the platform economy, it was necessary to regulate the conduct

¹⁰⁴¹ Yu Hong and Jian Xu, ‘Toward Fragmented Platform Governance in China: Through the Lens of Alibaba and the Legal-Judicial System’ (2019) 13 International Journal of Communication 4642.

¹⁰⁴² ‘Consumer Network’ is established by the Beijing Consumer Association, a local arm of the China Consumer Association (CCA), to receive consumer complaints and convey same to responsible business operators, thereby, facilitating a three-way communication and speedy resolution of disputes between the business operators and consumers. It further publishes information that helps educate consumers about their rights. Also see Zhang Dan, ‘Beijing Consumers Association Held an Expert Seminar on Consumer Rights Protection in the Field of E-commerce’ (Consumer Network, 21 May 2021) <<http://www.bjxf315.com/rd/56641.html>> accessed 29 May 2021.

¹⁰⁴³ Yide Ma and Haoran Zhang, ‘Development of the Sharing Economy in China: Challenges and Lessons’ in Kung-Chung Liu and Uday S Racherla, *Innovation, Economic Development, and Intellectual Property in India and China- Comparing Six Economic Sectors* (Springer 2019) 467, 477.

¹⁰⁴⁴ Ibid.

¹⁰⁴⁵ Ibid, 478.

of all parties involved and guarantee consumers that their rights will be protected accordingly through a comprehensive law on e-commerce.

4.3.2.4 Overview of Provisions

The ECL is divided into 6 major chapters with a total of a total of 89 articles. Chapter 1 covers the aims and objective of the law, its scope of application and the guiding principles governing consumer protection, business ethics and market competition.¹⁰⁴⁶ It also outlines the role of the state in facilitating the innovation, promotion, development, and enforcement of e-commerce through relevant competent departments.¹⁰⁴⁷ Chapter 2 focuses on the obligations of e-commerce operators and e-commerce platform operators with regards to compliance with pre-contractual information, guaranteeing safety of goods sold,¹⁰⁴⁸ prohibiting targeted marketing strategies and tie-in sales, and their delivery obligations towards consumers.¹⁰⁴⁹ It further clarifies the relationship between e-commerce platform operators and their business suppliers, together with their allocation of responsibility for violating consumer rights.¹⁰⁵⁰ Chapter 3 covers the formation, conclusion and performance of online contracts,¹⁰⁵¹ while chapter 4 requires e-commerce and platform operators to clarify the dispute resolution measures available to consumers.¹⁰⁵² In chapter 5, measures that facilitate e-commerce innovation, promotion, development, and adoption for all Chinese provinces, autonomous regions and municipalities are outlined.¹⁰⁵³ Finally, chapter 6 broadly covers the civil and criminal liabilities and sanctions that could be faced by e-commerce and platform operators for violating the provisions of the law¹⁰⁵⁴

¹⁰⁴⁶ Ibid, Articles 1, 2 and 5.

¹⁰⁴⁷ Ibid, Articles 3-8.

¹⁰⁴⁸ Ibid, Articles 9-15.

¹⁰⁴⁹ Ibid, Articles 17-20.

¹⁰⁵⁰ Ibid, Articles 30-38.

¹⁰⁵¹ Ibid, Articles 49-57.

¹⁰⁵² Ibid, Articles 58-59.

¹⁰⁵³ Ibid, Articles 64-73.

¹⁰⁵⁴ Ibid, Articles 74-88.

In summary, the ECL is an important piece of legislation which clearly defines and outlines the rights and obligations of e-commerce platforms, business suppliers and consumers in an e-commerce transaction. The law specifically attempts to improve user confidence in e-commerce through their provisions on consumer protection, ethical business conduct, and legal liabilities, whilst expressly outlining measures to encourage more of its adoption. The ECL further seeks to tackle more transactional issues peculiar to the online environment. However, since the law is still fairly recent, it is too soon to determine whether its provisions have had any positive impact on consumers or if there has been any practical improvement to the law's enforcement standards.

4.4 Comparative Analysis of Legislative Frameworks

The purpose of this section is to briefly identify possible similarities and differences in the legal and socio-economic background of these legislative frameworks by comparing the Nigerian laws with those of the exemplary jurisdictions. Identifying some similarities will help validate the theoretical ideal that any potential borrowing of laws from China and the UK geared towards addressing the central issues of this research, will less likely alter the course of legal development in Nigeria. Identifying areas of divergencies will also help highlight the gaps that exist within the laws of the three jurisdictions. The overall goal is to set an extended background for a more critical examination of the key issues of unfair contract terms, e-payment security and the physical delivery loss and cancellation of online purchases made in Part 2 of this thesis.

4.4.1 Nigeria and the UK

4.4.1.1 Differences and Similarities in Legal Background

I. Differences

Two remarkable differences exist between Nigeria's legal regime and that of the UK.

1. Unlike the UK, Nigeria lacks a law which is specifically devoted to protecting the online consumer. Neither the FCCPA 2018 nor the SOGA 1893 expressly cover such

matters. Although the CBN Consumer Protection Framework (CPF) 2016 strives to improve consumer confidence in the financial service industry, this sector-specific law can be overridden by the FCCPA in the event of any inconsistency. More so, the CPF cannot be applied to other consumer matters associated with e-commerce besides e-payment. Had Nigeria's ETB 2017 been signed into law by the President, perhaps, consumer protection issues in e-commerce transactions would have been partly addressed and the legislative autonomy of the CBN would have been affirmed.¹⁰⁵⁵ Looking at the UK on the other hand, it can be deduced from the objectives of the UK's CRA 2015, the Consumer Contract Regulation (CCR) 2013 and the UK Payment Services Regulation (PSR) 2017 that the scope of these legislations expressly extend to electronic transactions.

2. Nigeria's approach towards protecting consumer interests is heavily centred on institutional forms of regulation as opposed to devoting more attention to the rules that address the key issues affecting consumer rights. This is because of the 17 substantive divisions of the FCCPA (excluding the preliminary and miscellaneous provisions), 5 are devoted to the enormous powers and functions of the FCCPC while the remaining 12 parts are unevenly allocated to consumer protection rules, competition rules and the functions of the Competition and Consumer Protection Tribunal (CCPT). This raises issues about the effectiveness of the Act's enforcement provisions since some rules are left to the FCCPC to enforce through the CCPT, as opposed to clarifying specific implications or consequences of violating the FCCPCA's provisions. Interestingly, the ETB 2017 does not follow this approach because as stated in sub-section 4.1.3.2, regulatory institutions such as the NITDA, the CBN and the NCC control sector-specific matters within their regulatory competence which are covered by the Bill. On the other hand, the CRA follows a pragmatic approach in protecting consumer rights by providing detailed rules on the rights, obligations, and remedies available to consumers. More so, although the

¹⁰⁵⁵ This is because as explained in section 4.1.1.2, the ETB acknowledges the legislative autonomy of sector-specific institutions like the CBN, the NITDA and the NCC.

Competition and Market Authority (CMA) is conferred with some enforcement powers,¹⁰⁵⁶ other domestic enforcers are also outlined in the CRA.¹⁰⁵⁷

II. Similarity

The major similarity here lies in their shared legal objective. Simplifying consumer law by consolidating existing consumer protection-related laws into a single comprehensive legislation is a motivating factor behind the drafting of Nigeria's FCCPA 2018 and UK's CRA 2015. That notwithstanding, it is arguable if this objective has been attained, for example since the FCCPA relegated secondary sector-specific consumer protection laws like the CPF, while the UK Consumer Protection Act 1987 was omitted from the CRA.

4.4.1.2 Differences and Similarities in Socio-economic Background

I. Differences

Two differences exist between the socio-economic background of Nigeria's legal regime and that of the UK.

1. It appears that personal factors which make consumers vulnerable are not expressly incorporated into the UK legislation unlike the Nigerian FCCPA 2018. Section 124(2) of the FCCPA provides that businesses should not exploit consumer vulnerabilities that arise due to illiteracy, ignorance, physical or mental health disability and language barriers.¹⁰⁵⁸ That notwithstanding, the UK acknowledges the importance of integrating this social factor into consumer legislations. This is evident in the 2019 report on the CCR 2013 briefly highlighted in section 4.2.1.3 of this chapter. Additionally, the CMA has been undertaking some research on the impact of personal and market-specific consumer

¹⁰⁵⁶ For instance, schedule 3 of the CRA states confers the CMA with the power to enforce unfair contract terms.

¹⁰⁵⁷ For example, schedule 5 of the CRA lists other domestic enforcers of the Act such as the Gas and Electricity Markets Authority and the British Hallmarking Council.

¹⁰⁵⁸ FCCPA 2018.

vulnerabilities to help develop and inform its thinking when implementing the remedies enshrined in consumer legislations.¹⁰⁵⁹

2. The second difference relates to both countries' approach to consumer education and creating more awareness on consumer rights. Although the need to create more awareness of laws and educate consumers about their rights is acknowledged by both jurisdictions, the UK's practical approach towards achieving this goal distinguishes it from Nigeria. Once again, Nigeria relies on the FCCPC to not only administer the provisions of the Act, but to also create public awareness about the law and educate consumers about their rights.¹⁰⁶⁰ This seems too much of a duty for one institution, considering the history of regulatory inactivism that has trailed earlier consumer institutions.¹⁰⁶¹ The resultant effect could be the marginalisation of consumers who live in the rural parts of the country, especially since the FCCPA only encourages the FCCPC to establish sub-national branches in other parts of the states, 'if they deem it necessary.'¹⁰⁶² That notwithstanding, the Act acknowledges the functions of consumer NGOs by providing that the FCCPC may work with NGOs in matters relating to consumer education, provision of consumers advice and supporting consumer activism.¹⁰⁶³ On the other hand, the discussion in section 4.2.1.3 shows that policy reforms on the Consumer Rights Bill¹⁰⁶⁴ fuelled the restructuring of existing institutions and the creation of new ones to promote more consumer awareness, educate and offer advice to consumers in different parts of the UK, and encourage greater consumer responsiveness to laws.¹⁰⁶⁵

¹⁰⁵⁹ Consumer and Markets Authority, 'Research and Analysis- Vulnerable Consumers' (Gov.UK, 23 July 2018) <<https://www.gov.uk/government/publications/vulnerable-consumers>> accessed 7 June 2021.

¹⁰⁶⁰ FCCPA 2018, section 17 (j)

¹⁰⁶¹ See discussion on section 4.1.1.1 of this chapter

¹⁰⁶² FCCPA 2018, section 3(5).

¹⁰⁶³ Ibid, Sections 151-154.

¹⁰⁶⁴ Consumer Rights Bill (n 937).

¹⁰⁶⁵ Examples of these institutions include the Citizens Advice Bureau and the National and Local Trading Standards Boards.

II. Similarities

The socio-economic background to the Nigerian and the UK laws presents two similarities.

1. The enactment of Nigeria's ETB 2017 and the UK's CRA 2015 were driven by innovation and an increased internet penetration and ICT adoption rate in both countries. It was necessary to clarify rules that regulate the use of ICT in commercial transactions to ensure that consumers are protected against unfair and fraudulent commercial practices in the online environment since these could limit their confidence (according to the CRA) and curtail further use of e-commerce (according to the ETB).

2. The drafting of the UK's CRA and Nigeria's FCCPA 2018 and ETB 2017, are ultimately driven by economic reasons associated with the need to maintain competitive markets and drive the sustainable development of the of their respective economies. The significance of this objective lies in the fact that both Nigeria and the UK share some capitalist ideals which evidently shape the rule-making processes in both jurisdictions.

To conclude, the differences of legal context which exist between Nigeria's laws and those of the UK can be partly offset by the ETB 2017. This is because the ETB shares more similarities with the UK law. However, since the Bill is still ineffective, its practical significance cannot be fully determined at this instance. Looking at the socio-economic differences, one can notice that Nigeria's approach to promoting consumer rights awareness and education is not sustainable. As a result, there is certainly a need to establish other governmental institutions strategically located at different parts of the country to assist the FCCPC in executing this specific role.

4.4.2 Nigeria and China

Here, a brief comparative analysis is made since this sub-section aims to identify the similarities and differences that exist with China without replicating the supportive arguments made in the preceding section on the UK.

4.4.2.1 Difference and Similarities in Legal Background

I. Difference

Like the Nigeria-UK comparison, the major difference between the Nigerian and Chinese legal regimes is that both the China E-commerce Law (ECL) 2018 and the Consumer Protection Law (CPL) 2013 promote innovation whilst also targeting electronic transactions, unlike Nigeria's FCCPA 2018. Again, such law would have been in existence had the ETB 2017 received the required presidential assent.

II. Similarities

With respect to existing commonalities, same similarity in legal background which exist between Nigeria and the UK is equally obtainable between Nigeria and China, although with minor variations as highlighted below.

1. Like the UK, the objective of unifying existing Chinese consumer protection-related policies at the national, provincial, and local levels, led to the drafting of the CPL 2013. Again, same goal is applicable to the Nigeria context.

2. Unlike the UK, China shares a similar approach to enforcing laws with Nigeria, although the former is less dependent on institutions than Nigeria. In China, the State Administrative Department on Industry and Commerce (SAIC) is empowered to enforce the provisions of the law by listening to consumer complaints, conducting investigation where breaches of the law are suspected, and imposing administrative penalties for actual breaches.¹⁰⁶⁶ The SAIC can also promulgate other administrative laws to give effect to the objectives of the CPL.¹⁰⁶⁷ However, the SAIC is supported by the China Consumer Association (CCA), a not-for-profit consumer organisation officially recognised by the CPL. Here, the CCA liaises with the SIAC, the lead administrative body, to enforce the provisions of the CPL.¹⁰⁶⁸ Perhaps, the similarity in the enforcement mechanisms of

¹⁰⁶⁶ Ibid, China Consumer Protection Law 2018, articles 30-34.

¹⁰⁶⁷ Ibid, Article 30.

¹⁰⁶⁸ Ibid, Article 37 and 38.

Nigeria and China in terms of their reliance on a single institution (which may not be practically efficient), explains why both legal systems have not been effective in policing fraudulent practices and substandard products in their respective markets.

3. Nigeria's legal regime is greatly influenced by transplants as evidenced by the current reliance on the Sale of Goods Act 1893 and other received English laws. This is akin to the influence of European law principles on Chinese consumer law policy, especially with respect to the latter's provisions on consumer withdrawal rights.

4.4.2.2 Differences and Similarities in Socio-economic Background

I. Differences

Three differences are identified below:

1. China's increase in GDP and consumer disposable income propelled a shift in strategy from the once communist economy to a more liberal and new socialist market economy. This led to the promulgation of several consumer-related laws like the CPL 2013 and the ECL 2018, with the CPL finally recognising consumers as having personal rights capable of enforcement. On the other hand, the unstable economic landscape in Nigeria is a major driver to drafting of the ETB. Furthermore, although the FCCPA was adopted to promote economic efficiency and contribute to the sustainable development of the Nigerian economy,¹⁰⁶⁹ economic instability is worsened by poverty, which is already identified as a factor that affects consumers' spending habit and their ability to confidently enforce their rights, especially in the rural parts of Nigeria. As a result of this difference in motives, the submissions made in this thesis generally reflect the economic condition of Nigeria as a developing economy.

¹⁰⁶⁹ FCCPA 2018, Section 1 (a) & (e).

2. As an economy in transition, China's maintenance of socialist ideals through a more liberal economic policy is reflected in the objectives of their laws, unlike Nigeria's laws which as a mixed economy, reflects more capitalist market ideals than socialism.
3. Like the UK, China does not expressly incorporate personal factors which make consumers vulnerable, unlike Nigeria's FCCPA 2018 which acknowledges conditions such as illiteracy, ignorance, physical or mental health disability and language barriers.¹⁰⁷⁰

II. Similarities

Two similarities are further identified in this sub-section:

1. Both country's socio-economic background point to the fact that Nigeria's ETB 2017 and China's CPL 2013 and ECL 2018, were promulgated due to increased fraudulent online commercial practices triggered by higher internet penetration rate in the countries.
2. Like the Nigeria-UK analysis, consumer legislations in both countries are largely market driven, geared towards fulfilling their respective economic development goals.

To conclude, the major difference in the legal background between Nigeria and China lies with the CPL and ECL's express provisions on online transactions. However, since the Nigeria's ETB seeks to promote consumer rights and encourage greater use of e-commerce, the overall similarities in legal background between Nigeria and China far outweigh any differences that may exist between them. Thus, cautiously borrowing rules from China becomes even more feasible. However, due to the differences in economic background, this thesis considers the economic situation of Nigeria when proffering pragmatic responses to addressing the central issues raised in this research.

The summary of this sub-section is provided in the table below.

¹⁰⁷⁰ FCCPA 2018.

JURISDICTIONS	NIGERIA AND THE UK	NIGERIA AND CHINA
Differences in Legal Background	<ol style="list-style-type: none"> 1. Pending the signing into law of the ETB, scope of UK law recognises developments in the digital economy unlike Nigeria. 2. Nigeria predominantly follows an institutional approach to regulation and enforcement, unlike the UK. 	<ol style="list-style-type: none"> 1. Just like the UK, the Chinese legal regime expressly protects the interest of the online consumer, unlike Nigeria.
Similarities in Legal Background	<ol style="list-style-type: none"> 1. Both share the objective of simplifying their consumer law regimes. 	<ol style="list-style-type: none"> 1. Same objective of simplifying their consumer law regimes. 2. Both rely on a single governmental institution to enforce the provisions of their laws. 3. Laws influenced by transplants.
Differences in Socio-economic Background	<ol style="list-style-type: none"> 1. Consumer vulnerabilities associated with illiteracy, health disability and language are expressly recognised by the Nigerian law unlike the UK, although the latter acknowledges its importance. 2. Nigeria mostly relies on the FCCPC to promote consumer education and awareness unlike the UK where this duty is not solely dependent on a single institution. 	<ol style="list-style-type: none"> 1. Like the UK, China is silent on the issue of consumer vulnerabilities, unlike Nigeria. 2. Increase in Chinese GDP and consumer disposable income led to consumer policy reforms unlike in Nigeria where the laws were drafted due to unstable economic landscape. 3. Chinese laws aim to promote the development of the socialist market economy unlike Nigeria whose laws reflect more capitalist ideals than those of socialism.
Similarities in Socio-economic Background	<ol style="list-style-type: none"> 1. Innovation/higher internet penetration rate necessitated 	<ol style="list-style-type: none"> 1. Same innovation and internet penetration driver necessitated the

	the drafting of Nigeria's ETB 2017 and UK's CRA 2015.	drafting of Nigeria's ETB 2017 and China's CPL 2013 and ECL 2018.
	2. Consumer laws are largely market-driven and geared toward fulfilling more capitalist than socialist goals.	2. Like the UK, both consumer law regimes are largely market-driven, although China reflects more socialist market ideals.

Table 4: Differences and Similarities of Background to Legal Frameworks

In summary, this section establishes some semblance of contexts between the consumer law regimes of the UK and China (as originating countries), with those of Nigeria, (the adopting country). The areas of differences, especially as it relates to protecting the online consumer and placing the duty to create consumer rights awareness majorly with the FCCPC, seems less pragmatic and should be re-evaluated. Looking at the differences in economic background, Nigeria could achieve the goal of improving its economic landscape through legislation by learning from the legal experiences of countries like the UK and China which are more economically advanced. However, achieving the desired response from consumers in Nigeria will most likely require any potential reforms to consider consumer's disposable income and the country's general economic climate.

4.5 Conclusion

This chapter concludes the discussion on the extended research background by focusing on the background to some legal frameworks applied in answering the research questions. It has achieved its objective of providing a more detailed overview of the laws whose substantive provisions are applied in Part 2 of this thesis to address the central research issues. It has also provided more reasons that justify borrowing laws from the UK and China. To fulfil these goals, several steps were followed but categorised into four major sections.

The first section focuses on Nigeria by looking into the legal background, purpose, socio-economic background, and some provisions of the FCCPA 2018, the SOGA 1893 and the

ETB 2017. Whilst discussing the FCCPA, it was noticed that Nigeria's legislature leans more towards institutional form of regulation as opposed to codifying the substantive matters affecting the consumer interests which they purport to protect. This could have its adverse effect on consumer responsiveness to laws due to regulatory inactivism and the demerits of subsidiary legislations. Although the consumer rights provisions of the FCCPA is commendable, especially with regards to its recognition of consumer vulnerabilities, consolidating both competition and consumer law in a single legislative document can give rise to competing interests, which may eventually lead to the relegation of consumer matters. Consequently, there is need to sperate both laws for clarity of scope, application, and enforcement. On the SOGA 1893, the discussion shows why pre-1893 common law rules which does not incorporate the ideals of the modern-day consumer, can neither be stretched nor adapted to e-commerce. That notwithstanding, where the ETB 2017 is eventually signed into law, its provision may be used to fill some gaps within the FCCPA, especially with the latter's failure to address issues unique to online transactions.

The second section of this chapter focuses on the UK legal regime. Again, the legal background, objectives, socio-economic background, and provisions of the CRA 2015 is discussed. It was found that Act aims to improve consumer confidence by simplifying, modernising, and strengthening consumer rights in the UK. By consolidating into a single legislative document, the key consumer rights notably derived from EU Directives, whilst also covering the debateable areas of unfair contract terms and contracts for goods, services and digital content, the CRA hopes to achieve its long-term goal of promoting the competitive growth of the UK economy. Although the CRA performs the dual function of simplifying the law and giving effect to the EU Directives, the objective of simplification is, nevertheless, doubted since the CPA 1987 and the CCR 2013 could have both been consolidated into the Act. Regardless, this omission does not necessarily impact on the consumer confidence objective since different consumer organisations have either been restructured or established to create more awareness and enforce consumer rights.

In the third section, the China CPL 2013 and ECL 2018 are discussed, once again, by looking into their legal background, purpose, socio-economic background, and

provisions. It was found that as an economy in transition, China did not feel a sense of urgency to regulate private production, distribution and exchange of goods and services owing to their previously strict centralised government planning. However, with the increase in the country's GDP and a corresponding increase in consumer disposable period, China began to reform its economic policies, with the CPL and the ECL essentially adopted to cumulatively promote consumer confidence, facilitate domestic consumption, promote innovation, police the circulation of counterfeit products in the market and enhance the development of its socialist market economy. Furthermore, the scope of the Chinese Civil Code 2020, which consolidates some Civil laws in the country (contract law included), extends to online contracts. As a result, reference to the three laws is predominantly made when addressing the central issues of this research.

The fourth and final section provides a comparative analysis to the discussed background to the legal frameworks. Here, the similarities and differences in the legislations' legal and socio-economic backgrounds are identified to help validate the theoretical ideal that any potential borrowing of laws from China and the UK geared towards addressing the central issues of this research, will less likely irritate the course of legal development in Nigeria. Some areas of divergencies are also outlined to help highlight the gaps that exist within the laws of the three jurisdictions. More importantly, the need to sign the ETB into law, although with some modifications, is justified.

Despite the similarities and differences of context, it is suggested that law makers consider the current economic climate in Nigeria before borrowing laws from either the UK or China. This is because Nigeria's unstable economic climate necessitated the formulation of some of its laws, unlike the comparative jurisdictions whose economies were already more advanced than Nigeria before they passed their respective consumer laws.

PART 2

CHAPTER FIVE

UNFAIR CONTRACT TERMS

Having concluded the extended discussion of the research background, the next step is to delve into a more detailed analysis of the central research issues raised in section 1.4 of chapter one. This chapter focuses on the first issue, which is the use of unfair terms in online consumer contracts. The objective of this chapter is to demonstrate why the incorporation of unfair terms into consumer contracts by online merchants can act as a performance or information risk factor which has the potential to limit further adoption of e-commerce in Nigeria. The arguments made in this chapter are premised on the finding that where rules which control contract terms are flawed in both substance and form, then online merchants could capitalise on the flawed nature of the rules to further exploit consumers. This finding is derived from previous negative online shopping experiences shared by consumers who realised that they were bound by certain unconscionable terms after placing an online order.¹⁰⁷¹ The finding is further complemented by nationalistic belief on the effectiveness of laws and consumer trust in the compliance role of online merchants.¹⁰⁷²

Recall that sub-section 1.4.1 of chapter one already explains why unfair terms can either be classed as performance or information risk factor, depending on the effect of the terms on consumer rights and obligations. The section also clarifies why the unique nature of the online environment makes terms which can easily be considered rational and fair in traditional contracts as not entirely fair in an online context. Accordingly, since laws designed for traditional transactions may not be entirely adequate for online contracts, there is need to update its provisions to specifically align with the unique nature of the online environment.

¹⁰⁷¹ Ihuoma K Ilobinso (n 98).

¹⁰⁷² Thomas Wilhelmsson (n 187).

Sub-section 1.4.1 also identifies issues associated with the unfair terms' provisions of the Nigeria's FCCPA 2018. These issues generally relate to insufficient provisions around the substance and form of rules which control the use of unfair terms in consumer contracts. With regards to substance of the FCCPA rules, two issues are identified. Firstly, the Act does not provide an indicative list of terms which can be used as a guide to determine whether a term should be classed as fair or unfair in a given circumstance. Secondly, the rule that guides the interpretation of contract terms is also omitted. Two issues are further identified with regards to the form of rules. Firstly, the Act fails to clarify the practical means of bringing potentially unfair terms to the attention of a consumer. Secondly, the Act fails to incorporate a transparency provision which will require online merchants to draft terms in simple and legible language. When looking at both the substance and form of the rules, the Act is also flawed for not clarifying the implications of using unfair terms on both the consumer and the contract itself.

To address these issues, this chapter will be divided into six major sections. Section 5.1 explains the rationale for regulating unfair terms in an online context. This takes us to section 5.2, where a more detailed discussion of the unfair term provisions of the FCCPA as it relates to the two issues of substance and form, is provided. The judicial control of unfair terms is also explored with a view to understanding Nigeria's legal culture on this subject matter. Thereafter, the effectiveness of the rules when adapted to an online context is examined by looking into some online terms and conditions of Jumia, the largest e-commerce platform in Nigeria. In section 5.3, the focus shifts to the unfair term provisions of the UK's CRA 2015 and how the English courts interpret such terms. Same steps are taken in section 5.4 when examining relevant Chinese legislations which control unfair terms. Thereafter, the findings from these discussions are integrated into the TAM framework in section 5.5 to help understand how consumers perceive unfair terms as a risk factor, how such perception influences their online purchasing decisions and the possible role played by legal and extra-legal factors in influencing such decisions. Drawing on the discussions made in sections 5.1 to 5.5, section 5.6 compares the three jurisdictions with a view to identifying the gaps that exist within their legal regimes,

borrowing rules from the UK and China to addresses the situation in Nigeria where appropriate, and adapting same rules to suit the country's unique context.

5.1 Rationale for Regulating Unfair Terms in Online Consumer Contracts

The issue of unfair contract terms is linked to a well-established principle of contract law known as the doctrine of freedom of contract. This principle explains the autonomy granted to parties to enter into contracts on terms voluntarily agreed by both parties. Strict adherence to this doctrine, however, has the potential to cause significant detriment to parties with weaker bargaining power. This is because most consumer contracts assume standard forms which give sellers limitless opportunities to impose likely exploitative clauses as contract terms. These clauses are usually employed by sellers to exempt, exclude, or limit liability for non-performance of contractual obligations, hence why they are interchangeably called 'exemption', 'exclusion' or 'limitation of liability' clauses.

Standard form contracts, also known as 'boiler plate contracts' or 'contracts of adhesion' are documents containing terms which are solely drawn up in advance, usually by the online merchant and presented to the other party (usually the consumer) without any input from latter party.¹⁰⁷³ They are commonly used in consumer transactions since they are considered the most cost-efficient and practical way of dealing with small value, but large quantity distance sales.¹⁰⁷⁴

Chen-Wishart notes that standard form contracts do not involve any meaningful form of consent, negotiation or bargain.¹⁰⁷⁵ The autonomy and mutual consent which underpins the doctrine of freedom of contract is paradoxically not guaranteed in practice, since the other receiving party may not properly evaluate the consequences and implications of the

¹⁰⁷³ Aristides Hatzis, 'An Offer You Cannot Negotiate: Some Thought on the Economics of Standard Form Consumer Contracts' in Hugh Collins (ed), *Standard Contract Terms in Europe: A Basis for and a Challenge to European Contract Law* (Netherlands, Wolters Kluwer, 2008) 43-56.

¹⁰⁷⁴ Leone Niglia, 'Standard Form Contracts in Europe and North America: One Hundred Years of Unfair Terms?' in Charles Rickett and Thomas Telfer (eds), *International Perspectives on Consumers' Access to Justice* (New York, Cambridge University Press, 2003) 101-127.

¹⁰⁷⁵ Mindy Chen-Wishart, 'Regulating Unfair Terms' in L Gullifer and S Vogenaur (eds), *English and European Perspectives on Contract and Commercial Law* (London: Hart Publishing 2015) 105-130.

transaction.¹⁰⁷⁶ The implication of strictly following the freedom of contract doctrine may yield adverse consequences for the consumer since online merchants' unilaterally drawn-up standard terms can be obtained by the mere click of a mouse, especially in click-wrap and browse-wrap contracts, consequently making consumers contractually bound by terms they may not have consented to, had they read or understood the implications of the terms beforehand. This justifies the need for regulatory intervention. For Ilobinso, the freedom of contract doctrine is hinged on the traditional negotiation paradigm which does not adequately reflect the uniqueness of the online marketplace where standard form contracts are widely being used.¹⁰⁷⁷ As standard forms are unilaterally drafted by the online merchant, the opportunity to incorporate terms which will be favourable to the seller but detrimental to the buyer is rife.

The susceptibility of standard forms to abuse by businesses is heightened by the reality that most consumers do not read terms and conditions, and may not understand the implications of the terms which they consciously or unconsciously consent to.¹⁰⁷⁸ Online merchants are aware that some consumers are discouraged from reading terms and conditions since they are mostly drafted in small fonts, are complex, long and time-consuming to read,¹⁰⁷⁹ especially when weighed against the fast-paced nature of the online environment. Consumers mostly focus on the easily accessible core terms related to product description, price and delivery.¹⁰⁸⁰ For some who decide to read the terms, an understanding of their implications may not be grasped due to the terms being drafted in often legalistic and ambiguous language.¹⁰⁸¹ Even where they read the unfavourable terms, they are practically unable to negotiate for fairer terms, especially since most marketplaces use similar one-sided terms.¹⁰⁸² Lord Reid, in *Suisse Atlantique Société*

¹⁰⁷⁶ Tjakie Naude, 'Unfair Contract Terms Legislation: The Implications of Why We Need It for Its Formulation and Application' (2006) 3 Stellenbosch Law Review 361.

¹⁰⁷⁷ Ihuoma K Ilobinso, (n 98) 52.

¹⁰⁷⁸ Uri Benoliel and Shmuel I Becher, 'The Duty to Read the Unreadable' (2019) 60(8) Boston College Law Review 2257-96.

¹⁰⁷⁹ Ibid.

¹⁰⁸⁰ Ihuoma K Ilobinso (n 98) 55.

¹⁰⁸¹ Ibid.

¹⁰⁸² Tess Wilkinson-Ryan, 'The Perverse Consequences of Disclosing Standard Terms' (2017) 103 Cornell Law Rev 117, 128-9.

Armement Maritime SA v Rotterdamsche Kolen Centrale, summarises the reasons for low readership as thus:

“In the ordinary way the customer has no time to read them, and if he did read them, he would probably not understand them. And if he did understand and object to any of them, he would generally be told he could take it or leave it. And if he then went to another supplier the result would be the same.”¹⁰⁸³

Where consumers are done comparing products and prices from different online merchants and have taken the time to finally make an informed decision on which product or service to go for, some standard term contracts could then be sprung up on consumers at the last minute.¹⁰⁸⁴ The effort invested in searching for a product/service that meets consumers needs may make it difficult for consumers to end the transaction process on reading an unfair term at the final point of placing an order.¹⁰⁸⁵

Therefore, unfair terms in online consumer contracts are regulated due to the ubiquity of standard form contracts, the need to balance the uneven bargaining power between online merchants and consumers, and the necessity to protect consumers against the perceived risk of being bound by unconscionable terms in contracts which they oftentimes, do not read or have the requisite legal knowledge to understand their implications, where read.

5.2 Nigerian Perspective

The ETB 2017 does not contain any rule which regulates the provisions of unfair terms in consumer contracts. However, with the coming into force of the FCCPA 2018, unfair terms are now for the first time, covered by a statute. Before the FCCPA, some provisions in few statutes did provide some measure of control against the unfair term employed by sellers to exempt, exclude or limit liability for non-performance of contractual

¹⁰⁸³ *Suisse Atlantique Sociéted Armement Maritime SA v Rotterdamsche Kolen Centrale* [1967] 1 AC 361, 406.

¹⁰⁸⁴ Tjatie Naude (n 1076) 362-3.

¹⁰⁸⁵ Ibid.

obligations. They include the SOGA 1893, the Hire Purchase Act,¹⁰⁸⁶ the Standard Organisation Act,¹⁰⁸⁷ the Insurance Act¹⁰⁸⁸ and the Weight and Measures Act.¹⁰⁸⁹

Using the SOGA 1893 as an example, all contracts of sale have implied conditions that a seller has the right to sell the goods,¹⁰⁹⁰ that goods shall be of merchantable quality,¹⁰⁹¹ fit the description,¹⁰⁹² correspond to sample in a sale by sample¹⁰⁹³ and be fit for purpose subject to certain criteria.¹⁰⁹⁴ The effectiveness of these provisions in safeguarding buyers, and most especially consumers, is nevertheless, questionable since these provisions are only applicable where no contrary intention can be deduced from the face of the contract. This is because the SOGA allows parties to contract out of these implied conditions, consequently placing consumers in a very limited position to be protected by the Act.¹⁰⁹⁵

Prior to the enactment of the FCCPA, the Consumer Contract (Unfair Terms) Bill (CCB) 2010, a rather comprehensive Bill which essentially replicates the provisions of the repealed UK Unfair Terms in Consumer Contract Regulation (UTCCR) 1999,¹⁰⁹⁶ was brought before the third session of the Nigerian National Assembly (whose tenure ended in 2011). Dissappointingly, the Bill was not passed into law during this session as it neither received publicity nor support from stakeholders.¹⁰⁹⁷ Owing to the lapse of time and the expiration of legislative tenure, the Bill will need to be reintroduced by the National Assembly if its provisions are to be considered in the future. No other attempt was made at the national level to regulate unfair terms till the drafting of the FCCPA.

¹⁰⁸⁶ Cap H4, Laws of the Federation of Nigeria 2004.

¹⁰⁸⁷ Cap S9, Laws of the Federation of Nigeria 2004

¹⁰⁸⁸ The Insurance Act 2003.

¹⁰⁸⁹ Cap W3, Laws of the Federation of Nigeria 2004.

¹⁰⁹⁰ Sale of Goods Act 1893, section 12(1).

¹⁰⁹¹ Ibid, section 14(2)

¹⁰⁹² Ibid section 13.

¹⁰⁹³ Ibid, section 15.

¹⁰⁹⁴ Ibid, section 14(1).

¹⁰⁹⁵ Ibid, section 55.

¹⁰⁹⁶ SI 1999/2083. The repealed law was revised and consolidated into the Consumer Rights Act 2015.

¹⁰⁹⁷ Adejoke Oyewunmi and Abiola Sanni, 'Challenges for the Development of Unfair Contract Terms Law in Nigeria' (2013-2014) 37 University of Western Australia Law Review 86

Section 127(1) of the FCCPA generally prohibits the use of unfair contract terms. It states that a seller “shall not offer to supply or enter into an agreement to supply goods or services at a price that is manifestly unfair, unreasonable or unjust, or on terms that are unfair, unreasonable or unjust.” One can notice that the FCCPA applies to all contracts as opposed to being limited to standard term contracts, which was the case in the abandoned CCB 2010.¹⁰⁹⁸ This provision is commendable since it considers that consumers as weaker and vulnerable parties, may still be exploited through unfair terms irrespective of their contribution in the negotiation process.

It is also clear from the above section that price is subject to a fairness assessment. This may be due to Nigeria’s limited socialist economic ideals and the fact that competition matters are also fused within the FCCPA. That notwithstanding, it has been argued that price should not be subjected to a fairness assessment where the price-related clause in contention is either a principal term that determines the exchange agreement between a seller and buyer, underpins the validity of the contract or cannot be replaced by other default clauses.¹⁰⁹⁹ It is, however, not the intention of the writer to delve into arguments for or against the regulation of price since price is not identified as one of the issues which affects the adequacy of the Act’s unfair terms provisions.

The FCCPA’s use of ‘unfair, unreasonable and unjust’ to describe a contract term is quite confusing. This choice of words is broad and can be subject to varying interpretations. Section 127(1) could have been made less ambiguous to interpret by simply using the word ‘unfair’. That notwithstanding, section 127(2) attempts to clarify the meaning of

¹⁰⁹⁸ Consumer Contract (Unfair Terms) Bill 2010, Section 3(4).

¹⁰⁹⁹ Matthias Fervers and Beate Gsell, ‘Control of Price Related Terms in Standard Form Contracts in Germany’ in Yesim M Tamer and Pascal Pichonnaz (eds), *Control of Price Related Terms in Standard Form Contracts* (Ius Comparatum - Global Studies in Comparative Law, Vol 36, Springer 2020) 404, 418-21; James Maxeiner, ‘Standard-Terms Contracting in Global Electronic Age: European Alternatives’ (2003) 28 Yale Journal of International Law 109, 161-162; Christopher Willet, ‘Control of Price Related Terms in Standard Form Contracts in the UK: Regulating Prices and Charges in the UK: Information Versus Substance, General Clauses Versus Rules Developed by Regulators’ in Yesim M Tamer and Pascal Pichonnaz (eds), *Control of Price Related Terms in Standard Form Contracts* (Ius Comparatum - Global Studies in Comparative Law, Vol 36, Springer 2020) 723, 731-732; Hanneke A Luth, ‘Extending the Scope of the Unfair Terms Discipline in Consumer Contracts - An Economic and Behavioural Perspective’ (RILE Working Paper No 2008) p 18 [online] <<https://dx.doi.org/10.2139/ssrn.1115302>> accessed 12 July 2021.

these words. The section provides that a term or notice is unfair, unjust and unreasonable where it fulfils either of the following four criteria:

- i. It is excessively one-sided in favour of any other person other than a consumer,¹¹⁰⁰
- ii. The terms or notices are so adverse to the consumer that they become inequitable,¹¹⁰¹
- iii. A consumer relies on a misleading, deceptive or false statement of opinion provided by a seller to the consumer's detriment,¹¹⁰²
- iv. The term or notice was not reasonably drawn to the attention of the consumer.¹¹⁰³

From this general provision, one can notice that the criteria in paragraphs (i) to (iii) touches upon the substance or content of the rule while the fourth criterion in paragraph (iv) points to the form in which a contract term can assume to be deemed unfair.

The first criterion is quite meaningful in balancing business and consumer interests since it requires the terms to not only be one-sided against the consumer, but also excessively. The second criterion is ambiguous since no further explanation is provided to clarify what makes a term 'inequitable'. This is more so as the Act does not explain how contract terms which appear to have different meanings or connotations can be interpreted. With respect to relying on a misleading, deceptive or false statement of opinion, the Act does not explain how this criterion can be satisfied.

On the fourth criterion which deals with the form of rules, the incorporation provision which requires the attention of the consumer to be drawn to the term is quite commendable. However, further clarification on the practical means of drawing such attention or the measures which can be taken to fulfil the stated objective is needed, especially, within the online environment. This is because where contract terms are placed in a conspicuous location, say for instance, on a website, the consumer's attention may be deemed to have been drawn to the terms in a browse-wrap contract, but this is not always

¹¹⁰⁰ FCCPA 2018, Section 127(2)(a)

¹¹⁰¹ Section 127(2)(b).

¹¹⁰² Section 127(2)(c)

¹¹⁰³ Section 127(2)(d)

the case in practice.¹¹⁰⁴ Understandably, the scope of the FCCPA does not expressly cover online sale and supply contracts, hence this omission.

Issues associated with the form of unfair terms rules is further complemented by section 128 of the Act. This section provides that any notice which purports to either limit the liability of a seller, require a consumer to assume risk or liability, impose an obligation on a consumer to indemnify a seller, or translate into an acknowledgement of a fact by a consumer, should be conspicuously drawn to the attention of a consumer.¹¹⁰⁵ Commendable as this provision may seem, the consequences of failure to comply with this requirement is omitted. This also implies that so long as such terms are placed in a location so conspicuous that a consumer will be reasonably deemed to have taken notice of the terms, the substantive unfairness of these notices will be ignored. This gap is further worsened by the omission of a list of potentially unfair terms (previously contained in schedule 4 of Nigeria's abandoned CCB 2010) which could help guide parties in determining the fairness or otherwise of a contract term.

In the light of the foregoing, it is argued that section 128 of the FCCPA has the potential to exacerbate consumer trust in online transactions since studies have shown that most consumers do not necessarily read terms and conditions and when they do, they may not understand the implications of the terms they consciously or unconsciously consent to.¹¹⁰⁶ Thus, the fact that an online merchant satisfies the requirement of making contract terms conspicuous without providing both the practical measure for satisfying this criterion and the consequences of non-compliance, makes extending the FCCPA's rules on unfair terms to cover online transactions less practicable without filling these gaps.

Another flaw associated with the form of the FCCPA's rules is the omission of a transparency provision which should require terms and notices to be written in plain, readable, and intelligible language. It is well-acknowledged that most online terms and

¹¹⁰⁴ Yanis Bakos, Florencia Marotta-Wurgler and David R Trossen, (n 100); Debra P Stark and Jessica M Choplin, 'A License to Deceive: Enforcing Contractual Myths Despite Consumer Psychological Realities' (2009) 5 New York University Journal of Law & Business 617.

¹¹⁰⁵ FCCPA 2018, Section 128.

¹¹⁰⁶ Uri Benoliel and Shmuel I Becher (n 1078).

conditions are quite long, complex, ambiguous and written in tiny fonts.¹¹⁰⁷ Thus, the failure of the Act to incorporate this provision into its unfair terms rules presents further opportunity for online merchants to draft clauses which may be potentially difficult for consumers to read (where they intend reading it) or understand (where read), and such merchants are more likely to evade any consequences under the Act.

There are also gaps within the Act which touch upon both the substance and form of the unfair terms' rules. One of the most significant is the Act's failure to generally clarify the exact consequences of incorporating an unfair, unreasonable, or unjust term or notice to a contract. The FCCPA omitted to clarify whether such term will remain binding on the consumer, neither does it explain the effect of the supposed unfair term on the subsisting contract itself.

Perhaps, it might be helpful to understand Nigeria's legal culture as it relates to the principle of good faith often used in determining the fairness of a term.¹¹⁰⁸ This is more so as Section 4(1) of the abandoned CCB 2010 (which partially replicates the UK's repealed UTCCR 1999) states that "a term in a pre-formulated contract is unfair where contrary to the principles of good faith, a significant imbalance in party contractual rights and obligation is caused, to the detriment of a consumer."¹¹⁰⁹ Thus, although good faith is not literally incorporated into the unfair terms provisions of the FCCPA, this principle may be linked to the third criterion under section 127(1)(c), which refers consumers' reliance on a misleading, deceptive or false statement of opinion, as unfair. However, for clarity, it is necessary to understand the meaning of this principle.

There is no precise definition of good faith under Nigerian law.¹¹¹⁰ However, Akinkugbe, from his analysis of some Nigerian court decisions,¹¹¹¹ finds the good faith doctrine in

¹¹⁰⁷ Ibid.

¹¹⁰⁸ Adejoke Oyewunmi and Abiola Sanni (n 1097).

¹¹⁰⁹ Consumer Contract (Unfair Terms) Bill 2010.

¹¹¹⁰ Olabisi D Akinkugbe, 'To Recognise or Not? Good Faith Under Nigerian Law of Contract' (2019) 1 *Journal of Commonwealth Law* 363, 368.

¹¹¹¹ *Oloro Jay Jay v. Skye Bank Plc* [2016] LPELR – 40185 (CA); *Zenith Bank Plc v Arthur John* [2012] LPELR – 21295 (CA); *Diamond Bank Ltd. v Ugochukwu* [2008] NWLR (Pt. 1067) 1.

contract performance to be ambivalent.¹¹¹² For the author, “good faith under Nigerian law of contract does not have a coherent, technical or established meaning outside of the requirement to act honestly, without malice or fraud.”¹¹¹³ The incoherent nature of explanations given to the meaning of good faith is reflected in the case of *Williams v Williams*¹¹¹⁴ where the Nigerian Court of Appeal links the doctrine to the transparency of contract terms, (which provision is omitted under the FCCPA). Here, the court states that:

“An agreement voluntarily entered by parties [...] must of necessity be honoured in good faith [...] Where therefore the words in an agreement are clear, precise and unambiguous, the court shall without much ado expound those words in their ordinary and natural sense in order to give a true and genuine effect to the intention of the parties [...].”¹¹¹⁵

Nevertheless, in *Shodeinde & Others v Registered Trustees of the Ahmadiyya*, the Nigerian Supreme Court gave a rather vague definition of good faith when it defined it as “the absence of bad faith – of *mala fides*”¹¹¹⁶ This definition is later clarified by the Supreme Court in *Akaninwo & Others v Nsirim & Others*, where bad faith is explained as depicting:

“[A] sinister motive designed to mislead or deceive another [...] [projecting] more than bad judgment or mere negligence. It is a conscious doing of a wrong arising from dishonest purpose or moral obliquity. Mala fide is not a mistake or error but a deliberate wrong emanating from ill-will.”¹¹¹⁷

The above explanation, thus, suggests that section 127(1)(c) of the FCCPA which refers consumers’ reliance on misleading, deceptive or false statement of opinion as unfair, implicitly embodies the good faith doctrine on fairness. This also implies that any potential borrowing of rules from jurisdictions which are open to recognising the concept

¹¹¹² Olabisi D Akinkugbe (n 1093) 383.

¹¹¹³ Ibid.

¹¹¹⁴ [2014] LPELR 22642 (CA).

¹¹¹⁵ [2014] LPELR 22642 (CA) 42-43.

¹¹¹⁶ [1983] LPELR 3064 (SC) 53-54.

¹¹¹⁷ [2008] LPELR 321 (SC) 43 paras D-F.

of good faith in their unfair terms' rules will less likely irritate the Nigeria's legal culture on the fairness of contracts.

Having understood the court's approach towards interpreting the good faith doctrine, it is now necessary to examine how the Nigerian courts interpret and enforce potentially unfair terms. This is to ascertain if existing case laws are coherent and adequate to fill the gaps identified within the FCCPA.

There has so far, been no reported judicial decision on the unfair terms' provisions of the FCCPA. However, prior to the promulgation of the law, Nigeria strictly adhered to the common law doctrine of 'freedom of contract',¹¹¹⁸ with the courts very reluctant to interfere in the bargain between parties.¹¹¹⁹ Courts are, nevertheless, more favourably disposed to interfering where vitiating elements to consent in contract formation are raised, as opposed to contractual terms and conditions.¹¹²⁰ However, due to the exponential increase in the exploitation of weaker parties in contracts, Nigerian courts now exert judicial control over unfair terms through their proactive interpretation of terms which exclude or limit a seller's liability, especially in situations where the terms override a seller's performance of his core obligations towards a buyer.¹¹²¹ This is otherwise reflected in the common law doctrine of fundamental breach, and the Nigerian courts have indirectly risen to the defence of consumers by not enforcing such exclusion or exemption clauses.¹¹²²

The enforcement of this doctrine was first introduced in the case of *Adel Boshalli v Allied Commercial Exporters Ltd* where the Judicial Committee of the Privy Council¹¹²³ held that parties in breach of a fundamental term in a contract cannot evade liability by relying

¹¹¹⁸ Freedom of contract means that individuals of full contractual capacity are at liberty to dictate whom they enter into contract with and the contract terms which bind them. For more, see Scott R Peppet, 'Freedom of Contract in an Augmented Reality: The Case of Consumer Contracts' (2012) 59(3) UCLA Law Review 676.

¹¹¹⁹ Ihuoma K Ilobinso, (n 98) 57.

¹¹²⁰ These vitiating elements include misrepresentation, illegality, mistake, undue influence, and duress.

¹¹²¹ Adejoke Oyewunmi and Abiola Sanni, (n 1097).

¹¹²² Ibid.

¹¹²³ Although Nigeria gained political independence from the UK in 1960, appeals from the Nigerian Supreme still laid with the Privy Council as the apex court, till 1963 when Nigeria became a republic under a new constitution.

on exclusion clauses.¹¹²⁴ In this case which was brought pursuant to the SOGA 1893, the appellant acting as a consumer, rejected goods on grounds of non-conformity to description and sample. The question for determination was firstly whether there was a breach of contract, and if affirmative, whether the exclusion clause in a contract can be applied for the benefit of the seller. The Privy Council found for the appellant, holding that there was a breach of an essential contract term, which breach would disentitle the seller from relying on an exclusion clause.¹¹²⁵ Shortly afterwards, this decision was applied in subsequent cases as a precedent, both in disputes between business entities¹¹²⁶ and those with consumers.¹¹²⁷

Similarly, in the case of *DHL v Chidi*,¹¹²⁸ a B2C dispute which revolves around liability for non-delivery of goods by a logistic service company, the Nigerian Court of Appeal held that non-delivery of goods by the appellant constituted a fundamental breach which goes to the root of the postal contract between the appellant and the respondent.¹¹²⁹ As a result, the appellant could not rely on an incorporated exemption clause to evade liability.

Contrastingly, a different approach in reasoning was followed in *Iwuoha v Nigerian Railway Corporation*,¹¹³⁰ another B2C dispute. Here, a clause limiting the liability of the defendant for loss of goods on transit was enforced by the courts solely because the clause was held to be properly incorporated into the logistic contract and the plaintiff, deemed to be aware of the clause's existence. The court, thus, felt that these circumstances made it reasonable for the limitation clause be upheld, irrespective of the fairness or otherwise of the clause. Although this case was decided two decades before the promulgation of the FCCPA, one can notice that this decision aligns with the rules under section 128(1) of the Act, which essentially requires terms to be conspicuously brought to the attention of the

¹¹²⁴ [1961] ALL NLR 917.

¹¹²⁵ *Ibid.*

¹¹²⁶ *Niger Insurance v Abed Brothers* [19726] NCLR 37 and *Polymera Industries Ltd v Societe Recharges Etudes Applications Plastique* [1964] LLR 176.

¹¹²⁷ *Ogwu v Leventis Motors* [1963] NNLR 115 and *CFAO v Animotu* [1966] 1 ALR Commercial 289.

¹¹²⁸ [1994] 2 NWLR (Pt329) 720.

¹¹²⁹ *Ibid* at 742.

¹¹³⁰ [1997] 4 NWLR (Part 500) 419.

consumer, with no further comment on the fairness or otherwise of the terms or the implications of contravening the incorporation requirement.

One can, therefore, infer that the court's approach towards unfair terms remains inadequate for online commercial contracts. This is because the limitation of protection to mostly construing exemption clauses in cases of fundamental breach means that other flagrant or subtle abuse of the freedom of contract principle may be validated by the courts as demonstrated in the *Iwuoha case*.¹¹³¹ Additionally, the legal certainty needed to build consumer trust in the face of this perceived risk factor and other uncertainties associated e-commerce cannot be achieved where judicial decisions on this subject matter remain inconsistent. For consistency in interpretation of terms, there is need to provide the Nigerian courts with a legislative basis upon which all decisions on unfair contract terms will be based. Regrettably, the FCCPA has not provided sufficient rules in this regard.

5.2.1 Jumia's General Terms and Conditions of Use for Buyers

This section examines some terms and conditions of Jumia, the largest online marketplace in Nigeria, to weigh if its general conditions of use for consumers will pass the FCCPA's fairness test when adapted to the online context. This analysis will also demonstrate the inadequacy of the unfair term's provisions of the FCCPA for online transactions by outlining some terms in Jumia's policy which could be adjudged unfair based on the four criteria listed under section 127(2) of the Act, but is nevertheless, are likely to evade scrutiny under the Nigerian law.

Placing online orders via Jumia's e-commerce platform is subject to the standard terms contained in a hyperlink which is placed at the lower end of the website.¹¹³² The location of the hyperlink and the form in which it is presented suggests that such hyperlink will less likely be noticed by any consumer who generally browses through the website without having any preconceived intention of reading Jumia's terms and conditions. There

¹¹³¹ Ibid.

¹¹³² View Jumia website on <<https://www.jumia.com.ng/>> accessed 12 July 2021.

is also no sign of an “I agree” button with the referred terms and condition when proceeding to make payment, and before the final placement of order. This suggests that contracts formed via Jumia’s e-commerce platform are browse-wrap contracts, and this is implied in its policy which states that “by using our marketplace, you accept these general terms and conditions in full.”¹¹³³ However, the fact that the terms and conditions are not conspicuous with no possibility of being reasonably drawn to a consumer’s attention contravenes section 127(2)(d) of the FCCPA. That notwithstanding, since the Act does not specify the practical measures which may be employed to reasonably draw the attention of a consumer to a hyperlink, neither does it clarify the consequences of not complying with the conspicuous requirement, Jumia may evade responsibility.

On Jumia’s terms and conditions, the two underlisted clauses appear to contravene the provisions of section 128 of the FCCPA¹¹³⁴ because the hyperlink which contains Jumia’s terms and conditions, are not placed in a conspicuous position in such a way as to make consumers reasonably drawn to the terms. Even where the conspicuous requirement is satisfied, the clauses could be adjudged unfair based on the four criteria provided under section 127(2) of the Act.¹¹³⁵ However, since the Act fails to clarify the implication or outcome of using unfair terms both on the consumer and the contract itself, the clauses may remain unaltered by Jumia. This further demonstrates the inadequacy of the FCCPA and the need to fill this gap accordingly. Two questionable clauses are as follows:¹¹³⁶

- i. “We will not be liable to you for any loss or damage of any nature, including in respect of any losses occasioned by any interruption or dysfunction to the website,

¹¹³³ For Jumia’s terms and conditions, see <<https://www.jumia.com.ng/sp-terms-of-use/>> 13 July 2021.

¹¹³⁴ This section provides that any notice which purports to either limit the liability of seller/suppliers, require a consumer to assume risk or liability, impose an obligation on a consumer to indemnify a seller, or translate into an acknowledgement of a fact by a consumer, should be conspicuously drawn to the attention of a consumer.

¹¹³⁵ Recall that under section 127(2) of the FCCPA, a term is deemed unfair where it is excessively one-sided in favour of any other person other than a consumer, the terms or notices are so adverse to the consumer that they become inequitable, a consumer relies on a misleading, deceptive or false statement of opinion provided by a seller/supplier to the consumer’s detriment and the term or notice was not drawn to the attention of the consumer.

¹¹³⁶ Ibid.

any loss or corruption of any data, database or software, or any special, indirect or consequential loss or damage.”

- ii. “You hereby indemnify us, and undertake to keep us indemnified, against any and all losses, damages, costs, liabilities and expenses [...] incurred or suffered by us and arising directly or indirectly out of your use of our marketplace [...].”

These clauses exclude Jumia from any liability where the use of its website causes loss or damage to a consumer, irrespective of Jumia’s non-performance or negligence. On the other hand, Jumia is imposing the similar liability by requiring indemnification from consumers for the use of their website should they accrue any loss. It is submitted that these clauses are excessively one-sided and inequitable, more so since the attention of a consumer cannot be deemed to have been sufficiently drawn to the hyperlink.

The two underlisted clauses further highlight the inadequacy of the unfair terms’ provisions of the FCCPA for online contracts. The listed clauses are apparently unfair, but the Act lacks any indicative list or provision suggesting that such clauses could be deemed unfair.

- i. “We may suspend or cancel your account, and/or edit your account details, at any time in our sole discretion and without notice or explanation.”
- ii. “We reserve the right to discontinue or alter any or all of our marketplace services, and to stop publishing our marketplace, at any time in our sole discretion without notice or explanation.”

The circumstances that may lead to the unilateral and discretionary termination or editing of account details, as well as the discontinuation of provision of services without any form of notice/explanation is typical of online transactions. Where parties agree to enter into a contract and one party reserves the right to unilaterally terminate the agreement or change the other party’s account details without notice, this becomes inequitable since the affected consumer will likely be unaware of this potentially unfair action.

Although not within the scope of this study, editing consumer account details without notice or consent is a sheer violation of the Nigerian data protection rules.¹¹³⁷ Alteration of account details which contain sensitive customer data without consent also has the potential to adversely impact on consumers' trust in the security of services provided by the seller/supplier as well as their general confidence in online transactions.¹¹³⁸

With respect to discontinuation of service, a consumer may for instance, have a contract for the monthly supply of groceries. The termination or alteration of the grocery service provided by Jumia without giving notice to the consumer will negate the essence of entering into the supply contract in the first place. Absence of notice would also deny the consumer the opportunity to explore alternative online marketplaces that can provide similar services in due time. That notwithstanding, it is acknowledged that circumstances can change which may force a seller/supplier to discontinue a service, thus, rendering the action of the online marketplace fair.¹¹³⁹ Therefore, it is essential to weigh the fairness of an action in line with preserving the interest the interest of consumer under the contract, whilst also considering the unique circumstances which triggered a particular course of action by the merchant.

5.3 The UK Perspective

The UK Consumer Rights Act (CRA) 2015 regulates the use of unfair terms in consumer contracts. Prior to the coming into force of the CRA, the Unfair Contract Terms Act (UCTA) 1977 gave some degree of protection to parties who dealt as consumers and to those who were bound by non-negotiated standard terms drawn up solely by

¹¹³⁷ See section 2.2 (a) of the Nigeria Data Protection Regulation 2019.

¹¹³⁸ Adelola T, Dawson R, Batmaz F. Privacy and Data Protection in E-commerce in Developing Nations: Evaluation of Different Data Protection Approaches' (2015) 6(1-2) International Journal of Digital Society 950-9.

¹¹³⁹ Marco Loos and Joasia Luzak Wanted: A Bigger Stick on Unfair Terms in Consumer Contracts with Online Service Providers' (2016) 39 Journal of Consumer Policy 63, 75; Simon Bradshaw, Christopher Millard and Ian Walden, 'Contracts for Clouds: Comparison and Analysis of the Terms and Conditions of Cloud Computing Services' (2011) 19(3) International Journal of Law and Information Technology 187, 203-4.

businesses.¹¹⁴⁰ However, as noted in sub-section 4.2.1.1 of chapter four, the restrictive scope of the UCTA meant that the Act did not ascertain the general fairness of contract terms, but was applied to test the ‘reasonableness’ of standard terms or clauses which limit or exclude liability based on parties’ bargaining positions and the affected party’s supposed awareness of the clause’s existence.¹¹⁴¹ With the amendment of the UCTA 1977 by the CRA, the UCTA 1977 now specifically applies to B2B contracts.¹¹⁴²

The CRA generally prohibits the use of unfair terms and notices in consumer contracts. The implication of using such terms is that they become non-binding on the consumer except the consumer chooses to rely on the terms.¹¹⁴³ However, the subsisting contract remains unaffected by the unfair term, so far as practicable.¹¹⁴⁴ With regards to the substance of the rule, a term is deemed unfair where “contrary to the requirement of good faith, it causes a significant imbalance in the parties’ rights and obligations under the contract to the detriment of the consumer.”¹¹⁴⁵ To determine the fairness of a term, regard will be had to the subject matter of the contract, all pre-existing circumstances in place at the time when the term was agreed upon, all other terms of the contract and other terms contained in a related contract.¹¹⁴⁶ Furthermore, Schedule 2 of the CRA provides a ‘grey list’¹¹⁴⁷ which contains an indicative and exhaustive list of terms adjudged potentially unfair.¹¹⁴⁸ In addition, section 65(1) of the Act blacklists clauses which exclude or limit

¹¹⁴⁰ UCTA 1977, section 3.

¹¹⁴¹ Ibid, section 11. Also see Christian Twigg-Flesner (n 33) 2.

¹¹⁴² Unfair contract terms are now regulated by Part 2 of the CRA 2015.

¹¹⁴³ CRA 2015, section 62(1-3).

¹¹⁴⁴ Ibid, section 67.

¹¹⁴⁵ Ibid, section 62(4).

¹¹⁴⁶ Ibid, Section 62(5). It is, nevertheless, important to note that section 64 of the CRA excludes from the fairness test core terms that describe the subject matter of a contract and the appropriateness of the price payable under that contract.

¹¹⁴⁷ The term ‘grey list’ is borrowed from the Court of Justice of the European Union (CJEU) decision on the UCTD. In Case C-478/99 *Commission of the European Communities v Kingdom of Sweden* [2002] ECR I-4147 at para 20, the CJEU notes that the list in the Annex to the UCTD is indicative, meaning that “a term appearing in the list need not necessarily be considered unfair and, conversely, a term that does not appear in the list may none the less be regarded as unfair.” Such terms are subject to evaluation before being possible confirmation as being unfair and this why the terms are classed under a ‘grey list’. This is contrasted with a ‘black list’ which automatically invalidates all clauses containing such terms. For more, see Hans-W Micklitz and Norbert Reich, ‘The Court and Sleeping Beauty: The Revival of the Unfair Contract Terms Directive (UCTD)’ (2014) 51(3) *Common Market Law Review* 771-808.

¹¹⁴⁸ CRA 2015, Section 63.

the liability of traders for personal injury or death caused by negligence,¹¹⁴⁹ irrespective of a consumer's awareness or supposed consent to such clauses.¹¹⁵⁰

Prior to the CRA 2015, the UK Unfair Terms in Consumer Contract Regulation (UTCCR) 1999 (as amended),¹¹⁵¹ which implemented the EU Unfair Contract Terms Directive (93/13/EEC) (UCTD), were limited to regulating standard form contracts in accordance with Article 3 of the UCTD.¹¹⁵² The aim was to balance the bargaining weaknesses that exist between traders and consumers which might be addressed where consumers would have reasonably chosen differently had they been involved in the negotiation of terms.¹¹⁵³ This approach is echoed by the UK Supreme court which acknowledges that in assessing whether a term is contrary to the principles of good faith according to the UCTD, "the national court must assess for those purposes whether the seller or supplier, dealing fairly and equitably with the consumer, could reasonably assume that the consumer would have agreed to such a term in individual contract negotiations."¹¹⁵⁴

However, with the CRA 2015 having replaced the UCTRR, the Act now applies to all contract terms, whether negotiated with consumers or not, since such bifurcation of terms breeds unnecessary arguments and litigation.¹¹⁵⁵ It is thought that the CRA "will be simpler and more easily enforced if the distinction between standard terms and negotiated terms is removed."¹¹⁵⁶ Thus, based on section 62(4) of the CRA, the 'fairness test,' which is hinged on the requirement of 'good faith' and 'significant imbalance' and derived from

¹¹⁴⁹ Consumer Rights Act 2015.

¹¹⁵⁰ Ibid, Section 65(2)

¹¹⁵¹ SI 1999/2083, regulation 5.

¹¹⁵² Directive 93/13/EEC.

¹¹⁵³ Ibid, Article 3. Also see Ewan Mckendrick, *Contract Law Text, Cases, and Materials* (6th edn, Oxford University Press 2014) 461.

¹¹⁵⁴ The House of Lords assessed the fairness test based on the provisions of the UCTRR 1994 and taking into account the uneven bargaining position of the parties in the case of *Director General of Fair Trading v First National Bank plc* [2001] UKHL 52.

¹¹⁵⁵ Law Commission, 'Unfair Terms in Consumer Contracts: Advice to the Department for Business, Innovation and Skills' (March 2013) xi, available at <http://www.lawcom.gov.uk/wp-content/uploads/2015/06/unfair_terms_in_consumer_contracts_advice.pdf> accessed 4 July 2021.

¹¹⁵⁶ Ibid.

the EU UCTD, applies to all contract terms, unlike the UCTD which applies standard form contracts.

Looking at the fairness test, the first criterion, ‘good faith’, is quite contentious since the good faith doctrine is acknowledged by the English courts as being incompatible with their legal culture.¹¹⁵⁷ Indeed, as early as 1867, the English common law courts held in *Smith v Hughes* that the formal concept of good faith is not recognised under English contract law.¹¹⁵⁸ This decision is upheld in *Watford v Miles*, which affirms that parties are not generally required to negotiate good faith in contracts.¹¹⁵⁹ Regardless, the term is now incorporated into the CRA 2015 on the basis that the UTCCR 1999, which implements the EU UCTD and is now replaced by the CRA, borrowed the term from the EU Law.¹¹⁶⁰

The above notwithstanding, in *Director General of Faith Trading v First National Bank Plc*¹¹⁶¹, Lord Bingham, drawing on the opinion held in the case of *Interfoto Library Ltd v Stiletto Visual Programmes Ltd*,¹¹⁶² implies that the good faith requirement is now gradually gaining more acceptance in English law when he stated thus:

“The requirement of good faith in this context is not an artificial or technical concept [...] It looks to good standards of commercial morality and practice. It lays down a composite test, covering both the making and the substance of the contract, and must be applied bearing clearly in mind the objective which the regulations are designed to promote. Fair dealing requires that a supplier should not, whether deliberately or unconsciously, take advantage of the consumer's necessity, indigence, lack of experience, unfamiliarity with the subject matter of the contract, weak bargaining position.”¹¹⁶³

¹¹⁵⁷ Gunther Teubner (n 49) 12.

¹¹⁵⁸ [1871] 6 LR (QB) 597.

¹¹⁵⁹ [1992] 2 AC 128.

¹¹⁶⁰ Pre-Brexit UK was required to implement the EU Directives as a former member of the EU, hence the borrowing of the good faith principle from the EU law.

¹¹⁶¹ [2001] UKHL 52.

¹¹⁶² [1988] 2 W L R 615

¹¹⁶³ *Director General of Faith Trading* (n 1203) at 17.

Although this statement shows that the good faith principle is steadily permeating into the English legal culture, it does not necessarily mean that the term is now generally recognised.¹¹⁶⁴

English courts are, nonetheless, slowly embracing the term, and this is further evidenced by the statement made by Legatt J in *Yam Seng Pte Ltd v International Trade Corp Ltd* where he expresses that “the traditional English hostility towards a doctrine of good faith in the performance of contracts, to the extent that it still persists, is misplaced.”¹¹⁶⁵ Therefore, if the good faith principle is gradually beginning to fit within the English legal culture, this would suggest that traders have an obligation to explain and not withhold any onerous terms by hiding such terms behind long illegible terms and conditions, neither should they omit any material information on the subject matter of a contract that may impact on consumer decision to enter into such contract.¹¹⁶⁶ This suggestion is reflected in the case of *Westminster Building Co Ltd. v Beckingham* where it was held that the good faith requirement will be deemed to have been fulfilled by a seller where he devotes his attention to explaining the core terms to a consumer.¹¹⁶⁷

On causing ‘significant imbalance’ which is the second criterion for establishing the fairness test, the *Director General of Faith Trading* case provides more clarity.¹¹⁶⁸ In this case, the fairness of a term which allowed a bank to charge more interest on an outstanding loan after judgement, was in dispute. The House of Lords noted that in assessing the fairness of a term, consideration should be given to whether a supplier acted fairly and openly, whether the term unambiguously sets out parties’ rights and obligations, and whether the disputed term is prohibited by the law.¹¹⁶⁹ Lord Bingham, in commenting on significant imbalance, stated as thus:

¹¹⁶⁴ Ewan Mckendrick (n 1153) 598-505.

¹¹⁶⁵ [2013] EWHC 111 (QB) at 153.

¹¹⁶⁶ Mohammad El-Gendi, 'The Consumer Rights Act 2015: A One Stop Shop of Consumer Rights' (2017) 8 Queen Mary Law Journal 83,89.

¹¹⁶⁷ [2004] EWHC 138.

¹¹⁶⁸ *DG of Faith Trading v First National Bank Plc* (n 1144).

¹¹⁶⁹ *Ibid.*

“The requirement of significant imbalance is met if a term is so weighted in favour of the supplier as to tilt the parties' rights and obligations under the contract significantly in his favour. This may be by the granting to the supplier of a beneficial option or discretion or power, or by the imposing on the consumer of a disadvantageous burden or risk or duty [...] But the imbalance must be to the detriment of the consumer; a significant imbalance to the detriment of the supplier, assumed to be the stronger party, is not a mischief which the regulations seek to address.”¹¹⁷⁰

The above statement further clarifies that the UK law does not concern itself with any significant disadvantage to businesses.

The UK Supreme Court decision in *ParkingEye Ltd v Barry Beavis*¹¹⁷¹ makes a significant contribution to the fairness test in England and Wales. This case was brought pursuant to the UTCCR 1999 and further deals with the interpretation of penalty clauses in UK consumer contracts. Although the judicial regulation of penalty clauses dates to the sixteenth century, the court acknowledges that this matter goes beyond common law.¹¹⁷² In this case, Mr Beavis parked at a public retail car park where clearly visible signs at the entrance of the car park indicated that customers were entitled to park for free for two hours, after which they will be charged £85 for exceeding the time limit, even by a minute. Mr Beavis exceeded the two-hour timeframe by almost an hour but refused paying the £85 charge. In his defence, he argued that the charge was excessive as it violated the UTCCR 1999. More specifically, he contended that the charge caused significant imbalance in the rights and duties of parties, contrary to the requirement of good faith.

¹¹⁷⁰ Ibid at 17.

¹¹⁷¹ [2015] UKSC 67.

¹¹⁷² Ibid, paras 164-165. Also see commentary in Paula Giliker, ‘Case Note England and Wales, UKSC 4 November 2015, Cavendish Square Holdings BV v. Makdessi; ParkingEye Ltd v. Beavis’ [2017] 25(1) 173-180.

After considering the entire facts, the court in their ruling, recognised that although the clause was subject to the rule against penalties, it did not amount to a penalty.¹¹⁷³ On the unfairness of the said clause, the court (excluding Lord Toulson) rejected Mr Beaver's argument despite recognising that the term might be potentially unfair under Schedule 2 para 1(e) of the Regulations.¹¹⁷⁴ The court held that the notice in the carpark was large and prominent, and it was reasonably expected that the defendant would comply with the two-hour time limit. More specifically, the court held that:

“A provision derogating from the legal position of the consumer under national law will not necessarily be treated as unfair. The imbalance must arise “contrary to the requirements of good faith”. That will depend on “whether the seller or supplier, dealing fairly and equitably with the consumer, could reasonably assume that the consumer would have agreed to such a term in individual contract negotiations”¹¹⁷⁵

To this end, the court found no imbalance in parties' rights and obligations, contrary to the statutory good faith requirement. To further justify its decision, the court relied on the fact that the claimant sought to encourage compliance with the rules which would help maximise the public's use of the car park. Thus, the £85 charge was viewed in the court's opinion, as “no higher than necessary” to achieve the said objective.¹¹⁷⁶ Nonetheless, Lord Toulson, in his dissenting view, was concerned that other Justices,¹¹⁷⁷ when applying the law, did not notice any substantive difference between the fairness test under the Regulations and whether it violated the penalty doctrine at common law.¹¹⁷⁸

One may argue that this decision appears harsh to vulnerable consumers who may be financially constrained, or those who may perceive such charges as unconscionable and

¹¹⁷³ The court found that ParkingEye was protecting a legitimate public interest by imposing the parking charge and as a result, the charge could not be considered excessive or unconscionable.

¹¹⁷⁴ Ibid, para 205. Here, terms which require “any consumer who fails to fulfil his obligation to pay a disproportionately high sum in compensation” may be regarded as unfair

¹¹⁷⁵ Ibid, para 3.

¹¹⁷⁶ Ibid, para 106-109.

¹¹⁷⁷ Lord Neuberger and Lord Sumption.

¹¹⁷⁸ Ibid, para 315.

excessive. That notwithstanding, the case demonstrates that judicial regulation of fairness doctrine leaves judges with a wide discretion, with some arriving at different conclusions when applying the law. Given the differences in the attitude of judges, the approach followed in interpreting legislations may depend on judges' differing opinion towards either protecting consumers or upholding commercially legitimate objectives, than their desire to consider the unique features of common law.¹¹⁷⁹ Thus, provisions which apparently seek to protect consumers from unfair terms in English law, when interpreted in relation to specific facts, may not be held by the courts to be unfair. This is more so as terms contained in Schedule 2 para 1 (e) of the Regulation (now Schedule 2, Part 1 (5) of the CRA) are only indicative and thus, not automatically unfair, unless all relevant circumstances are considered.

Although this case, along with other cases mentioned in this section, does not directly relate to the CRA, these cases are used as a source of reference since most of the provisions of the CRA are derived from previous consumer laws from which these cases were decided upon.

It is important to note that unlike the FCCPA, section 64(1) of the CRA excludes from the fairness test core terms that describe the subject matter of a contract and the appropriateness of the price payable under that contract.¹¹⁸⁰ This provision attempts to provide a subtle balance between consumer interests and those of businesses.¹¹⁸¹ Nevertheless, the protection of consumer interests takes priority and this is evident from the case of *Kásler and Káslerné Rábai v OTP Jelzálogbank Zrt*, decided on basis of article 4(2) of the UCTD, now akin to section 64(1) of the CRA. Here, the court held that this provision should be strictly construed since the objective of the law is to protect consumers.¹¹⁸² Consequently, the subject matter and price exception should not be interpreted so broadly that it limits the protection which the law intends to give

¹¹⁷⁹ Geraint Howells and Gert Straetmans, 'The Interpretive Function of the CJEU and the Interrelationship of EU and National Levels of Consumer Protection' (2017) 9(2) Perspectives on Federalism 180, 192.

¹¹⁸⁰ Consumer Rights Act 2015, section 64(1).

¹¹⁸¹ Mohammad El-Gendi, (n 1166) 91.

¹¹⁸² Case C-26/13 *Kásler and Káslerné Rábai v OTP Jelzálogbank Zrt* [2014] ECR I.

consumers.¹¹⁸³ This explains why section 69(1) of the CRA applies the *contra proferentum* rule of interpretation, whose rules tend to favour a consumer when construing terms that have different meanings.

Looking more specifically into the form of the rules, the exception provided by section 64(1) of the CRA is only enforceable on the condition that relevant contract terms are “transparent and prominent.”¹¹⁸⁴ A term is transparent when it is expressed in either a “plain and intelligible language,” or legible where written,¹¹⁸⁵ while a prominent term is term “brought to the consumer’s attention in such a way that an average consumer would be aware.”¹¹⁸⁶ Where this transparency provision is breached, the CRA confers on the CMA and other regulators with investigative and enforcement powers over the use of these terms.¹¹⁸⁷ The regulators can also apply for injunctive relief against a trader who recommends, proposes or uses a non-transparent term or notice.¹¹⁸⁸

The relevance of these rules to online contracts may be worth highlighting. In 2019, it was reported that only about 10% of UK internet users always read online terms and conditions before placing orders, with 41% stating that they sometimes read the terms while 48% admitted to never reading such terms.¹¹⁸⁹ The limited number of users who read online terms and conditions clearly presents an effortless opportunity for merchants to impose unethical and unfair terms which may reduce their obligations and increase the transaction risks borne by the consumer.¹¹⁹⁰ Although the consensus amongst academics is to adopt technical measures that promote trust and encourage more readership,¹¹⁹¹

¹¹⁸³ Ibid.

¹¹⁸⁴ Ibid, section 64(2).

¹¹⁸⁵ Consumer Rights Act 2015, section 64(3).

¹¹⁸⁶ Ibid, section 64(4).

¹¹⁸⁷ Ibid, section 70.

¹¹⁸⁸ Ibid, Schedule 3(1) and (5).

¹¹⁸⁹ Statista, ‘Share of Internet Users Who Read the Terms and Conditions when Using Online Services in the European Union as of October 2019, by Country’ (Statista 7, December 2020) <<https://www.statista.com/statistics/1186267/internet-user-eu-terms-conditions-online/>> accessed 4 July 2021.

¹¹⁹⁰ Mohammed El-Gendi, (n 1149).

¹¹⁹¹ Empowering consumers by creating greater awareness and using trust cues on websites, are suggested by Elshout Maartje *et al* in their report which studies consumer attitudes towards terms and conditions. See Elshout Maartje *et al*, (n 364)

unfair terms are nevertheless, regulated for the benefit of consumers who either do not read or are unable to understand the implications of the contract terms they consent to.¹¹⁹²

The above notwithstanding, consumers can find safety in the guarantees provided by the CRA since the Act expressly states that such terms are non-binding on the consumer.¹¹⁹³ Indeed, the CRA's firm position towards unfair terms have the tendency to improve consumer trust in utilising the services provided by online merchants due to the greater statutory obligations placed on merchants. As observed by Clark, legislative controls against the use of unfair terms in consumer contracts is crucial in enhancing consumer trust and promoting market order since "weaker parties ['consumers'] have no practical opportunity to read or understand or negotiate about [contractual terms] and thereby, take them into account when deciding whether or not to enter into a contract at all, or with whom to do so."¹¹⁹⁴ For Howells, "unfair terms law proceed on the assumption that few consumers will read the terms."¹¹⁹⁵ Consequently, through the CRA, consumers become less defenceless against unfair terms, irrespective of readership or their participation in the negotiation of terms.

The above argument is for example, evident in the recent English case of *Green v Petfre (Gibraltar) Ltd (t/a Betfred)*.¹¹⁹⁶ Here, the claimant sought to recover from the defendant the total amount of bet winnings due to him from his game sessions played on the defendant's mobile application. The defendant, however, refused payment citing a technical glitch which rigged the claimant's game in his favour. As a result, the claimant sought to rely on one of the defendant's click-wrap terms and conditions which promised that customers may withdraw their winnings at any time. The defendant, once again, relied on an exclusion clause contained in its terms and conditions entitling it to refuse paying

¹¹⁹² Thomas Wilhelmsson and Chris Willet, 'Unfair Terms and Standard Form Contracts' in Geraint Howells *et al* (eds), *Handbook of Research in International Consumer Law* 158-188

¹¹⁹³ CRA 2015, section 62(1).

¹¹⁹⁴ Philip H Clarke, 'Curbing the Abuse of a Dominant Position Through Unfair Contract Terms Legislation: Australian and UK Comparison' in L Siliquini-Cinelli and A Hutchison (eds), *The Constitutional Dimension of Contract Law* (Springer 2017) 185, 190.

¹¹⁹⁵ Geraint Howells, 'Protecting Consumer Protection Values in the Fourth Industrial Revolution' (2020) 43 *Journal of Consumer Policy* 145, 157.

¹¹⁹⁶ [2021] EWHC 842 (QB).

out winnings where there has been a defect in a game. In defence, the claimant raised three issues, arguing firstly that the technical glitch was not covered by the exclusion clause, secondly that the exclusion clause was not sufficiently drawn to his attention and as result, cannot be said to have been incorporated into the contract, and thirdly, that even where incorporated, the clause was not fair and transparent in line with the CRA 2015.

Ruling on the first issue, the High Court found that the exclusion clause did not cover the circumstance of the case, which in this cases was a hidden defect and not a breakdown of service.¹¹⁹⁷ On the second issue, the court held that the exclusion clause was not sufficiently brought to the attention of the claimant since ‘burying’ the terms in numerous block letters was not enough to capture the defendant’s attention.¹¹⁹⁸ Although the court affirmed the validity of click-wrap contracts, they noted that in a gambling context,¹¹⁹⁹ “a player is most unlikely to spend significant time trawling through documentation, particularly if it is repetitive and not clearly relevant to him.”¹²⁰⁰ Therefore, excluding the obligation to pay “is something that would need to be achieved with great care and particularity.”¹²⁰¹ On the third issue, the High court found typographical mistakes, drafting inconsistencies, unclear terminologies, and unnecessary use of block letters. Although the drafting issues did not automatically invalidate the clause, the Court ruled that fairness and transparency requirements of sections 62(5) and 64(3) of the CRA were respectively not satisfied.¹²⁰²

Thus, although the CRA did not clarify the consequences of non-compliance with its transparency provisions, the above case, in the interim, shows that such terms are voidable. It further demonstrates the pro-consumer approach (*contra proferentum* rule) adopted by the English courts in construing exclusion clauses to aid consumers who do not necessarily read these terms. Not only will the courts consider the nature of the subject

¹¹⁹⁷ Ibid at para 158.

¹¹⁹⁸ Para 167.

¹¹⁹⁹ Para 170-171.

¹²⁰⁰ Para 172.

¹²⁰¹ Ibid.

¹²⁰² Para 176.

matter and all pre-existing circumstances, the practical measures employed to sufficiently draw the attention of consumers to onerous terms will also be strictly assessed.

Looking more into the terms and conditions of some of these online service providers, some academics have studied the terms and found them to be potentially unfair according to law. Luzak and Loos, in their research bothering on the EU law for instance, found that terms contained on some international online service providers' websites do not pass the fairness test under Annex 1 of the UCTD, (whose provisions are akin to the indicative list contained in schedule 2 of the CRA).¹²⁰³ Using Facebook, Google, Twitter and Dropbox, the authors show that their terms of use do not align with Annex 1 (b), (g), (j) and (k) of the UCTD.¹²⁰⁴ These provisions deem as potentially unfair, terms which enable a seller/supplier to inappropriately exclude liability for inadequate performance of obligations towards consumers, to unilaterally terminate a contract, to alter the terms of a contract, and to change the characteristics of a product or service without valid reasons, respectively.¹²⁰⁵ Once again, these provisions are similar to Schedule 2 Part 1 (2), (8), (11) and (13) of the CRA. Luzak and Loos further note that these terms violate the transparency requirement under Article 5 of the UCTD (akin to section 64(2) of the CRA), meaning that the contract terms of these online service providers are not often drafted in plain, intelligible language.¹²⁰⁶

Overall, it is evident that the unfair terms rules of the CRA are sufficient to a reasonable degree, in protecting consumers against unfair terms, irrespective of readership of terms. The investigative and enforcement powers conferred upon the CMA to apply for injunctive relief against a merchant who contravenes the provisions of the Act also adds an additional layer of protection for consumers. Although the Act does not explain the consequences of failing to comply with the transparency and prominence requirement, English courts tend to adopt a pro-consumer approach when interpreting and enforcing

¹²⁰³ Marco Loos and Joasia Luzak, (n 1139).

¹²⁰⁴ Ibid.

¹²⁰⁵ Unfair Contract Terms Directive 93/13/EEC.

¹²⁰⁶ Ibid.

potentially unfair terms. Consequently, terms which limit, exclude or impose additional liability on consumers to their own detriment will most likely become unenforceable. Knowing that consumers can apply to the courts to avoid potentially unfair terms will, therefore, go a long way in ensuring that merchants/service providers operate within the confines of the law.

5.4 China Perspective

The principle of fairness plays a prominent role in regulating standard term contracts under the Chinese civil law.¹²⁰⁷ The Chinese Civil Code 2020 provides that “when conducting a civil activity, a person of the civil law shall, in compliance with the principle of fairness, reasonably clarify the rights and obligations of each party.”¹²⁰⁸ The Civil Code further recognises the principle of good faith, which is said to be deeply rooted in the Chinese culture.¹²⁰⁹ Article 7 requires a party to comply with the principle of good faith, to honour commitments and to uphold honesty when conducting a civil activity.¹²¹⁰ Indeed, Jiangqiu notes that “the principle of fairness and the related contract law rule [of good faith] which implement this principle, point to the fact that the value of substantive fairness is still the core element of the Chinese socialist market economy.”¹²¹¹

The Civil Code attempts to uphold the fairness principle by regulating the use of unfair terms solely in standard form contracts. On the form of the rules, Article 496 of the Code states that a party who uses standard terms must determine the rights and obligations of the parties according to the principles of fairness.¹²¹² The attention of the other party must also, in a reasonable manner, be drawn to a clause which affects their major interest and concerns.¹²¹³ On the practical measures that can be employed to capture the attention of

¹²⁰⁷ Civil Code of the People’s Republic of China 2020, Article 496.

¹²⁰⁸ Article 6.

¹²⁰⁹ Wang Liming and Xu Chuanxi, ‘Fundamental Principles of China’s Contract Law’ (1999) 13(1) *Columbia Journal of Asian Law* 1-34.

¹²¹⁰ Chinese Civil Code 2020.

¹²¹¹ Jiangqiu Ge (n 56) 89.

¹²¹² *Ibid*, Article 496.

¹²¹³ *Ibid*.

the other party, the providing party must “use [a] special mark such as a note or a sign or such typeface to raise the awareness of the other party at the time of the signing.”¹²¹⁴

In addition to reasonably capturing the attention of a consumer using the above practical measures, the Civil Code further requires that the provider of the clause must explain the meaning and implications of the clause where requested by the other party.¹²¹⁵ Failure to comply with this provision makes such term voidable at the request of the consumer.¹²¹⁶ This provision is supported by Article 151 of the Civil Code which provides that “where one party takes advantage of the other party that is in a desperate situation or lacks the ability of making judgment, and as a result the civil juristic act thus performed is *obviously unfair*, the damaged party is entitled to request the people’s court or an arbitration institution to revoke the act.”¹²¹⁷

With respect to the substance of the rules, clauses in standard term contracts are automatically void or blacklisted where the clause exempts liability for physical injury or negligence to another party,¹²¹⁸ unreasonably alleviates or exempt themselves from liability, restricts the other party’s main rights or imposes greater liability on the other party,¹²¹⁹ and where the other party is deprived of his main rights.¹²²⁰

To interpret standard clauses, a literal approach is first followed since Article 498 of the Civil Code requires such terms to be interpreted according to its common understanding.¹²²¹ However, to cater to the interest of the weaker party being the consumer, the Civil Code adopts the *contra proferentum* rule of interpretation where two

¹²¹⁴ The Interpretation of the Supreme People's Court on Issues Concerning the Application of the Contract Law of the People's Republic of China (II), Adopted at the 1,462nd Session of the Judicial Committee of the Supreme People's Court on 9 February 2009, and effective on 13 May 2009.

¹²¹⁵ Ibid.

¹²¹⁶ Ibid.

¹²¹⁷ China Civil Code 2020 (emphasis mine).

¹²¹⁸ Ibid, Article 506.

¹²¹⁹ Ibid, Article 497(2).

¹²²⁰ Ibid, Article 497(3).

¹²²¹ China Civil Code 2020.

or more interpretations can be made out from a standard term.¹²²² This is in addition to the burden placed on provider of the standard term to prove compliance with procedure for capturing the attention of consumers to standard clauses.¹²²³

Aside the Civil Code 2020, the CPL 2013 also has more tailored rules on unfair terms. Article 26 goes a step further than the Civil Code by outlining terms related to key issues which consumers must take special notice of. They include “the quality, quantity, the prices or costs of the goods or services, the duration and manner of performance, safety precautions and risk warnings, after-sales service, civil liability, and other information strongly tied to the interests of consumers.”¹²²⁴ Traders are also prohibited from using “standard agreements, notices, declarations, on-site posters, or other means, to eliminate or restrict consumer rights, to reduce or avoid their [traders’] responsibilities, to increase the responsibilities of consumers, or to make other such unreasonable and unfair rules against consumers.”¹²²⁵ Such standard terms and notices become automatically void if used by a trader.¹²²⁶ Unlike the Civil Code, the CPL 2013 did not clarify the consequences of failing to alert consumers to key clauses in a standard term contracts. However, one can infer that that State Administrator for Industry and Commerce (SAIC), which is empowered to enforce the CPL,¹²²⁷ can hear consumer complaints against traders on any matter, investigate the issues and address them, pursuant to Article 32 of the law.

In addition to the Civil Code and the CPL, Article 49 of the E-Commerce Law 2018 prohibits the use of unfair terms. The law provides more safeguards for consumers against the perceived risk derived from unfair terms by prohibiting the unilateral termination of a

¹²²² Ibid, Article 498. For more, see Shaolan Yang, ‘Information Obligations and Disinformation of Consumers: Chinese Law Report’ in Gert Straetmans (ed) *Information Obligations and Disinformation of Consumers* (Springer 2019)457, 468-72.

¹²²³ The Interpretation of the Supreme People’s Court (n 1214).

¹²²⁴ China Consumer Protection Law 2013.

¹²²⁵ Ibid, Article 26.

¹²²⁶ Ibid.

¹²²⁷ See section 4.3.1.4 above.

contract by e-commerce operators using standard terms, irrespective of whether payment has been made by a consumer.¹²²⁸ Such terms are also deemed invalid on inclusion.¹²²⁹

A cumulative analysis of these provisions suggests that in China, unfair clauses in contracts are either voidable or instantly voided, depending on whether it contravenes the requirement as to form or substance, respectively. However, they only apply to standard term contracts, as opposed to all forms of consumer contracts. Regardless, in interpreting these terms, the Chinese courts tend to lean more towards prioritising the interest of consumers than businesses. For instance, in *Liu Chaojie v The Xuzhou Branch of China Mobile Group Jiangsu Company Limited*, a case which bothers on a dispute over a telecommunication contract, the Chinese Supreme Court interpreted Article 26 of the CPL, noting that the duration of a product or service is as an important clause in standard contracts which needs to be conspicuously drawn to the attention of a consumer.¹²³⁰ Here, the appellant was not informed by the respondent of the duration of pre-paid phone charges contained in a standard contract and as a result, the appellant claimed that the contract was voidable. The court upheld this appeal and suspended the contract.¹²³¹

Similarly, in the case of *Chen Wei v Amazon*, a case which essentially targets browse-wrap contracts and confirms the unenforceability of standard terms in browse-wraps contracts.¹²³² Here, the appellant placed an order through Amazon for a television at a bargain price. Amazon later cancelled the order, citing that the product was out of stock and that there was no subsisting contract based on the ‘acceptance clause’ contained in Amazon’s Terms of Use online policy. The court held that the mode of acceptance of a contract specified in the conditions of use of a website, constitutes a standard term and ought to be brought to the attention of a consumer.¹²³³ Thus, since the respondent did not reasonably present such term to the respondent in a conspicuous manner, but left it at the

¹²²⁸ ECL 2018, Article 49.

¹²²⁹ Ibid.

¹²³⁰ Guiding Case No 64: *Liu Chaojie v China Mobile Communications Group Jiangsu Co Ltd* (Discussed and Approved by the Judicial Committee of the Supreme People’s Court on 30 June 2016).

¹²³¹ Ibid.

¹²³² Beijing City No 3 Intermediate People’s Court (2014) SanZhongMi No. 09383.

¹²³³ Ibid.

bottom of website's homepage using a hyperlink exhibited in normal black font, the term becomes invalid.¹²³⁴

The above case demonstrates that the specificity and unique nature of the online environment makes placing a hyperlink on a website insufficient to constitute awareness and acceptance of the terms and conditions associated with the website's use. This, perhaps, explains why prominent Chinese e-commerce platforms such as Alibaba¹²³⁵ and JD. Com¹²³⁶ not only have a hyperlink containing their standard terms placed at the bottom of their website, but they also remind consumers to read through their terms and conditions prior to placing an order. Contracts formed through Alibaba's website, for instance, are click-wrap contracts and the attention of consumers to its standard terms is visible on the confirmation page through this statement: "Upon clicking 'Place Order', I confirm I have read and acknowledge all terms and policies."

Taking a closer look at Alibaba's transaction service agreement,¹²³⁷ it is discovered that key clauses which exclude, or limit liability are either highlighted in bold letters, large fonts, capital letters or in coloured fonts. Explanation is further provided for clauses pertaining to service amendment and cancellation of transactions, with the company stating that advance notice will be given where any material changes are made to the agreement. This accords with Article 496 of the Civil Code which renders failure to provide explanation or sufficiently draw the attention of consumers to terms which limit or exclude liability, as voidable. Furthermore, these clauses are made either subject to the applicable law or the full extent permitted by the law, in apparent recognition that different laws may regulate their operations as a global e-commerce service provider.

¹²³⁴ Ibid.

¹²³⁵ For Alibaba's website, see <<https://www.alibaba.com/>> accessed 13 July 2021.

¹²³⁶ For JD. Com, see their global website on <https://www.joybuy.com/?source=1&visitor_from=3> accessed 13 July 2021.

¹²³⁷ Alibaba, 'Transaction Service Agreement' [online] <https://rule.alibaba.com/rule/detail/2054.htm?spm=a2g0o.ams_83196.g497dab.2.177dNwtPNwtPrL> accessed 13 July 2021.

Therefore, the judicial and legislative control of unfair terms in China can be said to have had a significant influence on the activities of e-commerce operators in such a way that these businesses have begun taking a cautious approach when drafting their standard terms and conditions. The aim is to ensure that these contract terms are compliant to a satisfactory degree, with the letters of the law, both locally and in the businesses' respective countries of operation.

5.5 Application to TAM

This section aims to demonstrate that awareness of unfair terms rules (H12₁) has the potential to reduce consumer perception of performance/information risks associated with the use of unfair terms (H10), heightens their trust in online merchants (H7), ultimately impacting on their behavioural intention to make online purchases (H8₂). Additionally, it is shown that sometimes, the collective or nationalistic belief system of a specific group of people towards the effectiveness of their national rules on unfair terms can positively or negatively influence their behavioural intention to make online purchases (H14₂).

Using the UK as a point of reference, the foregoing argument is confirmed in the 2016 European Commission (EC) study on consumers' attitude towards terms and conditions.¹²³⁸ In this study, it is found that one of the reasons why some consumers do not bother reading terms and conditions and still proceed with making online purchases is because "many terms simply reflect the content of the law, and consumers may be aware of the rights awarded by consumer law legislation through other means. Therefore, not having read the [terms and conditions] does not necessarily mean complete unawareness of consumer rights."¹²³⁹ As a result of this awareness and the consequent positive impact on consumer behavioural intention, consumer perception of risk is reduced. Again, using consumer cancellation right as an example of a right affirmed as having contributed to boosting consumer confidence,¹²⁴⁰ the EC report finds that consumers are generally aware

¹²³⁸ Elshout Maartje *et al*, (n 364).

¹²³⁹ Ibid 17.

¹²⁴⁰ Department for Business, Energy & Industrial Strategy (n 136) 17.

of the existence of this right and as such, are confident that traders cannot deny them of the right using terms and conditions.¹²⁴¹ Since an element of uncertainty has been eliminated, this logically improves their trust in the online merchant. Consequently, they proceed with placing online orders despite not reading the terms.

With regards to the informed and active minority who read these terms, another 2016 European Commission report which investigates the impact of online terms and conditions on consumer purchasing decisions confirm that these terms influence online consumer behaviour.¹²⁴² In this report, 22% of consumers affirmed that they always read online terms and factor them into consideration before placing online orders, while 15% expressed that although they read the terms, they do not always take them into account since they will be unable to change the terms anyways.¹²⁴³ Thus, the fact that the behavioural intention of some consumers who read these terms are directly impacted, either positively or negatively, further highlights the need to ensure that online terms and conditions drafted by merchants remain fair.

With regards to the influence of consumers' collective belief system, the earlier 2016 European Commission report on consumers' attitude towards terms and conditions¹²⁴⁴ notes that consumers are sometimes known to exhibit optimism bias, a belief system which makes them confident that unfair terms do not exist, and that the law will invalidate any harmful term that pose as risks to consumers' own interest.¹²⁴⁵ This report notes that consumer optimism bias "makes consumers trust that they will not be "cheated" by sellers and if in exceptional cases this happens anyways, the law will force the seller to back down."¹²⁴⁶ Admittedly, section 62(1) of the CRA 2015, to some extent, validates this

¹²⁴¹ Ibid 29.

¹²⁴² Special Eurobarometer 447 Report- Online Platforms (Survey Requested by the European Commission, Directorate-General for Health and Food Safety and co-ordinated by the Directorate-General for Communication, June 2016) p 68 [online]
<https://ec.europa.eu/information_society/newsroom/image/document/2016-24/ebs_447_en_16136.pdf>
accessed 8 July 2021.

¹²⁴³ Ibid.

¹²⁴⁴ Elshout Maartje *et al* (n 364).

¹²⁴⁵ Ibid

¹²⁴⁶ Ibid 22.

belief since the provision stipulates that unfair terms will not bind the consumer.¹²⁴⁷ Indeed, automatic prohibition of terms, (also known as ‘blacklisted’ terms) have the potential to instil more trust in consumers since consumers will be certain they will not be bound by specific unfair clauses in contracts, irrespective of their awareness of the inclusion of such clauses or lack thereof.¹²⁴⁸

However, the foregoing argument does not automatically mean that all terms which fulfil the fairness test will be beneficial to consumers since consumers may find the terms as not meeting their own subjective expectations. Indeed, a fifth of the UK consumers surveyed in the European Commission study reported suffering from blindly accepting terms and conditions.¹²⁴⁹ Examples of the consequences faced by these consumers include being tied to a longer contract, losing money due to inability to amend or cancel a reservation, payment of extra unforeseen charges, as well as unknowingly agreeing to disclosing personal details to third parties.¹²⁵⁰

Adapting the above analogy to Nigeria, it can be argued that the nationalistic or collective belief where Nigerians are made to feel that their legal system provides less adequate safeguards against the risk of potential unfair terms, can increase their pessimism towards e-commerce, consequently impacting on their behavioural intention to make online purchases. This argument derives from the observation made by Wilhelmsson who finds some validity in the fact that nationalistic belief by consumers in the legal protection accorded to them domestically can increase their trust and reliance in their local law for protection against the perceived risks of online shopping.¹²⁵¹ As a high uncertainty avoidance country with a collectivist cultural orientation,¹²⁵² it is most likely that most Nigerians do not trust the effectiveness of existing legal measures in the country, hence their general pessimism towards online transactions. This argument is supported by Khan

¹²⁴⁷ Consumer Rights Act 2015.

¹²⁴⁸ Michael G Faure and Hanneke A Luth, ‘Behavioural Economics in Unfair Contract Terms: Cautions and Considerations’ (2011) 34 *Journal of Consumer Policy* 337, 343 & 351.

¹²⁴⁹ Elshout Maartje *et al*, (n 364).

¹²⁵⁰ *Ibid* 16.

¹²⁵¹ Thomas Wilhelmsson (n 311) 326-327.

¹²⁵² See section 3.5.1 of chapter three.

and Uwemi's empirical study on the possible challenges to e-commerce adoption in Nigeria, where the authors find that 72.5% of surveyed consumers agree to having a general fear of placing online orders from domestic retailers and would rather shop from foreign countries whom they believe offer better protection against transaction risks.¹²⁵³

Therefore, policy makers need to appreciate that where online terms and conditions are transparent and fair to informed consumers who read them, they are highly likely to exert a positive influence on consumer behavioural intention to make purchases than where those terms are obviously inequitable. On the other hand, some consumers who do not read these terms may be encouraged to make purchases based on the belief that their laws provide adequate protection against the perceived risks derived from unfair terms. Such belief can be acquired where enforcement authorities diligently and publicly execute their responsibilities in relation to policing merchants who incorporate unfair terms into their contracts. Therefore, since both arguments derive from the existence of laws, it is pertinent to ensure that such laws are adequate in the context of e-commerce due to the overall impact it has on consumer online purchasing behaviour.

5.6 Comparative Analysis

The control measures provided by Nigeria, the UK and China over unfair terms and notices are undoubtedly crucial in predicting the likely behaviour of consumers towards e-commerce based on the TAM discussion in the preceding section. This section makes four observations from comparing the unfair term rules of these three jurisdictions, whilst also drawing some lessons for Nigerian law makers.

Firstly, when dealing with exemption clauses that are apparently unfair, the substantive measures employed by these three jurisdictions are noteworthy. The UK blacklists clauses that exclude or limit the liability for personal injury or death caused by negligence, irrespective of consumer's awareness of such clause.¹²⁵⁴ While death is not expressly

¹²⁵³ Habib U Khan and Stellamaris Uwemi (n 13) 465.

¹²⁵⁴ Consumer Rights Act 2015, Section 65(1)(2).

mentioned in the Chinese Civil code, China also bans clauses that exculpate liability for physical injury or loss caused by intentional or gross negligence.¹²⁵⁵ These provisions are particularly relevant in the online context since the likelihood that a consumer will be sold a harmful, faulty, substandard or fake product knowingly or unknowingly by a online merchant is higher in online transactions than in offline transactions.¹²⁵⁶ Nigeria, on the other hand, requires that clauses which limit risk and liability must be brought to the reasonable attention of the consumer,¹²⁵⁷ with no clear consequences on the failure to comply with this obligation. This is further worsened by the fact that unlike the UK and China, the FCCPA does not clarify how contract terms can be interpreted.¹²⁵⁸ Such provisions can guide the courts in their interpretive functions. Thus, the more logical option is for the Nigerian legislature to clarify the implication for businesses who fail to comply with the unfair term provisions of the Act. Clauses which exclude liability for death and damages caused by negligence should also be blacklisted.

Secondly, looking at the fairness test, all three jurisdictions follow a nuanced approach to assessing the unfairness of a term. In the UK, the fairness test applies to all contract terms, except those that determine the subject matter of a contract and appropriateness of price.¹²⁵⁹ Fairness is also hinged on the abstract concepts of good faith and significant imbalance¹²⁶⁰ which are further complemented by the procedural elements of prominence and transparency.¹²⁶¹ However, the consequences of failure to comply with the transparency and prominence requirement is not clarified under the CRA 2015, although the *Green Case*¹²⁶² suggests that such clauses are voidable.

¹²⁵⁵ China Civil Code 2020, Article 506.

¹²⁵⁶ Jitendra K Sharma and Daisy Kurien, 'Perceived Risk in E-commerce: A Demographic Perspective' (2017) 34(1) NMIMS Management Review 31-57; Julian Sims and Lei Xu, 'Perceived Risk of Online Shopping: Differences Between the UK and China' (UK Academy for Information Systems Conference Proceedings 2012) [online] <<http://aisel.aisnet.org/ukais2012/25>> assessed 14 July 2021.

¹²⁵⁷ FCCPA, Section 128.

¹²⁵⁸ CRA 2015, section 69(1); Civil Code 2020, Article 498.

¹²⁵⁹ Section 64(1).

¹²⁶⁰ Section 62(4).

¹²⁶¹ Section 64(2).

¹²⁶² Fn 1083.

China's test of fairness on the other hand, applies only to standard term contracts and is much more reliant upon the principle of good faith, than the UK.¹²⁶³ However, like the UK, the procedural aspect of the fairness test requires clauses which affect the division of core right and obligation between parties to be reasonably brought to the attention of a consumer, and where they relate to exclusion of liability, an explanation must be provided.¹²⁶⁴ More relevant in the online context is the requirement by Article 26 of the CPL 2013 for sellers to specifically draw consumer's attention to the price, quantity, manner of performance, duration, risks, safety precautions and civil liability tied to a transaction. China goes a step further by clarifying the practical measures that sellers can use to satisfy the requirement of reasonably drawing consumer attention to the terms, which include the use of special characters, fonts, symbols, colours, images, and other relevant signs.¹²⁶⁵ Where non-compliance is proven, such terms can be avoided under the Chinese law.¹²⁶⁶

On Nigeria's fairness test, section 127(1) aligns more with the UK in terms of the law being applied to all contract terms and notices. However, although the principles of good faith and significant imbalance are not explicit from section 127(2) of the FCCPA, reliance on misleading, deceptive, or false statement of opinion implicitly can represent 'good faith', while inequitable and excessively one-sided term suggest causing 'significant imbalance'. The obligation to draw consumers' attention to potentially unfair terms is also provided under sections 127(1)(d) and 128, although with no explicit consequences attached to non-compliance. However, unlike the UK, price is included in Nigeria's fairness assessment.¹²⁶⁷

The fact that the FCCPA applies to all contract terms, just like the UK, is commendable since its relevance in protecting consumers who do not read terms of click-wrap contracts cannot be over-emphasised. However, since the UK's transparency requirement which

¹²⁶³ China Civil Code 2010, Articles 7 and 496.

¹²⁶⁴ China Civil Code, Article 496.

¹²⁶⁵ The Interpretation of the Supreme People's Court (n 1214).

¹²⁶⁶ China Civil Code 2020, Article 496.

¹²⁶⁷ FCCPA 2018, Section 127(1).

requires contract terms to be legible, plain and expressed in intelligible language is lacking in the FCCPA, this presents further opportunity for online businesses to couch potentially unfair terms in ambiguous and legalistic language. Therefore, it is necessary for Nigerian legislators to reassess the unfair term provisions of the FCCPA with a view to integrating the transparency provisions into the Act. Learning from the UK provision which considers the nature of a contract and the circumstances of a particular situation, will further help to ascertain more adequately, the fairness of a term since terms which appear fair in an offline context may not necessarily be fair when adapted to the online environment. Additionally, China's more need-specific requirement under the Article 26 of the CPL which focuses on alerting consumers to key aspects of a contract using practical measures that satisfy the requirement of reasonableness goes beyond the UK legislative provision. Such measures are highly likely to increase consumers' knowledge and awareness of the terms they supposedly consent to, especially in click-wrap contracts. Therefore, it is suggested that Nigeria adopts a similar practical approach to China in this regard.

Thirdly, besides the general fairness criteria, the UK provides a list of terms, (otherwise known as the grey list), which could be regarded as unfair or prohibited subject to the evaluation.¹²⁶⁸ The relevance of this list lies in the fact that its broad content covers most practical contexts where a potentially unfair term may be deemed reasonable in certain contexts. China does not necessarily have a grey list; rather, the country takes a different approach to the unilateral suspension of contract under Article 49 of the E-Commerce Law. Nigeria's FCCPA on the other hand, does not have a grey list. Therefore, it is suggested that Nigeria reintroduces the grey list (which was previously contained in the CCB) into the FCCPA, since such list serves as a useful guide to identifying terms which may potentially be fair or unfair when evaluated in their peculiar context.

Lastly, the approach to treating the general consequences of unfair term varies in the three jurisdictions. The UK provides that such terms do not bind the consumer, although the contract in question will continue to have effect so far as practicable.¹²⁶⁹ In China, the

¹²⁶⁸ CRA 2015, Schedule 2 Part 1.

¹²⁶⁹ CRA 2015, Sections 62(1)(2) and 67.

term can either be avoided and nullified on the instant depending on whether a procedural or substantive unfairness of the standard term is in question, respectively. However, with respect to Nigeria, the FCCPA does not state if the term will remain binding on the consumer, neither does it clarify the effect on contract. Therefore, it suggested that the FCCPA's rules on unfair terms can be improved where obvious onerous terms are made not binding on the consumer while the breach of procedural unfairness becomes voidable. The enforcement of other terms of the agreement should, however, continue if the contract can exist without the unfair term.

Table 4 below aptly summarises the major similarities and differences between the unfair term rules of the three compared jurisdictions.

LEGAL ISSUES	NIGERIA	THE UK	CHINA
<u>Substance</u> 1. Indicative list (grey list) 2. Prohibited list (black list)	1. None 2. None	1. CRA, Sec 63, Schedule 2 2. CRA, sec 65(1) -death or personal injury resulting from negligence.	1. None 2. CC, Art 605- physical injury or loss from intentional or gross negligence.
<u>Form</u>	1. No transparency requirement 2. Prominence requirement present (FCCPA, sec 127(1)(d) and 128), although silent on consequences. 3. No practical method of drawing consumer attention to terms.	1. Transparency- CRA, sec 64(3) 2. Prominence requirement- CRA, sec 64(4), although silent on consequences. 3. Practical measure is not explicit.	1. None 2. Prominence requirement coupled with explanation and voidable for non-compliance- CC, Art 496. 3. Characters, fonts, symbols, colours- Interpretation to CPL, Art 26.
<u>Others</u> 1. Implications	1. None	1. Term non-binding on consumer although contract	1. Term is void on incorporation- CC,

2. Scope	2. All contracts	subsists where practicable-	Art 496; CPL, Art 26;
3. Rule of	including price	CRA, Sec 62(1)(2) & 67.	ECL, Art 49.
Interpretation	3. None	2. All contracts except those that determine price and subject matter- CRA, Sec 64(1). 3. CRA, Sec 69(1)- Pro- consumer (<i>contra</i> <i>proferentem</i>)	2. Standard form contracts- CC, Art 496; ECL, Art 49. 3. CC, Art 498- Pro- consumer (<i>contra</i> <i>proferentem</i>).

Table 4: Similarities and Differences between the Unfair Term Provisions of Nigeria, the UK and China

In summary, the current legal approach to controlling the use of unfair terms and notices under the Nigerian law is a step in the right direction, especially, since it covers all contractual terms and notices, rather than focusing on just standard terms. However, limited clarity on the implications of using potentially unfair terms, on how unfair clauses can be interpreted, on the practical measures that can be employed to sufficiently draw the attention of a consumer to key terms, as well as the general absence of transparency requirement, exacerbate the application of current provisions to the online environment. The judicial control also offers very limited protection to consumers. Therefore, having established the likely influence of the law in instilling greater confidence in consumers who are aware of its existence using the TAM, it is necessary update the provisions of the FCCPA to reflect the suggestions proffered in this chapter. A good starting point would be to review the provisions of the CCB 2010 since the abandoned Bill seems to align with most substantive and procedural unfairness requirements of the UK law. Secondly, since all jurisdictions are to a certain degree, guided by the good faith doctrine, borrowing of some unfair term rules from the UK or China to fill gaps within the FCCPA becomes plausible.

5.7 Conclusion

This chapter commences the discussion on the central research issues identified as negatively affecting consumer adoption of e-commerce in Nigeria. It has achieved its objective of demonstrating why the incorporation of unfair terms into consumer contracts by online merchants, as the first identified issue, can act as a risk factor which has the potential to limit consumer behavioural intention to make online purchases in Nigeria. It also shows that where legal rules which control contract terms are flawed in both substance and form, then online merchants can capitalise on the gaps in the rules to exploit consumers further. To fulfil these objectives, several steps were followed but categorised into six major sections.

In the first section, the rationale for regulating unfair terms in online consumer contracts are outlined. Here, it is observed that standard form contracts present innumerable opportunities for merchants to exploit consumers, mostly since these contracts do not involve any meaningful form of consent, negotiation or bargain. As these contracts are unilaterally drawn-up by the merchant with consumer consent obtained by the mere click of a mouse, consumers become automatically bound by terms which they may not have consented to, had they read or understood the implications of the terms. This is further worsened by the reality that most consumers do not read these terms and merchants are aware of this fact.¹²⁷⁰ To this end, the law may step in to provide a regulatory cushion for consumers. This could be done by making the transactional environment less harmful to consumers through the protective guarantees it affords them by nullifying unfair terms.

This takes us to the second section which focuses on the legal rules of the FCCPA which regulate unfair contract terms in Nigeria. This section finds some gaps associated with the substance and form of rules in the Act. For example, the Act does not provide an indicative list of terms which can be used as a guide to determine the fairness of a term, neither does it clarify the interpretive approach to be followed when determining the enforceability of a contested term. Additionally, the practical means of bringing potentially unfair terms to

¹²⁷⁰ Uri Benoliel and Shmuel I Becher (n 1078).

the attention of a consumer and the consequences of non-compliance are omitted. The Act further lacks a transparency requirement and most importantly, a provision which explicitly clarifies the implications of using unfair terms on both the consumer and the contract itself. Although previous court decisions can by no means, be applied to fill these gaps, the courts can be guided by the principle of good faith in interpreting contested contract terms and clarifying their implications on the consumer and the affected contract.

In section three, the UK rules on unfair terms covered by the CRA are discussed. Looking at the substance and form of the rules, it is noticeable that just like Nigeria, it covers all contracts as opposed standard forms to help simplify its enforcement measures. The fairness test criteria of good faith and significant imbalance are further reflected in the Nigeria's FCCPA, although the latter is worded differently. However, unlike Nigeria, the CRA clarifies the implications of using unfair terms on the consumer, noting that such terms are non-binding although the contract may subsist where practicable. Unlike Nigeria, the CRA also contains a transparency requirement, has indicative and prohibitive list of terms, and follows a pro-consumer approach to interpreting potentially unfair terms. However, neither the consequences of not complying with the transparency/prominence requirements nor the practical measures for drawing consumer attention to these terms is explicit. Nonetheless, reference can be had to some English court decisions to fill this gap.

Looking at section four, China's Civil Code 2020, the CPL 2013 and the ECL 2018 all prohibit the use of unfair contract terms and notices in standard form contracts. Like the UK, unfair terms are not binding on the consumer, though the rules are silent on what happens to the affected contract. Similarly, the Chinese legal regime contains a prohibitive list of unfair terms although no indicative list is provided. That notwithstanding, China follows a pro-consumer approach when interpreting potentially unfair terms. The rules further contain a prominence requirement and the practical measures to satisfy this criterion, although it lacks the transparency equivalent. China's rules are quite commendable seeing that when analysed in relation to Alibaba's terms and conditions, consumers who shop through this platform will be indirectly protected by the legal guarantees provided by the Chinese law due to Alibaba's compliance with the rules.

When adapted to the TAM in the fifth section, it is found that these rules have the potential to reduce consumer perception of performance risks associated with the use of unfair terms, can heighten their trust in online merchants and can impact on their behavioural intention to make online purchase. Additionally, it is shown that sometimes, the collective belief about the effectiveness of national rules on unfair terms can positively or negatively influence consumer behavioural intention. Consequently, it is necessary for policy makers to ensure that rules which prohibit unfair terms are enough to practically deter online merchants from using such terms. This is more so as consumers who read online terms and those who do not read them are to a certain degree, influenced by the law.

The sixth section provides a comparative analysis of the three jurisdictions, noting the practical influence of the unfair term rules on consumer online purchasing behaviour. Drawing on the discussions made in sections one to five and based on their nuanced approach to fairness of terms, it is suggested that more trust and confidence can be instilled in consumers where the necessary provisions of the FCCPA are updated to not only extend to online transactions, but to also cover the gaps identified in the substance and form of the Act's unfair term rules, using the applicable laws from the UK and China as guides.

CHAPTER SIX

E-PAYMENT SECURITY

The second issue identified as capable of limiting consumer behavioural intention to adopt e-commerce in Nigeria is e-payment security. Section 1.4.2 of chapter one already defines e-payment, highlights its relevance to e-commerce and explains why e-payment transactions create security risks for the online consumer. This chapter aims to provide a deeper context to the points raised in section 1.4.2 by demonstrating why the Nigerian laws regulating e-payment are inadequate and thus, less effective in protecting consumers against the perceived risks associated with the use of e-payment portals when effecting payments for online purchases. It further aims to prove how and why consumer online purchasing behaviour is adversely impacted by this perceived risk factor.

Section 1.4.2 identifies two reasons why the laws regulating e-payment in Nigeria are not enough to guarantee consumer trust in the available safety measures employed by online service providers or merchants. The first issue is the vague and insufficient provision on the safety standards to be complied with by all payment service providers and online merchants, while the second issue is the weak liability regime which places the liability and burden of proof for e-payment fraud on consumers. This chapter aims to provide a more detailed assessment of the relevant provisions of the Nigeria law linked to these issues, comparing same to what is obtainable in the UK and China and arriving at conclusions that help explain why most Nigerians perceive the use of e-payment systems as extremely risky when making online purchases.

To fulfil the above objectives, this chapter will be divided into five major sections. Section 6.1 discusses the Nigerian rules regulating e-payment transactions in relation to the two issues identified in the preceding paragraph. This is then followed by an assessment of the UK law in section 6.2 and thereafter, the Chinese rules in section 6.3. In section 6.4, the need to address the two e-payment issues are justified using the TAM framework. The aim is to understand how consumers generally respond to perceived e-payment risk and why this risk affects their behavioural intention to make online purchases in Nigeria, the

UK and China, regard being had to the general influence of laws. Finally, in section 6.5, all three jurisdictions are compared. The aim of this comparative analysis is to propose adequate responses to fill the gaps in the Nigerian law drawing on the UK and Chinese laws, as well as the TAM findings made in section 6.4.

6.1 The Nigerian Perspective

E-payment is regulated by the Central Bank of Nigeria (CBN), the apex regulatory body of all financial institutions in Nigeria. The CBN is empowered by Article 1 of the CBN (Establishment) Act 2007 to make laws that control all financial services and products in Nigeria.¹²⁷¹ Initially, the CBN was more devoted to regulating operational matters of financial withdrawals and transfer between commercial banks, as opposed to addressing critical issues introduced by electronic forms of payment.¹²⁷² The CBN's delayed response towards e-payment issues, perhaps, derives from the less than express mandate conferred upon it by the CBN Act 2007. Section 47(2) of the CBN Act merely authorises the CBN to:

“Promote and facilitate the development of an efficient and effective system for the settlement of transactions (including the development of electronic payment systems).”¹²⁷³

From this provision, one may infer that the legislative control of operational matters within the sector takes precedence over the regulation of electronic forms of payment by the CBN. It is, nevertheless, important to reiterate that aside the CBN, the Federal Competition and Consumer Protection Commission (FCCPC) also has a mandate that extends to the Nigerian financial services sector.¹²⁷⁴

¹²⁷¹ Central Bank of Nigeria Act 2007.

¹²⁷² Odi Nwankwo and Onyekachi Richard Eze, 'Electronic Payment in Cashless Economy of Nigeria: Problems and Prospect' (2012) 5(1) Journal of Management Research 138, 145.

¹²⁷³ Central Bank of Nigerian Act 2007.

¹²⁷⁴ Recall from section 4.1.1.4 that the FCCPC was established under Sections 3(1) and (2) of the FCCPA 2018 to administer the provisions of the Act and review *all* economic activities in Nigeria to identify and eliminate practices which are deemed anti-consumer, anti-competitive and restrictive (emphasis mine).

Modernisation of payment services in Nigeria began in 2003 with the CBN's granting of approval to some commercial banks to introduce electronic banking instruments and services such as mobile banking, internet banking, electronic fund transfer services, automated teller machines (ATM), debit and credit cards.¹²⁷⁵ In 2007, the 'Payments System Vision 2020' was launched by the CBN to promote greater use of e-payment services like the Point of Sale (POS) terminals.¹²⁷⁶ To further promote increased adoption of e-payment services in Nigeria, the CBN 'Industry Policy on Retail Cash Collection and Lodgement (IITP/C/001),' otherwise known as 'the cashless policy,' was promulgated by the CBN in 2011.¹²⁷⁷ The cashless policy was introduced to limit the high use of cash as a method of payment in commercial transactions, to promote greater use of e-payment systems and to encourage wider financial inclusion of the population in formal banking operations.¹²⁷⁸

The National Bureau of Statistics (NBS) notes that following a widespread awareness and campaign on the ease of use and benefits of e-payment channels including POS and ATM terminals, the volume of transactions conducted using these channels increased by over 100% in 2014.¹²⁷⁹ However, despite the acceptance of these channels of payment, their overall usage for effecting payment for goods and services remained relatively low mostly due to concerns over cybersecurity risks.¹²⁸⁰ The NBS aver that the increased acceptance and use of e-payment services led to more incidents of card fraud which were not

¹²⁷⁵ Uchenna J Orji, 'Protecting Consumers from Cybercrime in the Banking and Financial Sector: An Analysis of the Legal Response in Nigeria' (2019) *Tilburg Law Review Journal of International and European Law* 105, 109.

¹²⁷⁶ Funmilola Olubunmi and Oluwatobi Dahunsi, 'Factors Affecting Adoption of Point-of-Sale Terminals by Business Organisations in Nigeria' (2015) 5(10) *International Journal of Academic Research in Business and Social Sciences* 115, 118.

¹²⁷⁷ Central Bank of Nigeria Industry Policy on Retail Cash Collection and Lodgement (IITP/C/001) Ref: COD/DIR/GEN/ CIT/05/031 (20 April 2011).

¹²⁷⁸ Uchenna J Orji, 'Building a Cashless Economy in Nigeria: An Analysis of the Policy Framework and Proposals for Responses' (2012) 27(7) *Journal of International Banking Law and Regulation* 265–271.

¹²⁷⁹ National Bureau of Statistics, *POS Adoption and Usage: A Study on Lagos State* (National Bureau of Statistics 2015) 9. See also Chuka Odittah, 'More Nigerians Used ATM Electronic Banking in 2016, says NBS Report', (The Guardian News, 29 January 2017) <<https://guardian.ng/news/more-nigerians-used-atm-electronic-banking-in-2016-says-nbs-report/>> accessed 18 July 2021.

¹²⁸⁰ Ibid, 34-37. This is worsened by Nigeria's notoriety for internet fraud. See Federal Bureau of Investigation Internet Crime Complaint Centre, '2014 Internet Crime Report' p 45 [online] <https://www.ic3.gov/Media/PDF/AnnualReport/2014_IC3Report.pdf> accessed 18 July 2021.

necessarily backed up by regulatory measures that protect customers from these incidents.¹²⁸¹ As a result, the CBN diverted its attention to consumer-related matters by drafting policies which affect consumers of financial products and services.

One of such policies relevant in the context of this research is the CBN Consumer Protection Framework (CPF) 2016. Recall from sub-section 4.1.1.2 of chapter four that the CPF was issued by the CBN to promote consumer confidence in the financial services industry, facilitate financial stability, enhance innovation, and drive further growth of the sector.¹²⁸² A specific objective of the CPF is to implement effective safety measures and risk management practices.¹²⁸³ That notwithstanding, this research argues that the current rules which purport to guarantee the safety of e-payment transactions in Nigeria is flawed and needs revision if more adoption of e-payment transaction in Nigeria is to be achieved.

With respect to the first identified issue on e-payment security measures, Rule 2.6.1 of the CPF 2016 provides that payment service providers should ensure their portals are embedded with safety mechanisms.¹²⁸⁴ What constitutes ‘safety mechanisms’ is, however, unexplained, although it ambiguously states that “the CBN shall specify minimum technology standards for payment platforms.”¹²⁸⁵ These standards are, however, also not clarified anywhere under the Framework, thereby creating a gap within the CPF. The implication of this omission is that payment service providers now have a wider discretion to implement any self-regulatory security standards deemed sufficient, but with no strict compliance obligation on their part.

This security lapse is further evident in the recently issued ‘CBN Guidelines on Operation of Electronic Payment Channels in Nigeria 2020 (CBN Guidelines).¹²⁸⁶ The CBN Guidelines aim to regulate the operation and use of web acceptance services, mobile

¹²⁸¹ Ibid.

¹²⁸² CPF 2016, Article 1.1.

¹²⁸³ Ibid.

¹²⁸⁴ CPF 2016.

¹²⁸⁵ Ibid.

¹²⁸⁶ Published on 31 May 2020 and replaces the Guidelines on Operations of Electronic Payment Channels in Nigeria 2016

payment, Automated Teller Machine (ATM) and Point of Sale (POS) payment channels by all CBN-regulated entities within the public and private sector.¹²⁸⁷ It specifically highlights the roles and responsibilities of payment service providers, merchants, card issuers and card holders as it pertains to the acceptance and use of these payment services.

Rule 3.4.5.6 of the Guidelines provide that online merchants should comply with the minimum security guidance provided by payment service providers. Rule 4.5.2.2 further charges merchants to cooperate with payment service providers “in implementing appropriate security measures.” Payment service providers are, however, charged to “be responsible for the security of the data related to the payment instrument that is possessed or otherwise stored, processed or transmitted on behalf of cardholders/users.”¹²⁸⁸ Proactive as these provisions may seem, the issue here remains the clarification of what is deemed an appropriate security measure which ought to be complied with by providers of these payment services. That notwithstanding, in practice, financial institutions encourage their customers to use two-factor authentication measures¹²⁸⁹ as an additional layer of protection when using their payment instruments on websites.¹²⁹⁰ Service providers’ compliance with this practice as a matter of law, is nevertheless, not absolute.

It is argued that, perhaps, the reason behind this permissive approach to implementing security measures lies in the fact that strict compliance with technical standards could incur prohibitive costs for the average merchant or service provider who may not be able to afford the high cost of acquiring and maintaining relevant security-enhancing technologies.¹²⁹¹ Stressing on the economic situation in Nigeria, Obodeze *et al* argue that these cost could be borne by major industry players and switching companies while

¹²⁸⁷ CBN Guidelines 2020.

¹²⁸⁸ Ibid, Rule 4.5.4.3.

¹²⁸⁹ This often requires the combination of the use of a password and additional verification measure, personally known or possessed by the user. See Olufunmi S Adeoye, ‘Evaluating the Performance of Two-Factor Authentication Solution In the Banking Sector’ (2012) 9(4) International Journal Of Computer Science 457.

¹²⁹⁰ A Ibitola and O Longe, ‘Internet Banking Authentication Methods in Nigeria Commercial Banks’ (2013) 6(1) African Journal of Computing & ICT 208-214.

¹²⁹¹ Adekemi Omotubora and Subhajit Basu, ‘Regulation For E-Payment Systems: Analytical Approaches Beyond Private Ordering’ (2018) 62(2) Journal of African Law 281, 291.

smaller service providers and merchants mostly resort to compromising on safety standards.¹²⁹² While it is acknowledged that cost is an extra-legal factor which acts as a facilitating condition to the adoption of security-enhancing technologies by businesses, this issue can be factored into consideration in the rule making process of the CBN to ensure that online service providers/merchants undergo a strict vetting process to ensure that only those who can afford these technologies, are given the license to provide financial services to consumers.

Overall, it is submitted that stronger security measures are needed to strengthen consumer trust in the use of e-payment services when shopping online, especially, due to the high cases of e-payment fraud in the country.¹²⁹³ This view is supported by a recent empirical research conducted by Oyelami *et al* which finds safety and security as important influential factors that motivate consumers to use e-payment channels when shopping online.¹²⁹⁴ As noted in section 1.4.2 of chapter one, Cash-On-Delivery (COD) method of payment is already used by approximately 80% of the Nigerian population¹²⁹⁵ while research by Falode *et al* find that Nigerians would rather go into physical stores to shop than make online payments.¹²⁹⁶

Therefore, as a starting point, it is recommended that payment service providers should be mandated by the law to adopt and comply with multi-factor authentication measures or other alternative strong security-enhancing technologies that can assure users of their commitment to maintaining high security standards. Online merchants, on the other hand, should only engage the services of payment service providers that comply with this strong

¹²⁹² Fidelis C Obodoeze *et al* 'Enhanced Modified Security Framework for Nigeria Cashless E-payment System' (2012) 3(11) International Journal of Computer and Science Applications 189, 189-90.

¹²⁹³ See Busola Jeje 'Alarming Growth in Online Fraud Threatens Digital Banking Success' (Tellimerr Research, 22 February 2021) <<https://tellimer.com/article/nigeria-alarming-growth-in-online-fraud-threa>> accessed 16 July 2021; Babajide Komolafe, 'Apprehension Over N6.1trn Loss to E-fraud as Annual e-Payment Transactions Hit N97tr' (Vanguard News, 16 November 2018) <<https://www.vanguardngr.com/2018/11/apprehension-over-n6-1trn-loss-to-e-fraud-as-annual-e-payment-transactions-hit-n97tr/>> accessed 16 July 2021.

¹²⁹⁴ Lukman O Oyelami, Sulaimon O Adebiyi and Babatunde S Adekunle, (n 118).

¹²⁹⁵ Ibid, 4-5; Patrick O Igudia, (n 121) 477-479.

¹²⁹⁶ Bukola O Falode *et al*, 'Online and Offline Shopping Motivation of Apparel Consumers in Ibadan Metropolis, Nigeria' (2016) 8(1) Internet Journal of Marketing Studies 150-158.

security standard. Such measures will likely improve consumer trust in the merchants and the services they provide, while a lax regulatory regime will most likely worsen the perceived security risks already associated with using e-payment systems in Nigeria.

The second legal issue is the liability on customers for losses attributed to e-payment fraud.¹²⁹⁷ Rule 3.4.6.5 of same CBN Guidelines 2020 provides that “a cardholder shall be held liable for fraud committed with his card.”¹²⁹⁸ Rule 4.5.4.3, however, states that liability only lies with the card issuer either where the issuer’s negligence is proven or where the account holder already notified the issuer of the loss or theft of their card prior to the commission of the alleged fraud.¹²⁹⁹ A similar provision is also found in Rule 2.6.1.5 of the CPF 2016 which provides that liability lies with the card holder if it is proven that loss occurred due to the customer’s negligence or where fraud is committed on the customer’s account. While acknowledging that there may be grounds for holding customers liable for negligence to a certain degree, the CBN Guidelines and the CPF 2016 clearly fail to take into consideration the possibility that due the peculiar nature of the online environment, payment cards can be cloned and online accounts, hacked without the knowledge of the cardholder. Thus, holding users liable for fraud is in the writer’s view, counter-productive to the objective of promoting consumer confidence in the e-payment transactions. More so, it is almost unlikely that paying customers will be able to prove a card issuer’s negligence on their own accord, without the issuer admitting to this error. As a result, consumers whose card details are fraudulently compromised on e-payment portals may be left with little or no remedy.

Perhaps, the CBN’s weak liability regime derives from the approach followed by the Cybercrimes Act 2015. Recall from sub-section 4.1.3.1 of chapter four that the Cybercrimes Act¹³⁰⁰ is Nigeria’s second attempt at enacting a federal law which covers

¹²⁹⁷ Emmanuel N Olowokere ‘A Comparative Analysis of Civil Liability in Electronic Payment Systems Under the U.S. And Nigerian Laws’ (2019) 82 Journal of Law, Policy and Globalization 60, 69.

¹²⁹⁸ Article 3.4.6.5.

¹²⁹⁹ Ibid, Rule 4.5.3.4.

¹³⁰⁰ Cybercrimes (Prohibition, Prevention, Etc.) Act 2015.

online activities, the first being the Evidence Act 2011.¹³⁰¹ More specifically, the Act aims to punish offenders who perpetuate fraud on computer networks, safeguard potential victims of such fraud, promote cybersecurity, and protect electronic communications in Nigeria.¹³⁰² On the obligation on financial service providers to safeguard customer online account information and transactions made through the account, a proviso to section 19(3) of the Cybercrimes Act states that “[...] where a security breach occurs, the proof of negligence lies on the customer to prove the financial institution in question could have done more to safeguard its information integrity.”

Although the Cybercrimes Act and the CBN regulations are silent on the extent of liability, the above provision clearly contradicts the essence of consumer protection policies, considering that the contractual relationship between account issuers and holders is that between parties of unequal bargaining power. Placing an onerous burden on customers to prove the negligence of a stronger party with greater resources to defend itself, tantamount to leaving the average consumer with no better choice than to avoid using e-payment instruments, where possible. However, imposing a strict liability on service providers will most likely steer them into implementing stronger security measures that can enhance the needed trust and confidence in the services they provide. Regrettably, since the Cybercrimes law is an Act of Parliament, secondary rules such as those made by the CBN will logically follow the same approach.

A consumer was, however, able to prove the negligence of a financial institution for fraud committed on his online account in the recent unreported Federal High Court case of *Abolade Bode v First Bank of Nigeria Plc & Mastercard West Africa Limited*.¹³⁰³ In this case, the plaintiff, who banks with the 1st defendant alleged that a fraudulent transaction was committed online using his debit card which credentials was issued by the 1st defendant, but the fraudulent transaction initiated by a card company, the 2nd defendant.

¹³⁰¹ As a procedural law, the Evidence Act 2011 only introduces rules that govern the admissibility of electronically generated evidence.

¹³⁰² Ibid, section 1.

¹³⁰³ (Suit No: FHC/L/CS/405/13, 10 April 2019).

The plaintiff asserted that the fraud did not occur due to his own negligence, but because the security of the payment service providers (1st and 2nd defendants) was compromised. The plaintiff, therefore, asked the defendants to be jointly and severally liable for reimbursement of the debited sum and further claimed damages for stress and inconvenience.

In their defence, the 1st defendant stated that the plaintiff had not proven the allegation of fraud which by law, must be proven beyond reasonable doubt. They further stressed that based on their contract with the plaintiff, the latter agreed to bear responsibility for all online transactions made with his Personal Identification Number (PIN) and as such, should be held liable for the misuse of his PIN. The 2nd defendant, in their defence, argued that they basically link banks, as service providers, to merchants and customers, being only a payment technology provider/initiator, and since they neither issued the card nor ever possessed the card, they had no contract or connection whatsoever with the plaintiff. They further argued that the plaintiff had failed to discharge the burden of proving they were negligent or that their security was compromised.

Finding for the plaintiff, the court held that an uncontroverted and sufficient evidence has been provided to show fraud on the plaintiff's account and negligence on the part of the 1st defendant, and that proving online fraud beyond reasonable doubt is inapplicable in this circumstance since the fraud was committed by persons who were not parties to the case. Discharging the claim against 2nd defendant, the court held that the plaintiff had not sufficiently proven that the security of the 2nd defendant was compromised. The plaintiff needed to show evidence of avoidable security gaps in the 2nd defendant's technology that makes information transmitted through it vulnerable to fraudsters. Even if the plaintiff was successful, the claim would have still failed since the 2nd defendant was not a party to the contract between the plaintiff and the 1st defendant. Consequently, the common law doctrine of privity of contract barred the plaintiff from enforcing any rights or claiming damages from the 2nd defendant.

Although the outcome of this case is favourable to the plaintiff being the customer in this instance, it still goes to show that Nigerian courts will require a consumer who alleges online fraud to prove negligence on the part of the payment service provider. Were the 2nd defendant a party to the contract (say in a different capacity), the plaintiff's claim would still have failed, having not sufficiently satisfied the onerous burden of proving the existence of security gaps in the 2nd defendant's technology. It is, therefore, suggested that this approach to liability for e-payment fraud be revised to take into consideration the weaker position of consumers of financial services.

A review of the pending ETB 2017 neither shows the existence of a favourable liability regime for consumers nor the requirement of providing a strong secure mechanism that guarantees safety of e-payments. The ETB merely states that all forms of e-payments by individuals, agencies or body corporates should comply with the CBN regulations,¹³⁰⁴ in apparent reference to the importance of the CPF 2016. That notwithstanding, the security standards and the liability regime of existing CBN regulations and Frameworks need to be re-evaluated in line with current consumer policy standards applicable across jurisdictions. This could help improve the confidence of consumers who become aware of the new rules, ultimately reducing their perception of e-payment risks.

6.2 The UK Perspective

The UK Payment Services Regulation (PSR) 2017,¹³⁰⁵ which implements the EU Payment Services Directive II (PSD 2),¹³⁰⁶ currently regulates electronic payments in the UK. The PSR 2017 entered into force on 13 January 2018 and as stated in section 4.2.1.2 of chapter four, the Regulation amends the Consumer Rights (Payment Surcharges) Regulations 2012 (which partly implements the EU Consumer Rights Directive 2011/83/EU).¹³⁰⁷ Prior

¹³⁰⁴ ETB, Sections 11(6) & 26(5).

¹³⁰⁵ SI 2017/752.

¹³⁰⁶ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on Payment Services in the Internal Market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, OJ L 337.

¹³⁰⁷ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on Consumer Rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC and repealing Council Directive 85/577/EEC and Directive 97/7/EC, OJ L 304/64.

to the drafting of the PSR 2017, e-payments were regulated by Payment Services Regulation 2009¹³⁰⁸ which implemented the original EU Payment Services Directive (PSD 1).¹³⁰⁹ However, with UK leaving the EU, some amendments have now been made to the PSR 2017 under part 2 of the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018,¹³¹⁰ solely to reflect UK's exit from the EU.

The PSR 2017 aims to achieve these four objectives:¹³¹¹

- i. To bring the payment services market up to standard with current market standards by extending the authorisation regime to payment service providers who are neither electronic money institutions nor deposit takers,
- ii. To reduce cost of services by implementing a total ban on surcharges for payments made in B2C transactions,
- iii. To provide a more secure and safer standard of making payments by outlining technical measures that improve general online payment security, and
- iv. To enhance consumer protection by increasing consumer rights and assisting victims of e-payment fraud.

To help achieve these objectives, the Financial Conduct Authority (FCA) is tasked with the responsibility of monitoring and ensuring compliance with the provisions of the Regulation.¹³¹²

E-payments covered by the PSR include credit card payments, debit card payments, direct debits, money remittance, mobile/fixed phone payments, standing order and payments from other digital devices.¹³¹³ However, the Regulation does not apply to paper-cheque

¹³⁰⁸ SI 2009/209.

¹³⁰⁹ Directive 2007/64/EC.

¹³¹⁰ SI 2018/1201

¹³¹¹ Financial Conduct Authority, 'Guidance on the Scope of Payment Services Regulation 2017' in *The Perimeter Guidance Manual*, Chapter 15 [online]

<<https://www.handbook.fca.org.uk/handbook/PERG/15.pdf> > accessed 18 July 2021.

¹³¹² PSR 2017, Article 106.

¹³¹³ Ibid, Schedule 1 Part 2.

transfers or cash only transactions.¹³¹⁴ This is in line with the intention expressed by the European Commission when discussing the parameters to a revised PSD. In the Commission's green paper, they note that e-payments covered by the PSD 2 should cover card payments made remotely using the internet, direct debits or credit transfers executed via online banking authentication portals, and payments made through a payment service provider where an individual sets up a personal account and funds it through credit transfers or credit cards.¹³¹⁵ It is important to note that in this green paper, the Commission acknowledges that e-commerce growth in the region has been affected by customer concerns around online payments, especially in view of recent innovative methods of effecting payments for online purchases.¹³¹⁶ Thus, there was a need to update the PSD 1 to address these concerns.

On the first identified issue of safety measures, the PSR 2017 provides adequate security measures that must be complied with by all FCA-regulated entities. Article 100(3) of the PSR provides that "a payment service provider must maintain adequate security measures to protect the confidentiality and integrity of payment service users' personalised security credentials."¹³¹⁷ To clarify the meaning of 'adequate security measures,' Article 100(1) of the Regulation mandates service providers to apply strong customer authentication measures, especially where the customer accesses his payment account online, initiates an e-payment transaction or conducts any action through remote payment channels which may involve the risk of payment fraud or abuse.¹³¹⁸ Article 2 of the Regulation further clarifies that a customer's authentication is strong where it is uses two or more information of something solely known by the customer (such as PIN or password), possessed by the customer (such as authentication code generation instrument or card) or inherent to the customer (such as finger print or voice recognition). The authentication will be so strong that "that the breach of one element [will] not compromise the reliability of any other

¹³¹⁴ Ibid.

¹³¹⁵ European Commission, 'Green Paper: Towards an Integrated European Market for Card, Internet and Mobile Payments COM (2011) 941 Final, 4' <<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52011DC0941>> accessed 18 May 2020.

¹³¹⁶ Ibid 5.

¹³¹⁷ Payment Services Regulation 2017.

¹³¹⁸ Ibid.

element [...].”¹³¹⁹ This strong authentication measures further require the use of dynamic codes linked to a specific payment purportedly being initiated by the customer.¹³²⁰ The code will alert the customer to the amount being authorised by the payment service provider and the specific transaction to which it relates.¹³²¹ By so doing, they minimise to the barest minimum, possible risks of online payment fraud.

Cases of e-payment fraud in the UK has been on a steady decline since the introduction of this security measure. For instance, recent data from UK Finance¹³²² shows that 359.3 million GBP was lost to e-commerce fraud from card transactions in 2019, accounting for 58% of all payment card frauds and 76% of frauds committed through remote purchases.¹³²³ Data hacks on online merchant websites is said to be a major source of the losses.¹³²⁴ A significant fact though, is that compared to 2018 where UK recorded a 27% increase in e-commerce payment fraud the previous year, a 9% decrease was recorded in 2019. The finance industry response to tackling fraudulent payments is said to be the major reason for the reduced cases of payment fraud.¹³²⁵ One of the identified responses is the commencement, in 2019, of the phased implementation of strong customer authentication regulatory requirement, which rule mandates all payment providers to use multi-factor authentication for higher-risk and higher-value transactions.¹³²⁶ The UK FCA is currently strengthening the enforcement of this security standard on all e-commerce operators in the country by imposing a deadline for its implementation for March 2022.¹³²⁷

¹³¹⁹ Ibid.

¹³²⁰ Ibid, Article 100(2).

¹³²¹ Ibid.

¹³²² UK Finance is a trade association consisting of over 300 firms within the banking and financial sector which provide payment, market, banking and credit-related services in the UK. For more, see <<https://www.ukfinance.org.uk/about-us>> accessed 20 June 2021.

¹³²³ UK Finance, ‘Fraud- The Facts 2020: The Definitive Overview of Payment Industry Fraud’ (UK Finance 11 June 2021) p 26 [online] <<https://www.ukfinance.org.uk/system/files/Fraud-The-Facts-2020-FINAL-ONLINE-11-June.pdf>> accessed 20 July 2021.

¹³²⁴ Ibid.

¹³²⁵ Ibid.

¹³²⁶ Ibid p 10.

¹³²⁷ Financial Conduct Authority, ‘Strong Customer Authentication- Our Expectations of Firms when Implementing Strong Customer Authentication (SCA), including Information on Applying SCA to E-commerce and Online Banking’ (FCA, 20 May 2021) <<https://www.fca.org.uk/firms/strong-customer-authentication>> accessed 19 July 2021.

On the second issue of liability for fraudulent e-payments, it has been acknowledged that where consumers do not generally bear the financial consequences of fraudulent e-payments, such step is crucial to building their trust and confidence in the services provided by online merchants and payment service providers.¹³²⁸ Thus, under Article 75(1) of the PSR 2017, the liability for unauthorised or fraudulent online payment transactions lies with the payment service provider, who is expected to promptly refund the unauthorised amount once notified and confirmed.¹³²⁹ Where contested, a proviso to the Article places the evidentiary burden on the payment service provider to prove that “the payment transaction was authenticated, accurately recorded, entered in the payment service provider’s accounts and not affected by a technical breakdown or some other deficiency in the service provided [...]”.¹³³⁰ However, where a payment service provider reasonably suspects that a customer may have acted fraudulently or was grossly negligent, such customer is obligated to bear full liability for the loss on successful proof; with same evidential burden solely resting on the payment service provider who alleges fraud.¹³³¹ Service providers could, however, reduce liability for a customer’s negligence to the sum of 35 GBP where the payment instrument used in perpetuating the fraud had been misappropriated, stolen or lost to the knowledge of the customer, prior to the authentication of the fraudulent payment.¹³³² Brener notes that this customer liability policy presumably encourages responsible online user behaviour.¹³³³

While the PSR aims to strengthen consumer confidence in online transactions through a default liability regime on payment service providers, this policy in return, serves as an informal method of regulating online merchants by the same payment service providers

¹³²⁸ European Commission, ‘Consumer Behaviour in a Digital Environment’, European Parliament, Directorate General for Internal Policies: 2011 (IP/A/IMCO/ST/2010-08).13; London Economics, *Study on the Impact of Directive 2007/64/EC on Payment Services in the Internal Market and on the Application of Regulation (EC) No 924/2009 on Cross Border Payments in the Community* (Brussels: European Commission, 2013), ix

¹³²⁹ Payment Services Regulation 2017, Article 76.

¹³³⁰ Ibid, Article 75(1) and (2).

¹³³¹ Ibid, Article 77(3).

¹³³² Ibid, 77(1) and (2).

¹³³³ Alan Brener, ‘Payment Service Directive II and Its Implications’, in T Lynn *et al* (eds), *Disrupting Finance. Palgrave Studies in Digital Business & Enabling Technologies* (Palgrave Macmillan 2019) 108, 113-114.

who initiate and process payments on their behalf.¹³³⁴ This is because the PSR allows the payment service providers to proceed against online merchants to recover incidental losses incurred by them due to the merchant's negligence in complying with necessary safety standards for securing its websites against fraudulent attacks.¹³³⁵ By delivering better control and oversight of the online merchant's website, the payment service provider will be protecting its financial interest due to the presumption of liability in a payer's favour.¹³³⁶ The liability provisions, therefore, ensure that payment service providers and online merchants take adequate steps to protect a customer's financial interests whilst also providing adequate security mechanisms that enhance the safety of customer payment information processed and stored on their websites.

Prior to the introduction of the strong authentication and liability regime in the UK, some financial industry players unjustly undermined the interest of customers in courts by manipulating evidence in their favour. For instance, in the unreported English case of *Job v Halifax Plc*, the claimant argued that the sum of 2,100 GBP had been fraudulently withdrawn from his account through his debit card.¹³³⁷ Though the bank (payment service provider) admitted to authorising the transaction, it argued that it was not liable to refund the claimant since the transaction was made using the customer's card and PIN.¹³³⁸ When the claimant requested that the bank provides proof showing it complied with necessary security management controls and authentication measures, the bank declined; claiming they could be disclosing commercially sensitive information that would compromise other bank cards in issue.¹³³⁹ Despite the bank's failure to provide supporting evidence, judgement was entered in their favour, contrary to the evidential burden of proof now

¹³³⁴ Reinhard Steennot, 'Allocation of Liability in Case of Fraudulent Use of An Electronic Payment Instrument: The New Directive on Payment Services in The Internal Market' (2008) 24(6) Computer Law & Security Review 555, 557.

¹³³⁵ Payment Services Regulation, Article 76(5).

¹³³⁶ Nicole S Van der Meulen, 'You've Been Warned: Consumer Liability in Internet Banking Fraud' (2013) 29(6) Computer Law & Security Review 713, 714-715.

¹³³⁷ Case no 7BQ00307 (30 April 2009). Also see A. Kelman, 'Case Judgment: England and Wales' (2009) 6 Digital Evidence and Electronic Signature Law Review 235.

¹³³⁸ Ibid.

¹³³⁹ Ibid.

required of payment service providers under Article 75(1) of PSR 2017.¹³⁴⁰ Similar facts also applies to the case of *Rahman v Barclays Bank*,¹³⁴¹ where the courts regrettably, arrived at the same conclusion.¹³⁴²

On a positive note, the *Halifax* and *Raman* cases will likely not stand the test of time in current day practice. Article 75(3) of the Regulation specifically provides that “where a payment service user denies having authorised an executed payment transaction, the use of a payment instrument recorded by the payment service provider is not in itself necessarily sufficient to prove either that (a) the payment transaction was authorised by the payer or (b) the payer acted fraudulently or failed with intent or gross negligence.”¹³⁴³ This provision, therefore, counters the presumption of collusion or negligence on the payer’s part for unauthorised payments. It further requires that payment service providers justify adherence to authentication measures with strict proof, irrespective of whether the payment instrument in dispute was used in authorising the transaction.

Overall, one can see the pragmatic approach employed by the PSR 2017 to improve consumer trust in the security of payments made through e-payment channels, in addition to the protection afforded to consumer as weaker parties to a payment contract. Although this standard has its cost implication and burden on online merchants and service providers, data by UK Finance showing the decline in the rate of e-payment fraud in the UK attests to the relevance of such rules in protecting consumers against the potential adverse impact of e-payment security risks.

6.3 China Perspective

E-payment in China is generally regulated by the People’s Bank of China (PBOC), which is empowered by Article 32 of the Peoples Bank of China Law 2003 to issue guidelines and regulations aimed at enhancing financial inclusion, facilitating the security of

¹³⁴⁰ Ibid, 238.

¹³⁴¹ Case no 1YE003643 (24 October 2012). Also see S. Mason and N. Bohm, 'Commentary on Case On Appeal: England And Wales' (2013) 10 Digital Evidence and Electronic Signature Law Review 175

¹³⁴² Ibid, 185.

¹³⁴³ The UK Payment Services Regulation 2017.

transactions and promoting innovation in the financial sector.¹³⁴⁴ The PBOC's first attempt at regulating e-payment-related transactions in the financial services sector dates to 2006 with the issuance of the 'Guidelines for Financial Innovation for Commercial Banks',¹³⁴⁵ This Guidelines was drafted to "encourage financial innovation, supervise innovative activities, and speed up healthy and continuous development of new banking products and services."¹³⁴⁶ Thereafter, the 'Rules on Administration of Electronic Banking 2006',¹³⁴⁷ and the 'Guidelines on E-Banking 2006',¹³⁴⁸ were both issued concurrently to enhance the online security of financial transactions conducted electronically and strengthen their risk management practices.¹³⁴⁹

Since issuing the Guidelines, the PBOC notes that its financial policies have reduced transaction costs, enhanced financial product innovation and satisfied the increasing participation of the population in e-commerce using of innovative payment systems.¹³⁵⁰ The PBOC, nevertheless, acknowledges that the increasing acceptance and use of e-payment systems introduced new risks which affect consumer rights and the security of transactions.¹³⁵¹ More specifically, they cited the rise in non-financial (3rd party) payment service providers in China such as Alibaba's Alipay, and how they remain unregulated.¹³⁵²

To this end, the PBOC issued two administrative rules in 2010, namely, the 'Rules on the Administration of Payment Services Provided by Non-Financial Institutions (Administration of Payment Rules)',¹³⁵³ and the ¹³⁵⁴'Measures on the Implementation of

¹³⁴⁴ Law of the People's Republic of China on the People's Bank of China 2003, effective 2 January 2004. See also Andrew Liu, 'An Analysis of the PBOC New Mobile Payment Regulation' (2019) 39(1) Cato Journal 87, 88.

¹³⁴⁵ Promulgated on 6 December 2006 and effective on 11 December 2006.

¹³⁴⁶ Ibid.

¹³⁴⁷ Promulgated on 26 January 2006, effective on 1 March 2006.

¹³⁴⁸ Ibid.

¹³⁴⁹ Andrew Liu (n 1344).

¹³⁵⁰ Peoples Bank of China, '12th Five-year Plan for the Development and Reform of the Financial Industry' p 38 [online] available at <http://www.csrc.gov.cn/pub/csrf_en/newsfacts/release/201210/W020121010631355001488.pdf> accessed 19 July 2021.

¹³⁵¹ Ibid.

¹³⁵² Ibid 38-39.

¹³⁵³ Peoples Bank of China Decree No 2, promulgated on 14 June 2010, effective on 1 September 2010.

¹³⁵⁴ Ibid, Article 1.

the Rules on the Administration of Payment Services Provided by Non-Financial Institutions (Implementation of Payment Measures)’¹³⁵⁵ While the first rule serves as the main framework which provides the substantive rules regulating non-financial institutions and e-commerce operators who provide web and mobile e-payment services, the second rule clarifies the procedural requirements for compliance and enforcement.¹³⁵⁶ Both rules aim to safeguard the legitimate interest of consumers and other parties involved in the payment transaction.¹³⁵⁷

To regulate e-commerce transactions, the China E-Commerce law (ECL) was passed by the Chinese National People’s Congress (NPC) in 2018.¹³⁵⁸ Recall from section 4.3.2 of chapter four that the ECL aims to “safeguard the legitimate rights and interests of e-commerce entities, regulate e-commerce conduct, maintain market order, and promote the continuous and sound development of e-commerce.”¹³⁵⁹ The ECL has provisions which control the activities of e-commerce operators who provide e-payment settlement services.¹³⁶⁰ Its provisions are however, subject to other relevant administrative rules provided by the PBOC.¹³⁶¹

With regards to the first issue of enhancing the security of e-payment transactions, Article 53 of the ECL provides that where e-commerce parties agree to adopt e-payment to pay for the price of a product or service, service providers must ensure the tamper resistance, consistency, completeness, and traceability of transactions.¹³⁶² The law, however, does not clarify how a ‘tamper-resistant’ service can be provided. That notwithstanding, since the ECL refers e-commerce operators who provide payment settlement services to relevant administrative regulations,¹³⁶³ regard will be had to the Administration of

¹³⁵⁵ Peoples Bank of China Decree No 17, promulgated on 1 December 2010, effective same date.

¹³⁵⁶ Ibid, Article 1. For more on these rules, see Zhou Weihuan and Douglas W Arner and Ross P Buckley, 'Regulation of Digital Financial Services in China: Last Mover Advantage' (2015) 8 Tsinghua China Law Review 25, 47-48.

¹³⁵⁷ Ibid.

¹³⁵⁸ Promulgated on 31 August 2018, effective from 1 January 2019.

¹³⁵⁹ ECL, Article 1.

¹³⁶⁰ Ibid, Article 46.

¹³⁶¹ Ibid.

¹³⁶² E-commerce Law 2018.

¹³⁶³ Ibid, Article 46.

Payment Rules 2010. Article 33 of the rule states that payment service providers must ensure the security of consumer payment information processed or stored on their sites.¹³⁶⁴ In an attempt to provide further clarification, Article 38 of the corresponding Implementation of Payment Measures 2010 gives a more general requirement mandating service providers to adopt adequate security measures to protect consumer payment information from loss, or damage arising from its unauthorised or fraudulent use and access.¹³⁶⁵

Drawing on the above provisions, one can infer that under the Chinese law, the minimum technical measures which explain the obligation on payment service providers to provide adequate security measures is not clarified, just like Nigeria. However, it is surprising to find that despite the less than express nature of e-payment security provisions under the law, Article 54 of the ECL requires a payment service provider to assume compensation liabilities where they provide e-payment services that “fail to conform with administrative requirements of the State on payment security.” Where the administrative requirements are not clarified, one presumes that e-payment providers will adopt self-regulatory measures deemed adequate in the circumstance.

On the second issue of liability regime, Article 57 of the ECL places the liability for loss on customer account arising from e-payment fraud on the payment service provider. A proviso to the article, however, charges customers to protect their e-payment signatures, passwords and other security tools used in effecting payments and to promptly notify e-payment service providers where unauthorised payments have been made using these security tools, or where they are lost or fraudulently used. Where payment service providers can prove a customer’s negligence or non-compliance with the stated rules, then they can evade liability.¹³⁶⁶ The onus of proof that necessary security measures are complied with also lies with the service provider.¹³⁶⁷

¹³⁶⁴ Administration of Payment Rules 2010.

¹³⁶⁵ Implementation of Payment Measures 2010.

¹³⁶⁶ ECL 2018, Article 57.

¹³⁶⁷ Ibid

Therefore, while the e-payment security provisions under the Chinese law is not strictly controlled, their liability regime is favourable to consumers who will be entitled to compensation by an e-payment service provider where the latter fails to prove the former's negligence or non-compliance with the rules. While there are no known cases on these two issues, it is most likely that the Chinese courts would construe compliance with security standards strictly to aid a consumer since the default liability regime for e-payment fraud rests with the payment service provider.

6.4 Application to TAM

As stated in section 1.4.2 of chapter one, several empirical studies identify perceived e-payment security risk as a disabler of e-commerce use.¹³⁶⁸ Ozkan, for instance, finds that the perceived usefulness of e-commerce is negatively influenced by concerns over e-payment security.¹³⁶⁹ Abrazhevich observe that customers' behavioural intention to engage in e-commerce is adversely affected where they are not confident in the security of online payment systems provided by merchants.¹³⁷⁰ Ardiansah *et al* add that perceived e-payment security impacts on user behavioural intention to make online purchases.¹³⁷¹ For Oney *et al*, availability of "technical infrastructure, implementation, well-defined transaction rules and legal factors (legal framework)" all act as contributory factors which enhance trust in the perceived security of e-payment systems used in online marketplaces.¹³⁷² Islam further notes that the security of e-payment transactions and the consequent positive impact on the volume of e-commerce sale can partly be enhanced where operational and legal issues that affect trust in its use are addressed.¹³⁷³

¹³⁶⁸ Emrah O, Gizem O Guven and Wajid H Rizvi (n 109). Md A Hassan, Zarina Shukur and Mohammad K Hasan, (n 109); Noor Hamid and Yoke Cheng (n 109).

¹³⁶⁹ Sevgi Ozkan, Gayani Bindusara and Ray Hackney (n 66) 319-320.

¹³⁷⁰ Dennis Abrazhevich, *Electronic Payment Systems: A User-Centred Perspective and Interaction Design* (Phd Thesis, University of Eindhoven 2004) 6-9. See also Shamim Hossain and Xiaoyan Zhou, 'Impact of M-payments on Purchase intention and Customer Satisfaction: Perceived Flow as Mediator' (2018) 3(2) International Journal of Science and Business 503-517.

¹³⁷¹ Chariri M Ardiansah, S Rahardja and U Udin (n 623).

¹³⁷² Emrah Oney *et al*, (n 108) 398.

¹³⁷³ Md M Islam, Harunur Rashid and Md Alam, 'Secure Electronic Payment: Proposed Method for the Growth of E-commerce in Bangladesh' (2015) 5(2) Asian Business Review 89.

In the light of the above, this section aims to prove, using findings from empirical literature, that e-payment security risks negatively affect consumer perception of the usefulness of e-commerce (H8₁), their trust in online merchants (H9) and their behavioural intention to make online purchases (H8₂) in Nigeria, the UK and China. It further aims to confirm the influence of laws in reducing consumer perception of e-payment security risk (H10) where consumers are aware of their existence (H12₁). Additionally, the influence of culture on consumer behavioural intention to effect e-payments (H14₂) is affirmed.

In a recent research conducted by Oyeyemi *et al* investigating the impact of consumer perceived risk on the effectiveness of online shopping in Nigeria, the perception of e-payment risk associated with ‘online credit card fraud’ is identified by 68% of the surveyed consumers¹³⁷⁴ as ‘very frequently’ impacting on their behavioural intention to shop online.¹³⁷⁵ 30% of the respondents admitted to ‘rarely’ being influenced while 2% expressed that they have ‘never’ been influenced by online credit card fraud.¹³⁷⁶ On their trust in online merchants due to online credit card fraud, 80% generally expressed their distrust while 20% suggested otherwise.¹³⁷⁷ On whether they perceive online shopping as useful in the light of these concerns, 26% admitted to its usefulness, 46% expressed that it is sometimes useful, while 28% disagreed on its usefulness. Overall, 65% of the respondents expressed preference for offline shopping due to these security concerns while 30% were indifferent.¹³⁷⁸ 5% on the other hand, indicated preference for online shopping.¹³⁷⁹ Thus, these data show the causal behavioural connection between e-payment risks, trust in online merchants, perceived usefulness and behavioural intention.

¹³⁷⁴ The authors surveyed 240 consumers who are students in computer sciences departments of state-owned tertiary institutions in Lagos state Nigeria. The participants were randomly selected from this specific sample population because they were deemed to be aware of the benefits and risks associated with e-commerce and to a certain degree, reasonably informed.

¹³⁷⁵ Sunday O Oyeyemi *et al*, ‘Perceived Risk and Online Shopping Ineffectiveness in Retail Industry of Lagos State, Nigeria’ (2018) 4(8) International Journal for Innovative Research in a Multidisciplinary Field 10, 12.

¹³⁷⁶ Ibid.

¹³⁷⁷ Ibid.

¹³⁷⁸ Ibid 13

¹³⁷⁹ Ibid.

On the influence of laws, same research by Oyeyemi *et al* show that 59% of the respondents who are all educated and therefore, presumably informed,¹³⁸⁰ expressed to being adversely influenced by the absence of sufficient regulatory control for online payment fraud.¹³⁸¹ 38% stated that they were rarely influenced while 13% acknowledged to never being influenced by regulatory controls.¹³⁸² More interesting is the finding that 73% of respondents expressed to being very frequently influenced by the difficulty faced by online shoppers in getting legal redress for fraudulent transactions.¹³⁸³ 23% stated they are rarely influenced by this difficulty, while 4% are never influenced by it.¹³⁸⁴ This could, perhaps, be attributed to the weak liability regime which makes defendants automatically liable for fraud on their online accounts unless they can satisfy the onerous burden of proving the negligence of the payment service provider. Even where they are capable of discharging this burden, only the very few who are able to afford litigation costs can proceed with enforcing their rights to reimbursement.

Therefore, drawing on these pieces of data and existing literature on e-payment risk, a consideration of measures that can reduce the perception of e-payment security risks in Nigeria should be factored into consideration by policy makers if they desire to encourage more consumer participation in e-commerce. Changing the law on consumer default liability for e-payment fraud is a good starting point. Strengthening the security of e-payment transactions should also be considered. An increased awareness of a change in law will most likely help reduce perceived e-payment risks, increase trust in online merchants, improve consumer perception of the usefulness of e-commerce and their behavioural intention towards its use, ultimately encouraging more of its adoption. Being a high uncertainty avoidance country, it is logically expected that implementing measures that guarantee the security of e-payment transactions will most likely impact positively on e-commerce adoption where consumers are made aware of the new policy.

¹³⁸⁰ See Fn 1365.

¹³⁸¹ Sunday O Oyeyemi *et al* (n 1375) 14.

¹³⁸² Ibid.

¹³⁸³ Ibid 15.

¹³⁸⁴ Ibid.

Using data on the UK as another example, a recent report published by Pay Safe¹³⁸⁵ shows that consumers¹³⁸⁶ mostly use debit and credit cards when shopping online.¹³⁸⁷ It also shows that consumers are now generally more confident in the security of e-payment transactions, although some still advocate for further tightening of security measures.¹³⁸⁸ On the tightening of security measures, 63% of consumers suggested that security standards need to be strengthened, while 40% stated they would accept any payment security measure so long as it eradicates fraud.¹³⁸⁹ Although there are concerns that consumers may abandon shopping carts or cancel ongoing checking out processes where security measures become more complicated, the report finds that only 26% believe a balance should be struck between the ease/convenience of payment and security measures.¹³⁹⁰ Nonetheless, the proof of increased confidence lies in the fact that in a similar report published by same investigators the previous year (2020), 76% of respondents demanded stronger payment security controls over convenience, while 18% suggested that both be balanced.¹³⁹¹ The reduction in the number of consumers who suggested the tightening of security standards in the 2021 report, when compared to a similar study conducted 2020, shows increased confidence in existing safety measures.

The foregoing notwithstanding, there are still concerns over payment fraud, although judging by the UK's position as having the 3rd largest consumer e-commerce market in the world,¹³⁹² in addition to the high percentage (88.5%) of consumers who shop

¹³⁸⁵ Pay Safe is a UK holding company that offers online payment services to customers in different countries through its subsidiaries. For more, see <<https://www.paysafe.com/gb-en/industries-we-serve/ecommerce/>> accessed 20 June 2021.

¹³⁸⁶ Between March-April 2021, 8111 consumers from the UK, US, Germany, Canada, Bulgaria, Italy and Austria were interviewed by Sapio Research on behalf of Pay Safe, using online surveys and e-mail invitations. 2000 of those consumers reside in the UK.

¹³⁸⁷ Pay Safe, 'Lost in Transaction: Consumer Payment Trends 2021- How COVID-19 Has Changed the Landscape, and What this Means for the Future of E-Commerce' (Pay Safe, 7 May 2021) p 5-6, <https://www.paysafe.com/fileadmin/user_upload/Lost_in_Transaction_Consumer_Payment_trends_2021.pdf> accessed 20 July 2021.

¹³⁸⁸ Ibid.

¹³⁸⁹ Ibid.

¹³⁹⁰ Ibid 7.

¹³⁹¹ Ibid 8.

¹³⁹² See section 1.2 of chapter one.

online,¹³⁹³ such concerns have not adversely affected their behavioural intention to use and their actual adoption of e-commerce. Perhaps, this can be attributed to UK's culture as an individualist society with a low uncertainty avoidance orientation. Recall from subsection 3.2.5.3 of chapter three that this cultural orientation makes consumers more likely to trust and embrace the use of new technologies irrespective of the perceived risk, especially where the benefits (such as usefulness, convenience and speed) outweigh the risks. The benefits in the UK context does outweigh the risks since statistics show that consumers are 98% of the time, reimbursed for losses associated with unauthorised and fraudulent payments.¹³⁹⁴ Thus, by implication, it can be inferred that the guarantees provided by the law which holds payment service providers liable for e-payment fraud by default, indirectly contributes to building consumer confidence in online transactions.

On China, statistics show that e-payment is made by approximately 86.4% of internet users.¹³⁹⁵ Data by the Peoples' Bank of China (PBOC) further shows a 6.3% increase in the number of e-payments processed by banks between 2018 and 2020, with 62.1 billion e-payment transactions recorded in the 4th quarter of 2019 alone.¹³⁹⁶ Online mobile payment transactions, however, represents 30.7 billion (nearly 50%) of the bank-processed e-transactions, thus suggesting less preference for credit and debit card transactions.¹³⁹⁷ This means that Chinese consumers prefer making online payments using mobile payment platforms.¹³⁹⁸ In the 1st quarter of 2021 alone, 65.3% of online mobile payments were made on e-commerce websites, given the growing size of its e-commerce market.¹³⁹⁹ These data show that Chinese consumers perceive online mobile payments to

¹³⁹³ European Commission (n 293).

¹³⁹⁴ UK Finance (n 1314) 13.

¹³⁹⁵ Statista, 'Penetration Rate of Online Payment in China from 2008 to December 2020' (Statista 9 February 2021) <<https://www.statista.com/statistics/248962/penetration-rate-of-online-payment-in-china/>> accessed 20 July 2021.

¹³⁹⁶ Ibid

¹³⁹⁷ The Payers, 'China's Electronic Payments up to 62 billion in Q4 2019' (19 March 2020) <<https://thepayers.com/mobile-payments/chinas-electronic-payments-up-to-62-billion-in-q4-2019--1241249>> accessed 20 July 2021.

¹³⁹⁸ Examples of these payment platforms include, but are not limited to China Union Pay, WeChat Pay, Alipay, PayPal and Apple Pay.

¹³⁹⁹ Daxue Consulting, 'Payment Methods in China: How China became a Mobile-first Nation' (4 July 2021) <<https://daxueconsulting.com/payment-methods-in-china/>> accessed 20 July 2021.

be useful, hence their growing use when shopping online. It further demonstrates that consumers exhibit a favourable attitude towards e-commerce.

A study conducted by China Union Pay, a mobile payment platform with the third largest market share in the country, shows that 98% of respondents believe mobile payments to be safe, with only 8% expressing they had experienced online mobile payment fraud in 2020.¹⁴⁰⁰ This, perhaps, is due to the trust built by these platforms in providing money back guarantees for potential incidents of transactional fraud. Additionally, their low uncertainty avoidance cultural orientation most likely plays a role in their collective belief on the safety of online mobile payments. That notwithstanding, where other forms of online payments do not provide similar payment guarantees, Chinese consumers will most likely be protected by the favourable liability regime on e-payment fraud.

Overall, the essence of attempting to determine the impact of perceived e-payment security risk on e-commerce adoption using the TAM is to provide law makers and relevant stakeholders with insight into factors to consider when negotiating the parameters of rules that have the potential to improve consumer use of e-payment systems. Online payment fraud is certainly a huge obstacle to e-commerce adoption in Nigeria. Where law makers consider the causal connection between e-payment risk and other variables (awareness, trust in online merchant/service provider, culture and the law), on both consumer perceived usefulness and behavioural intention, such potential law will most likely achieve its desired objectives, having been drafted to apply to its unique context.

6.5 Comparative Analysis

Examining the relationship between e-payment security risk and the TAM variables analysed in the preceding section suggest that consumer confidence in e-commerce can be improved where users do not bear the financial consequences of unauthorised/fraudulent e-payments. In the UK, the liability for e-payment fraud lies with the service provider, who is expected to promptly refund the unauthorised amount once

¹⁴⁰⁰ Ibid.

notified and confirmed.¹⁴⁰¹ The only exception is where the payment service provider successfully proves that the customer acted fraudulently or was grossly negligent, and in such situation, liability for loss falls on the customer.¹⁴⁰² The service provider nonetheless, has a discretion to reduce customer's liability to a specified amount on the grounds of negligence alone.¹⁴⁰³ The payment service provider also needs to prove that they complied with set technical measures to guarantee the safety of the payment transaction.¹⁴⁰⁴ China follows a similar approach to the UK in holding payment service providers liable for fraudulent e-payments and placing the onus of proof on these service providers to prove compliance with safety measures and possible customer negligence or fraudulent behaviour.¹⁴⁰⁵ However, the Chinese approach varies from that of the UK since the former is silent on the possible reduction of consumer liability for negligence.

Nigeria on the other hand, follows a much different approach from the UK and China. Here, automatic liability for loss linked to fraudulent/unauthorised e-payment transaction lies with the customer except where the payment service provider is proven to have been negligent or compromised on safety standards.¹⁴⁰⁶ Unlike both comparative jurisdictions, burden of proving negligence and compromises in technical safety standards lie with the consumer. As stated in section 6.1.1 of this chapter, this approach contradicts the coherent body of existing consumer law principles which aim to protect a party with a weaker bargaining strength. It also means that payment service providers will most likely take little or no action to ensure that their websites are less vulnerable to fraudulent activities since they would rarely be liable for unauthorised payments without a consumer going through strenuous lengths to prove compromises in their safety standards. Therefore, it is necessary to amend this rule if Nigeria desires to improve the confidence of its consumption population in the use e-payment services when making online purchases.

¹⁴⁰¹ Payment Services Regulation 2017, Articles 75(1) and 76.

¹⁴⁰² Ibid, Article 77(3).

¹⁴⁰³ Ibid, 77(1) and (2).

¹⁴⁰⁴ Ibid, Article 75(1) and (2).

¹⁴⁰⁵ ECL 2018, Article 57.

¹⁴⁰⁶ CBN Guidelines on Operation of Electronic Payment Channels in Nigeria 2020, Rules 3.4.6.5 and rules 4.5.4.3

Looking at safety standards in particular, the approach adopted by the UK seems to vary from that of China and Nigeria. UK requires the implementation of multi-factor authentication measures (otherwise known as strong customer authentication) for higher value and higher risk transactions by all payment service providers, including e-commerce operators who offer payment services.¹⁴⁰⁷ While the strict enforcement of this requirement translates into providing a less convenient or less easy checking out service for consumers who shop online, UK consumers are however, said to prefer the maintenance of stronger security standards that help prevent fraud, over convenience.¹⁴⁰⁸ China, on the other hand, only requires payment service providers to comply with adequate security standards which ensure payment transaction are tamper-resistant and secure, without clarifying the technical standards required.¹⁴⁰⁹ Nigeria adopts a similar approach to China in the sense that its CBN rules require online merchants to corporate with payment service providers and comply with their security guidance, which appears to be a system of self-regulatory measures that may vary with different service providers.¹⁴¹⁰ It is most likely that the interpretation of this standard is either left to the CBN to determine as suggested by Rule 2.6.1 of the CPF 2016, or left to the courts where a consumer decides to prove the negligence of a payment service provider.

Table 5 below summarises the regulatory differences between the e-payment rules of Nigeria, the UK and China.

¹⁴⁰⁷ Payment Service Regulation, Article 100.

¹⁴⁰⁸ Pay Safe (n 1378).

¹⁴⁰⁹ E-Commerce Law 2018, Article 46; Rules on the Administration of Payment Services Provided by Non-Financial Institutions 2010, Article 33; Measures on the Implementation of the Rules on the Administration of Payment Services Provided by Non-Financial Institutions 2010, Article 38.

¹⁴¹⁰ CBN Guidelines on Operation of Electronic Payment Channels in Nigeria 2020, Rules 3.4.5.6, 4.5.2.2 and 4.5.4.3.

LEGAL ISSUES	NIGERIA	THE UK	CHINA
Compliance with security measures	Adequate security measures not explicit	Strong authentication measures- PSR, Art 100.	Tamper-resistant measure not clarified
Liability regime	<p>1. Liability lies with customer- CBN Guidelines, Rule 3.4.5.5.</p> <p>2. Exception: Payment service provider is negligent or compromised on safety standards- Rule 2.6.1.5.</p> <p>3. Burden of proof: On customer- CBN Guidelines, Rule 3.4.6.5.</p> <p>4. No Contributory Negligence.</p>	<p>1. Liability lies with payment service provider- PSR, Arts 75(1) & 76.</p> <p>2. Exception: Fraud or gross negligence- PSR, Art 77(3).</p> <p>3. Burden of proof: On payment service provider- PSR, Art 77(4).</p> <p>4. Contributory negligence may be considered by service provider. PSR, Art 77(1) & (2).</p>	<p>1. Liability lies with service provider- ECL, Art 57</p> <p>2. Exception: Fraud or negligence- ECL, Art 57.</p> <p>3. Burden of proof: on payment service provider- ECL, Art 57.</p> <p>4. No contributory negligence.</p>

Table 4: Differences between the Security and Liability Provisions of E-payment Laws in Nigeria, the UK and China.

It is important to note that although Nigeria's safety standards are akin to those of China, both countries' socio-economic and cultural conditions vary in some respects, which can make Chinese companies more willing to adopt strong security measures despite lacking regulatory clarity in this regard. Firstly, payment service providers in China may generally be able to invest significantly into acquiring and maintaining tamper-proof payment technologies unlike in Nigeria where the associated costs can be prohibitive, ultimately leading to a deliberate attempt to compromise on security standards.

Secondly, as a long-term orientation country, China's renowned technical competence and regulatory objective of promoting financial innovation mean that they are keener on

taking measures that yield future benefits and rewards. In this circumstance, achieving future benefits would entail adopting secure technologies that promote consumer trust in the payment services provided by e-commerce operators, ultimately sustaining existing customers and attracting new ones. Nigeria on the other hand, being a short-term oriented country, will less likely be interested in investing in innovation, hence, why they are known to be late adopters of technology. Similarly, China's low uncertainty avoidance orientation means they are more willing to face the risks associated with perceived e-payment fraud, compared to Nigeria's high uncertainty avoidance outlook which heightens their preference for offline transactions.

Thirdly, where Chinese consumers eventually become victims of e-payment fraud, they are more likely to receive refunds for the lost sum than in Nigeria due to the latter's weak liability regime. These three reasons, therefore, underscore the need for Nigeria to enforce firm regulatory requirements for safety standards akin to those provided by the UK; else, payment service providers will make little or no effort to cater to the e-payment concerns of consumers in Nigeria.

Overall, it is suggested that the perceived risks associated with making online payments through e-commerce websites/applications will most likely be reduced where the following actions are taken:

- i. Nigeria should update its current rules on e-payment to clarify the technical safety and security standards required of all payment service providers. They should also put in place measures to ensure that the new standards are strictly complied with. Default liability for fraudulent payments should further be placed on these service providers, except where the service provider can prove that the contested payment transactions was caused by a consumer's negligent or fraudulent activity.
- ii. Awareness of the revised law, typical cyber-security risks associated with e-payments, and available risk mitigations measures should be created. Awareness of these risks and their associated mitigation measures will help limit consumer potential liability for negligence. To create this awareness, monthly public

enlightenment programs should be conducted and disseminated by the CBN and other relevant institutions in all state and local government areas of the country. This will not only promote financial inclusion and consumer empowerment, but it will also serve as an opportunity to draw consumers' attention to the phenomenal benefits of e-commerce.

- iii. Since the FCCPA 2018 regulates all economic matters, with its scope implicitly extending to financial products and services,¹⁴¹¹ it is suggested that the FCCPC steps in to institute actions on behalf of consumers who cannot afford to defend themselves in court. Alternatively, civil society groups could be encouraged to institute class actions on behalf of consumers challenging payment service providers who often compromise on safety standards.

6.6 Conclusion

This chapter extends the discussion on the substantive research issues identified as negatively affecting consumer adoption of e-commerce in Nigeria by considering the second issue, being e-payment security. It has also fulfilled its objective of demonstrating why the laws regulating e-payment are inadequate, and consequently less effective in protecting consumers against the perceived risks associated with the use of e-payment portals when shopping online. Findings which confirm the adverse impact of this perceived risk factor on consumer purchasing behaviour have also been presented. In fulfilling the objective of this chapter, several steps are followed but categorised into five major sections.

In the first section, the Nigerian CBN rules on e-payment are analysed in relation to the two issues of service provider compliance with minimum safety standards and the liability regime for e-payment fraud. With regards to the first issue, the CBN Guidelines on E-payment 2020 and the CPF 2016 are faulted for their less than express provisions on payment safety standards. This is because although the rules require payment service providers to implement adequate safety measures on their websites to ensure they are

¹⁴¹¹ FCCPA 2018, Section 17 (a) and (b).

fraud resistant, what constitutes safety mechanisms is not clarified. The failure to provide the expected standards presents payment service providers with wide discretion to implement self-regulatory measures deemed sufficient in this regard (but which may be inadequate in practice, depending on the circumstance). That notwithstanding, it is acknowledged that the economic situation in Nigeria may force payment service providers to compromise on safety standards, which in most situations, go unnoticed due to the lax regulatory regime and enforcement measures. As a result, it is suggested that the CBN only grants operational license to payment institutions who can comply with specified security standards. It is further suggested that the CBN conducts routine screening checks to ensure that these institutions are consistently compliant.

Looking at the second issue, the default liability placed on consumers for fraud on their accounts except where negligence of payment service providers is proven by consumers, is also found to be inequitable and onerous, thereby contradicting consumer protection principles. As consumers are weaker parties with little resources to pursue a claim in court, placing the burden of proving the negligence of a stronger party with greater resources tantamount to potentially leaving most consumers with little or no form of remedy for e-payment fraud. Payment service providers will, on the other hand, be indirectly encouraged to pay less attention to maintaining a strong security system when processing remote payments since they are aware that they will most likely evade any form of responsibility for e-payment fraud. Consequently, it is suggested that this provision be revised to reflect the coherent body of existing consumer law principles.

Section 6.2, nevertheless, shows that the UK follows a completely different approach from Nigeria with respect to these two issues. On the first issue, the PSR 2017 mandates all service providers and e-commerce operators to use multi-factor authentication measures as the specified minimum standard for high-risk high-value transactions. The FCA also diligently monitors compliance with this standard across the UK. On the second issue, the default liability for e-payment fraud in the UK rests on payment service providers although they are exculpated from liability where they prove that the consumer was grossly negligent or participated in the fraudulent activity. The liability on service

providers responsibly steers them into ensuring that consumer online accounts are fraud proof, knowing that in the event of a fraud, they ultimately bear liability except consumer collusion in the fraudulent activity is proven.

Looking at the Chinese legal regime in section 6.3, it is found that they follow a similar approach to Nigeria with regards to the first issue of maintaining adequate security standards. However, with regards to their liability regime, China adopts a similar approach to the UK since the default liability for fraud and the burden of proving customer negligence or fraud, rests with service providers. The exception here is that China requires proof of mere negligence as opposed to the UK's stricter gross negligence requirement. Additionally, in China, the consumer bears total liability where the payment service provider proves the fraud and negligence, compared to the UK which allows for consumers to be contributorily negligent.

Despite similar regulatory approaches followed by Nigeria and China with regards to their safety, compliance and enforcement standards, section 6.4 shows that consumers are more likely to be confident when effecting remote payments in China than in Nigeria. This is demonstrated using the TAM framework where it is deduced that China's long-term orientation and low uncertainty avoidance culture positively influences consumer behavioural intention to participate in e-commerce, compared to Nigeria's short-term orientation and high uncertainty avoidance culture. Aside cultural influence, the impact of laws is proven using data on the UK which shows an increased level of consumer confidence in e-payment transactions in recent years. More importantly, it demonstrates UK consumers' preference for the implementation of safety measures which reduce the risk of fraud as opposed to enjoying a convenient check out experience, in apparent support for multi-factor authentication. On Nigeria, it is found that the perceived risk of e-payment fraud affects consumer perception of the usefulness of e-commerce as well as their trust in online merchants. It is also found that most informed consumers are deterred from making online purchases due to high risk of e-payment fraud, absence of sufficient regulatory control for e-payment fraud, and the difficulty faced when seeking legal redress for fraud on their accounts.

Drawing on the comparative analysis made in section 6.5 and the TAM findings from existing literature, it is suggested that perceived risk of e-payment fraud can be reduced where current e-payment rules are updated to clarify the technical safety and security standards expected to be complied with by all payment service providers, seeing that high uncertainty avoidance countries thrive where regulatory structures are in place to improve trust. Furthermore, the default liability for fraudulent payments should be placed on service providers except where the service provider proves that the contested payment transactions was caused by the consumer's negligent or fraudulent activity. Additionally, awareness of the potential law, typical cyber-security risks associated with e-payments, and available risk mitigations measures, can be created to empower financial consumers. This has the potential to improve their confidence in e-commerce seeing that TAM findings suggested that consumer awareness of laws exerts a contributory, but positive influence on their behavioural intention to make online purchases.

CHAPTER SEVEN

PHYSICAL DELIVERY AND CANCELLATION OF ONLINE PURCHASES

The third issue identified as capable of limiting consumer adoption of e-commerce is the risk of loss associated with physical delivery of tangible goods and the product return risk associated with cancellation of online purchases. Put differently, the delivery risk associated with allocation of liability for loss of goods in transit and the product return risk associated with the possibility of returning a product after physical delivery without incurring additional liability or providing justification, are identified as perceived risk factors to e-commerce adoption. Although these two risks are substantially different, they are discussed under this chapter as related risks since the occurrence of the second perceived risk factor is dependent on completion of physical delivery of goods.

Section 1.4.3 of chapter one already explains why inadequate logistic and technical infrastructure exacerbate the occurrence of the first risk factor. It further explains, although briefly, why the two risk factors have the potential to worsen consumer adoption of e-commerce. Additionally, the sub-section clarifies why existing Nigerian laws which purport to address these issues are insufficient and will need to be updated to reflect the peculiar nature of online transactions. Therefore, this chapter aims to provide a more detailed assessment of the relevant provisions of the Nigeria law linked to these two issues, comparing same to what is obtainable in the UK and China and arriving at conclusions that can help explain better, why most Nigerians perceive issues associated with delivery and returns as demotivating factors to making online purchases.

To fulfil this objective, this chapter will be divided into five major sections. Section 7.1 discusses the substantive provisions of applicable Nigerian laws whilst also assessing their implications for e-commerce. Section 7.2 provides a corresponding discussion of the legal situation in the UK while section 7.3 focuses on the Chinese legal regime. Based on the research framework, empirical studies showing the influence of delivery and product return risks on e-commerce adoption is explored in section 7.4 with a view to understanding how consumers generally perceive these risks and how such risks impact

on their online purchasing decisions. Finally, all three jurisdictions are compared in section 7.5. The aim of this comparative analysis is to identify measures from the UK and the Chinese legal regimes that could be adapted to fill the gap in Nigerian laws, drawing on lessons from TAM findings.

7.1 The Nigerian Perspective

7.1.1 Delivery Risk of Loss

On the first issue, liability for loss on transit poses concerns for Nigerian consumers because merchants often exclude such liability in their contracts with consumers.¹⁴¹² Sellers can successfully evade liability since existing rules on delivery in a contract for the sale of goods allow implied terms and conditions to be excluded by agreement.¹⁴¹³ Recall from section 5.1 of chapter five that in *Iwuoha v Nigerian Railway Corporation*, a consumer was held liable for loss of goods on transit, more so since the consumer was said to be aware of the clause limiting the liability of the defendant transportation company.¹⁴¹⁴ This is in addition to the fact that Nigeria lacks rules on delivery which can be sufficiently adapted to protect the interest of the online consumer. Recall from section 4.1.2 of chapter four that the SOGA 1893 is the prevailing law which regulates both business and consumer sales contracts in Nigeria. Thus, an examination of the Act's rules on delivery is necessary to help determine if those rules may be stretched further to suit the peculiar nature of e-commerce.

Section 32(1) of the SOGA provides that “where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is prima facie deemed to be a delivery of the goods to the buyer.”¹⁴¹⁵ Section 32(2), however, requires the seller to make a contract with the carrier on behalf of the buyer as

¹⁴¹² Judith E Jessah (n 128).

¹⁴¹³ Sale of Goods Act 1893, Section 55.

¹⁴¹⁴ [1997] 4 NWLR (Part 500) 419.

¹⁴¹⁵ This principle is affirmed in the Nigerian case of *Nads Imperial Pharmacy v. Messrs Siemsqluese and Sons & Anor* [1959] LLR 21.

deemed reasonable in the particular circumstance. Else, the buyer may decline to treat delivery to carrier as delivery to himself where goods are lost or damaged and may claim damages against the seller.¹⁴¹⁶

An adaptation of the above provisions to e-commerce would mean that delivery to e-logistic service providers, as carriers in the supply chain, by default, translates to delivery to a consumer. This provision on its own alone should not apply to consumer contracts, let alone e-commerce. A corresponding implication for e-commerce would mean that where consumers are informed that their orders have been dispatched, the seller will by default, be deemed to have performed his delivery obligation. Clearly, the peculiar nature of e-commerce transactions presupposes that consumers mostly have direct access to the online merchant with whom they entered into contract with and only expects the merchant to fulfil his obligation arising out of a contract, with no thoughts whatsoever directed towards the e-logistic service provider. Section 32(2), thus, seems to be more of a protection for the seller as opposed to the buyer. This is because the seller will only be legally shielding himself from possible liability for loss or damage, having legally discharged his delivery obligation and secured the other insurance contract on behalf of the buyer. The buyer, on the other hand, will be expected to proceed against the carrier in the event of such loss or damage. Clearly, the very nature of B2C e-commerce makes this sort of arrangement burdensome on a consumer and will less likely be feasible in practice.

Looking at a related rule on liability for transit loss, Section 18 rule 1 of the Act states that “where there is an unconditional contract for the sale of specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, be postponed.”¹⁴¹⁷ This rule is complemented by Section 20 of the Act which states that unless parties agree to the contrary, “goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not.” The only

¹⁴¹⁶ Sale of Goods Act 1893.

¹⁴¹⁷ Sale Of Goods Act 1893.

exception to this rule is where either party delay delivery (which is transferring of goods to a carrier), then the party at fault for such delays will be liable for any loss that occurs due to the day.¹⁴¹⁸ A joint interpretation of these provisions reveals that under the SOGA 1893, the default rule on liability places the risks associated with delivery loss on the buyer (consumer). This is because property in the goods would be deemed to have passed to the consumer on contract formation, as opposed to when the buyer takes physical delivery of the goods.

It may, however, be argued that goods sold online should not be classified as ‘specific goods’ since consumers are generally not deemed to have chosen a particular product from a physical warehouse for onward delivery. The possible exception could be where a consumer places an online order for a customised product. That notwithstanding, section 18 rule 5 of the SOGA states that where unascertained or future goods by description are expressly or by implication, appropriated to a contract by either the seller or the buyer, with either party consenting to such appropriation, then property in the goods would be deemed to have passed to the buyer.¹⁴¹⁹ To clarify the meaning of appropriation, Section 18 rule 6 once again refers to the delivery of goods to a carrier whether named by the buyer or not, for onward transmission to the buyer, as sufficient to constitute goods appropriation to a contract. It is, therefore, clear that the basic rule of delivery under section 32(1) of the SOGA which deems a seller’s delivery obligation to have been performed on dispatch to a carrier, cannot be adapted to online consumer contracts for the purposes of determining liability for transit loss.

Another delivery risk-related provision of the SOGA which casts doubt on the Act’s possible application to e-commerce transactions is the rule under Section 33 of the Act. The rule states that “where the seller of goods agrees to deliver them at his own risk at a place other than where they are when sold, the buyer must, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of

¹⁴¹⁸ Ibid, section 20.

¹⁴¹⁹ Ibid.

transit.”¹⁴²⁰ Under the Act, the seller’s place of business is the default place of delivery.¹⁴²¹ This rule, on its own, is not in tandem with the very nature of e-commerce except where a seller offers click and collect services as an alternative to delivery.¹⁴²² Nonetheless, section 33 refers to a ‘distant place’ as any other location other than the seller’s place of business, which is where delivery ought to have taken place. Thus, even where a seller opts to assume the risk of conducting delivery at a different location, the SOGA still requires the buyer to bear the risk of incidental losses associated with the delivery. Thus, same risk is once again, borne by the buyer, although the seller can share in some liability which is voluntarily assumed as opposed to being implied by the law.

All analysed provisions seem to ignore the position of the consumer as a party who needs more protection in view of possible asymmetric information, uneven bargaining power and consumer vulnerabilities.¹⁴²³ Admittedly, this is expected since section 4.1.2 of chapter four reveals that the Act essentially codifies legal principles from pre-1893 cases and as a result, did not embody the ideals of a modern consumer.¹⁴²⁴ Based on this fact alone, its suitability for online consumer transactions remains highly questionable.

The FCCPA 2018 and the ETB 2017 have no rules on delivery and associated liability allocation for transit loss. The only related provision of the FCCPA is the unfair terms requirement under sections 127 and 128 of the Act. Recall from section 5.2.1 of chapter five that notices which suggest a limitation of liability or an assumption of risk are required to be reasonably drawn to the attention of a consumer, although the implication of non-compliance is not clarified, neither is the effect of using a potentially unfair term clarified. Perhaps, the drafters of the FCCPA intended for the SOGA 1893 to still apply to all matters of delivery in sales contracts to reduce cases of parallel regimes. Looking at the ETB 2017, matters related to delivery are also not addressed by the Bill. However, the

¹⁴²⁰ The Sale of Goods Act 1893.

¹⁴²¹ Ibid, Section 29(1).

¹⁴²² Click and collect services are usually offered by e-vendors as a cost effective and quicker form of delivery which allows a consumer to select designated locations controlled by the seller to physically take delivery of their product.

¹⁴²³ See section 2.2.1 of chapter two.

¹⁴²⁴ Law Commission (n 79).

Bill lists activities covered under a contract of carriage, without providing set rules regulating those activities.¹⁴²⁵ Therefore, there is a dire need to review and update the provisions of the SOGA to reflect modern practices obtainable in both B2B and B2C transactions. Alternatively, and more importantly, the FCCPA can be revised in such a way that its provisions are able to cover issues faced by online consumer. This could entail amending the SOGA by transferring its consumer provisions to the FCCPA and updating the SOGA to solely reflect modern B2B practices.

7.1.2 Cancellation of Online Purchases

As will be discussed in sections 7.2 and 7.3 of this chapter, consumers in the UK and China are generally accorded the legal right to cancel or withdraw from online contracts without incurring additional liabilities or providing reasons to justify their decision to cancel or withdraw from the contract. This is otherwise known as the mandatory right of withdrawal or cancellation. The Nigerian legal regime does not recognise withdrawal or cancellation rights. However, goods may be returned, and full refunds claimed without incurring liability where the consumer proves to the seller that goods were found to be faulty, unsafe, or unsuitable for a specified purpose.¹⁴²⁶ Despite this rule, no specific timeframe is set for returning the faulty or unsuitable products. This means that sellers have the wide discretion to fix the time limit for effecting returns once a consumer provides legal justification for refunds.

Although justification may be provided as required by law, there is still a risk that a seller may fix a very restrictive and limited time limit for returns, to the detriment of an unsuspecting consumer who may fail to notice a less apparent defect on a product on receipt of the good. In this situation, where a seller has a strict 3-day return policy (as is often contained in the return policies of some Nigerian e-commerce operators),¹⁴²⁷ such consumer will most likely be unable to return the goods and claim full refunds. However,

¹⁴²⁵ Electronic Transaction Bill 2017, Section 31.

¹⁴²⁶ Federal Competition and Consumer Protection Act 2018, Section 122 (a).

¹⁴²⁷ For instance, Kara.com.ng, a Nigerian e-commerce operator has a 3-day return policy for defective products

where withdrawal/cancellation rights are available to consumers, their perception of the occurrence of this risk will most likely be reduced.

Since this right is available to consumers in some other jurisdictions, it is necessary to consider the background to and relevance of this right as a consumer protection measure which has the potential to improve consumer confidence in online transactions.

7.1.2.1 Background and Relevance of Withdrawal/Cancellation Rights

Withdrawal rights can be traced to the common law principle of *pacta sunt servanda* which means that parties are required to strictly comply with the terms of their contracts, with neither party exercising any right to unilaterally terminate or withdraw from the contract at will.¹⁴²⁸ This principle is, however, not applicable to cases where a contract is formed in the absence of mutual consent such as instances where fraud, undue influence and mistake are proven.¹⁴²⁹ In such instances, the affected party can avoid the contract. Nevertheless, there is an exception to the principle where consumers may be allowed to unilaterally withdraw from a contract without using defects in consent as a reason and without any penalty, but subject to be exercised within a specific time frame.¹⁴³⁰ In these cases, the consumer is given the opportunity to ponder over his decision to be bound by the contract within a specified ‘cooling off period.’ Within this set period, the consumer does not need to prove that there was no express or implied intention to be bound or that the contract has been detrimental to his interest. Rather, all that is expected of the consumer is to inform the seller that he has changed his mind and wishes to release himself from the contract. The legal protection which guarantees that a consumer can extricate himself from a contract after delivery, is termed ‘withdrawal rights’, otherwise known as cancellation rights in some jurisdictions,¹⁴³¹ and is mostly applied to distance contracts.

¹⁴²⁸ Horst Eidenmüller, ‘Why Withdrawal Rights?’ (2011) 1 European Review of Contract Law 1, 4-5.

¹⁴²⁹ Jiangqiu Ge, (n 56) 199.

¹⁴³⁰ Ibid.

¹⁴³¹ Christian Twigg-Flesner, Reiner Schultz and Jonathan Watson, ‘Protecting Rational Choice: Information and the Right of Withdrawal’ in Geraint Howells, Ian Ramsey and Thomas Wilhelmsson (eds), *Handbook of Research on International Consumer Law* (2nd edn: Edward Elgar 2018) 111, 127-128.

As noted in the preceding sub-section, withdrawal rights is neither covered by the SOGA 1893 nor the FCCPA 2018. However, since this right allows a consumer to end a contract without providing evidence of a defective consent, it is important to justify its importance as a tool for boosting consumer confidence in e-commerce transactions.¹⁴³² Ascertaining the legitimacy of withdrawal rights is also necessary to ensure that the purpose of such right is appreciated without relegating the importance of contracts as a critical aspect of private law.¹⁴³³ This research discusses two reasons proposed by commentators suggesting the importance of withdrawal rights, which reasons could equally be applied to justify its incorporation into the FCCPA.

Firstly, withdrawal rights can help correct information bias.¹⁴³⁴ Consumer behavioural studies suggest that transaction risks are often underestimated by consumers due to their optimism.¹⁴³⁵ While consumers are presented with several pieces of information from which they are expected to rely on and make their judgement about the probable success of the transaction, it is argued that consumers may encounter information overload which might make them overwhelmed.¹⁴³⁶ In this circumstance, consumers may feel they have been sufficiently informed and as a result, prematurely stops gathering more information about a transaction,¹⁴³⁷ essentially just focusing on few indicators that describe a product's quality.¹⁴³⁸ Due to the limited ability to process information, consumers may end up processing much lower amount of information compared to the information provided by the seller.¹⁴³⁹ This ultimately leads to information asymmetry, making consumers enter into contracts they would have avoided had they gathered more information about a

¹⁴³² Horst Eidenmüller (n 1419) 7-10.

¹⁴³³ Ibid 200.

¹⁴³⁴ Joasia Luzak, (n 176) 97-98.

¹⁴³⁵ Hanneke Luth, (n 273) 50; Robert A Hillman and Jeffrey J Rachlinski, 'Standard Form Contracting in Electronic Age' (2002) 77 New York University Law Review 429, 483.

¹⁴³⁶ Christian Twigg-Flesner, Reiner Schultz and Jonathan Watson (n 1422) 130; Hanneke Luth (n 273) 48.

¹⁴³⁷ J Bettman *et al*, 'Constructive Consumer Choice Processes' (1998) 25 Journal of Consumer Research 187, 193-200.

¹⁴³⁸ Ibid 190; Torben Hansen (n 273).

¹⁴³⁹ Ibid.

potential transaction.¹⁴⁴⁰ Therefore, withdrawal rights can be used as a tool to protect irrational consumers from the adverse consequences of the choices they make.¹⁴⁴¹

Although Eidenmüller argues that withdrawal rights could further deepen information asymmetry since consumers will be less willing to gather more information about a product before placing an online order,¹⁴⁴² it still does not negate the fact that those who investigate further may still end up making choices that may yield unfavourable consequences.¹⁴⁴³ More so, since human behaviour changes with each distant transaction overtime, one should not assume that consumers will learn to easily recognise and sieve out potential ‘regrettable’ transactions from the ‘good’ ones.¹⁴⁴⁴ Therefore, it is necessary to protect consumers from those regrettable transactions using withdrawal rights.

Secondly, withdrawal rights have the potential to improve consumer trust and confidence in online transactions.¹⁴⁴⁵ Due to the lack of personal interaction between online merchants and consumers in e-commerce transactions, consumers may be incapable of ascertaining the reliability of the transaction or its potential success.¹⁴⁴⁶ This lack of trust may curtail consumer’s desire to engage in e-commerce, especially due to uncertainty around the transaction process.¹⁴⁴⁷ To limit this perceived risk and assure consumers of online merchant and transaction reliability, withdrawal rights may be used. Although consumers can easily compare different commodity prices by checking different offers on several websites, thereby having limitless choices,¹⁴⁴⁸ the stain on confidence derives from their inability to physically examine those commodities, which assurance is usually

¹⁴⁴⁰ Christian Twigg-Flesner, Reiner Schultz and Jonathan Watson (n 1422).

¹⁴⁴¹ Joasia Luzak (n 176).

¹⁴⁴² Horst Eidenmüller (n 1419) 16.

¹⁴⁴³ Joasia Luzak (n 176) 98.

¹⁴⁴⁴ Pamaria Rekaiti, P and Rekaiti Van den Bergh, ‘Cooling-off Periods in the Consumer Laws of the EC Member States. A Comparative Law and Economics Approach’ (2000) 23 *Journal of Consumer Policy* 371, 377.

¹⁴⁴⁵ Joasia Luzak (n 176) 99-100.

¹⁴⁴⁶ G Borges and B Ilrenbusch, ‘Fairness Crowded Out by Law: An Experimental Study on Withdrawal Rights’ (2007) 163 *Journal of Institutional and Theoretical Economics* 84, 85.

¹⁴⁴⁷ S Harridge-March, ‘Can the Building of Trust Overcome Consumer Perceived Risk Online?’ (2006) 24(7) *Marketing Intelligence & Planning* 746, 748.

¹⁴⁴⁸ Robert A Hillman and Jeffrey J Rachlinski, (n 1426) 478; N Donthu and A Garcia, ‘The Internet Shopper’ (1999) 39(3) *Journal of Advertising Research* 52, 56.

provided in offline transactions. Withdrawal rights, in return, improves business efficiency because online merchants will strive to ensure they circulate high quality goods in the market to avoid the possibility of their goods being returned.¹⁴⁴⁹

Withdrawal rights have, however, been criticised for over protecting consumers.¹⁴⁵⁰ This is because over-reliance on the information asymmetry rationale and the benefit it provides for consumer to make free choices, does not necessarily mean that these rights are justified.¹⁴⁵¹ Markesinis particularly notes that “cancelling the contract does not mean that the exercise of the free will of consumer was actually impaired.”¹⁴⁵² This explains why the rules regulating the exercise of this right is restricted to a limited number of days and to limited commodities in certain jurisdictions.

In the light of the foregoing, subsequent paragraphs of this chapter will analyse the rules regulating this right in the UK and China. The aim is to reveal the extent to which these jurisdictions use withdrawal/cancellation rights as a protective tool for consumers, the likely impact such right has on consumer purchasing decision, as well as how their application in both countries vary. Drawing on lessons from this discussion, law makers can access the likely benefits of this right if incorporated into the FCCPA, in addition to the criteria that need to be fulfilled before such right can avail consumers in Nigeria.

7.2 The UK Perspective

7.2.1 Delivery Risk of Loss

Rules on delivery and returns, together with their associated remedies for sale contracts are contained in Chapter 2 Part 1 of the Consumer Rights Act (CRA) 2015. Before the passage of risk provisions of the CRA are analysed for the purposes of determining the

¹⁴⁴⁹ Liangguo Sun, ‘Consumers are Entitled to Withdrawal Rights’ (2011) 6 Contemporary Law Review 105, 109-110.

¹⁴⁵⁰ Joasia Luzak, (n 176).

¹⁴⁵¹ Ibid.

¹⁴⁵² Basil Markesinis, Hannes Unberath and Angus Johnston, *The German Law of Contract: A Comparative Treatise* (2nd edn, Oxford: Hart Publishing, 2006) 266.

party with liability for transit loss, it is necessary to first understand the CRA's default rules on delivery to weigh if they align with the very nature of e-commerce transactions.

Section 28(2) and (3) of the CRA states that under a sales contract, a seller is obligated to deliver goods to the consumer unless parties agree to the contrary, with such delivery effected without undue delay and not more than 30 days after contract formation. Where a seller refuses to deliver the goods, the consumer may end the contract.¹⁴⁵³ The consequences of treating the contract as ended is that a seller must promptly reimburse the consumer all payments made towards the contract.¹⁴⁵⁴ The CRA further clarifies that even where the consumer fails to treat the contract as ended, it still does not stop the consumer from cancelling the order or rejecting the goods when they are delivered.¹⁴⁵⁵ The seller is also expected to reimburse the consumer all the payments made towards the product.¹⁴⁵⁶ Thus, the rules on delivery entitles a consumer to end a contract and get full refunds for the money paid as consideration for the goods where a buyer fails to fulfil his delivery obligations, although the Act makes it clear that the consumer can pursue other remedies available to it if he so desires.¹⁴⁵⁷ Therefore, compared to the SOGA 1893, it is evident that the CRA's rule on delivery aligns with the very nature of e-commerce and this is logically expected since the Act covers online transactions.

On the risk provisions of the CRA, Section 29 provides that goods remain at the seller's risk till it comes into the physical possession of the consumer, or a person nominated by the consumer to take possession of the goods. However, where the consumer commissions a carrier to deliver the goods, then the goods will remain at the consumer's risk once delivery is made to that carrier.¹⁴⁵⁸ A joint interpretation of these provisions mean that a under the CRA, the seller bears liability for any loss or damage that occurs after dispatch

¹⁴⁵³ CRA, Section 28(6)(a).

¹⁴⁵⁴ CRA, Section 28(9).

¹⁴⁵⁵ CRA, Section 28(10)(a).

¹⁴⁵⁶ CRA, Section 28(10)(b).

¹⁴⁵⁷ CRA, Section 28(13). Other general remedies available to a consumer, depending on the circumstances include "(a) claiming damages; (b) seeking specific performance; (c) seeking an order for specific implement; (d) relying on the breach against a claim by the trader for the price [and] (e) for breach of an express term, exercising a right to treat the contract as at an end." See CRA, section 19(11).

¹⁴⁵⁸ Ibid.

until the goods are in the ‘physical possession’ of the consumer. However, a consumer will only be liable at the point of dispatch where the seller performs his delivery obligations, and the goods are transferred to a carrier nominated by the consumer.

It is important to note that the CRA prohibits the use of exclusion or limitation clauses to vary or restrict a seller’s obligations with respect to delivery and passage of risk.¹⁴⁵⁹ Clauses which purport to exclude the rights and remedies contained under these rules will not be binding on the consumer.¹⁴⁶⁰ This provision has the potential to guarantee consumers that despite low readership of terms and conditions,¹⁴⁶¹ their rights and obligations with respect to delivery will not be restricted or made more onerous.

Overall, it is submitted that the CRA’s provisions on delivery and passage of risk clearly align with the very nature of e-commerce transactions since the failure of a buyer to deliver goods as agreed under a contract may entitle the buyer to terminate the contact. In the same vein, the seller bears liability for delivery risk of loss since physical possession of goods by consumer or his nominated carrier determines when risk is deemed to pass from the seller to the buyer. This is contrary to the provisions of the SOGA 1893 where risk passes on contract formation irrespective of delivery.

7.2.2 Withdrawal and Cancellation Rights

The current law which regulates the use of withdrawal and cancellation rights in the UK is the Consumer Contracts (Information, Cancellation and Additional Charges) Regulation (CCR) 2013,¹⁴⁶² which as can be recalled from section 4.2.1 of chapter four, implements the EU Consumer Rights Directive.¹⁴⁶³ Under Part 3 of the CCR, withdrawal

¹⁴⁵⁹ Other exclusions barred by the CRA include compliance with pre-contractual information (section 12), compliance with sample (section 13), match with see or examined model (section 14), installation as part of conformity (section 15), non-conformity with digital content (section 16) and trader’s right to sell (section 17).

¹⁴⁶⁰ CRA, Section 31(2)

¹⁴⁶¹ See argument in section 5.4 of chapter 5.

¹⁴⁶² SI 2013/3134.

¹⁴⁶³ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on Consumer Rights.

rights apply to distance and off-premises contracts between a trader and a consumer.¹⁴⁶⁴ However, the CCR does not apply to contracts for passenger transport services and off-premises contracts where payment to be made are not more than 42 GPB.¹⁴⁶⁵

It is important to clarify that the UK uses the words ‘withdrawal’ and ‘cancellation’ to explain the right cancel under Part 3 of the Regulation. From the wordings of the CCR,¹⁴⁶⁶ it can be inferred that ‘withdrawal rights’ is used in the context to describe the possibility that a consumer may want to ‘withdraw’ an offer to enter into a distance or off-premises contract, while ‘cancellation right’ is used when a contract has already been concluded. Therefore, since this chapter focuses on delivery-related risks where contracts are concluded, with the consumer or someone nominated by him, having physical possession of the goods, this thesis is concerned with the exercise of cancellation rights. To this end, any other reference to withdrawal rights in this thesis is used to generally depict the cancellation and subsequent termination of a contract where goods have already been delivered to the consumer.

Article 28 of the CCR list instances where application of withdrawal rights will not apply. Of specific note is the unavailability of this right in contracts for the supply of goods or services where price is dependent on financial market fluctuations, contracts for personalised goods, goods able to deteriorate easily, newspapers and periodicals, alcoholic beverages under specific circumstances, service contracts for repairs or maintenance where consumer requests a visit from a trader, and accommodation and leisure services which require a specific date for performance.¹⁴⁶⁷ These exceptions are most likely provided to balance the interest of consumers with that of traders since where consumers are allowed to withdraw from these contracts, traders might suffer unforeseen financial losses. For example, the value of goods contracts subject to price fluctuations is

¹⁴⁶⁴ Section 5 of the CCR defines distance contracts as one “concluded between a trader and a consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded.” E-commerce transactions are therefore, classed as distance contracts.

¹⁴⁶⁵ CCR 2013, Article 27(2)(c) and (3).

¹⁴⁶⁶ CCR, Articles 29(3), 32(1)-(2) and 35(1).

¹⁴⁶⁷ For more circumstances where withdrawal rights are inapplicable, see CCR, Article 28(1)-(3).

attached to time, which determines the rate of increase or decrease in the value of the goods. For personalised products, such goods will most likely be difficult to be resold while for perishable items, the quality of the item depreciates with time especially, when not stored in ideal conditions. With regards to newspapers and periodicals, the time limit attached to its use by the public reduces its value on the expiration of the specific time. Thus, returning these items becomes less beneficial to the seller.

The CCR offers a 14-day cooling off period within which a consumer may wish to cancel a distant or off-premises contract, without providing any reasons or incurring additional liability.¹⁴⁶⁸ However, where a trader fails to inform the consumer of his the existence of this right in accordance with his mandatory information requirements under the Regulation, the cooling off period ends 12 months after the date in which the initial 14-day period would have ended.¹⁴⁶⁹

Under a sales contract which is a major focus of this thesis, withdrawal period commences on the day the consumer or someone identified by him takes physical possession of the goods.¹⁴⁷⁰ Where multiple goods are delivered on different days, consumer's withdrawal period begins from the day the last of the goods are delivered to a consumer.¹⁴⁷¹ Furthermore, where the sales contract is for "regular delivery of goods during a defined period of more than one day," the 14-day withdrawal period commences from the day the first of the goods are delivered.¹⁴⁷² However, for service contracts and digital content, the 14-day cooling-off period commences from the date of contract formation.¹⁴⁷³

To exercise this right, a consumer is expected to inform a trader of his decision to cancel by either using a form similar to the model form contained in Schedule 3 Part B of the Regulation or making any other statement that clearly depicts the consumer's decision to withdraw from the contract.¹⁴⁷⁴ Although a trader may provide a cancellation form on his

¹⁴⁶⁸ CCR, Articles 29(1) and 30(2)-(3).

¹⁴⁶⁹ CCR, Article 31.

¹⁴⁷⁰ CCR, Article 30(3).

¹⁴⁷¹ CCR, Article 30(4)-(5).

¹⁴⁷² CCR, Article 30(6).

¹⁴⁷³ CCR, Article 30(2).

¹⁴⁷⁴ CCR, Article 32(1)-(3).

website, a consumer is not obligated to use the form; nevertheless, where used, a trader must promptly acknowledge the receipt of the form in a durable manner.¹⁴⁷⁵ The key rule is that once a consumer communicates his decision to cancel within the expiration of the cooling off period, the consumer will be deemed to have cancelled the contract.¹⁴⁷⁶ In the event of a dispute, the onus lies with the consumer to prove that he complied with the requirements of the CCR in cancelling the contract.¹⁴⁷⁷ It is noteworthy that in service contracts, a consumer will lose his cancellation right where the performance of the service is completed, with the performance commencing after the cancellation notice is sent by the consumer and the consumer is aware that cancellation rights will be lost once service is fully performed.¹⁴⁷⁸

On the consequences of exercising this right, Article 33(1)(a) of the CCR confirms that withdrawal right “ends the obligations of the parties to perform the contract.” Thus, a consumer is expected to send the goods back to the trader or any person authorised to receive the goods on behalf of the trader, unless the trader offers to collect them.¹⁴⁷⁹ The obligation to return the goods must be exercised without undue delay and no later than 14 days after intimating the trader of his decision to withdraw from the contract.¹⁴⁸⁰ The trader is further expected to reimburse all payments made by the consumer towards the goods without undue delay, in addition to delivery costs paid for by the consumer, only on the condition that the consumer chooses the standard delivery option.¹⁴⁸¹ The reimbursement is expected to be completed within 14 days after either when the trader receives the goods back or when the consumer provides evidence of the goods being sent back, whichever is earlier.¹⁴⁸² Additionally, the trader is expected to make the

¹⁴⁷⁵ CCR, Article 32(4).

¹⁴⁷⁶ CCR, Article 32(5).

¹⁴⁷⁷ CCR, Article 32(6).

¹⁴⁷⁸ CCR, Article 36(2). Similar situation applies in contracts for supply of digital content. See Regulation 37(2).

¹⁴⁷⁹ CCR, Article 35(1) and (2). For off-premises contracts, a consumer is not obligated to return the goods where “the goods were delivered to the consumer’s home when the contract was entered into and [such goods] could not, by their nature, normally be returned by post”. See specifically Article 35(1)(b).

¹⁴⁸⁰ CCR, Regulation 35(4).

¹⁴⁸¹ CCR, Regulation 34(1)-(3).

¹⁴⁸² CCR, Regulation 34(4)-(5).

reimbursement using the same means of payment provided by the consumer, unless otherwise agreed.¹⁴⁸³ The trader is also prohibited from imposing any other charges on the consumer with respect to the reimbursement.¹⁴⁸⁴

On who bears the cost of transporting the goods back to the seller, the CCR states that the consumer will bear the cost, unless the trader offers to cover the costs, or where the trader fails to perform his information duty notifying the consumer of the costs attached to exercising this right.¹⁴⁸⁵ There is also a possibility that the value of the goods may depreciate “beyond what is necessary to establish the nature, characteristics and functioning of the goods.”¹⁴⁸⁶ In this circumstance, “the trader may recover that amount from the consumer, up to the contract price.”¹⁴⁸⁷ The trader can recover such amount by either deducting it from the reimbursement or the consumer will be expected to pay the amount to the trader.¹⁴⁸⁸

Overall, one can see that the CCR provides robust rules that control the exercise of withdrawal and cancellation rights by consumers. It further outlines the rights and responsibilities of traders and consumers attached to the exercise of this right. However, a situation where goods are lost in transit while being sent back to the trader may raise concerns. It is not clear if the reimbursement which comes with the exercise of cancellation rights will still avail the consumer or whether it is sufficient that the consumer provides a receipt confirming proof of dispatch, irrespective of confirmation by trader of actual receipt of goods. It is also not clear if the rules of delivery and passage of risks under the CRA 2015 will be adapted to this same context. Therefore, it will be interesting to see how the draftsmen or the courts will address risks associated with loss of goods (as opposed to value) when exercising cancellation rights.

¹⁴⁸³ CCR, Regulation 34(7).

¹⁴⁸⁴ CCR, Regulation 34(8).

¹⁴⁸⁵ CCR, Regulation 35(5).

¹⁴⁸⁶ CCR, Regulation 35(9).

¹⁴⁸⁷ Ibid.

¹⁴⁸⁸ CCR, Regulation 35(10).

7.3 China Perspective

Once again, this section will first analyse Chinese rules on delivery and passage of risk to determine who bears liability for loss of goods on transit. Secondly, the Chinese laws regulating withdrawal and cancellation rights will be assessed with a view to understanding how this right is applied in practice by Chinese consumers. Ultimately, the rules that purport to address both issues will be weighed to see if their provisions align with the unique nature of e-commerce transactions.

7.3.1 Delivery Risk of Loss

Article 20 of the China E-Commerce Law (ECL) requires goods or services to be delivered to consumers by e-commerce operators in accordance with the mode or time agreed to by parties, with the e-commerce operator liable for risks and liabilities during transportation of goods, except the consumer selects another logistic service provider. This provision is complemented by Article 51 of the ECL which places the time of delivery as being the time of sign off by the consignee, where delivery is made by express logistics.¹⁴⁸⁹ Since a consignee is a term used in shipping contracts to refer to the customer or recipient of goods, the provision of the ECL clearly places the delivery risk of transit loss on a seller.

Similarly, Article 598 of the China Civil Code 2020 provides a general rule affirming a seller's obligation to perform his delivery duties by transferring ownership of the subject matter to a buyer in a sales contract. The delivery is expected to be performed at a time agreed by the parties or within such period.¹⁴⁹⁰ Article 602 of the Code adds that a seller must deliver a contract's subject matter at the agreed place of delivery and where the place of delivery is unclear, but the subject matter needs to be transported, "the seller shall

¹⁴⁸⁹ A proviso to Article 51 further adds that the time of delivery in service contracts "shall be the time indicated on the electronic voucher or physical voucher so generated; [however,] if the above voucher indicates no time or the indicated time is inconsistent with the actual service provision time, the actual service provision time shall be the delivery time." For digital goods, the time of delivery is stated to be "when the subject matter of the contract arrives at the specific system designated by the other party and can be searched and identified."

¹⁴⁹⁰ China Civil Code 2020, Article 601.

consign it to the first carrier for its delivery to the buyer.”¹⁴⁹¹ Thus, consigning goods to a carrier for onward delivery to a buyer where the place of delivery is unclear, means that the seller has performed his delivery obligations under the Chinese Civil Code.

Like the ECL, the Civil code provides that risks of loss, damage and destruction of the subject matter lie with the seller prior to delivery, while such risks is transferred to the buyer after delivery, unless the law provides otherwise or the parties agree to the contrary.¹⁴⁹² This means that compared to the UK’s CRA, liability for loss can be varied by agreement between parties, although the law requires such agreement to comply with the principles of good faith and fairness.¹⁴⁹³

The above notwithstanding, a proviso to Article 607 of the Civil Code states that ‘where no agreement exist’ to clarify the place of delivery and the subject matter needs to be transported, “the buyer shall bear the risks of destruction, damage, or loss of the subject matter when the seller consigns the subject matter to the first carrier for transport. Similarly, where the seller delivers the subject matter at a place agreed to by the parties, but the buyer fails to take delivery of the goods, the risk associated with such default is borne by the buyer.”¹⁴⁹⁴

It is important to note that although the delivery and liability provisions of the ECL are very clear, its rules are, however, subject to the provisions of Civil Code in the event any inconsistency. This is because a proviso to Article 2 of the ECL states that “where other laws or administrative regulations contain specific provisions on sale of goods or provision of service, those laws or administrative regulations shall prevail.” Therefore, based on a joint interpretation of the ECL and the Chinese Civil Code, one can conclude that the default rule for transit liability under the Chinese legal regime is that risk lies with the seller prior to delivery, although it may be varied by agreement. However, where the ‘place of delivery is not clear’ from the face of the contract, it is sufficient if a seller

¹⁴⁹¹ China Civil Code, Article 603(1).

¹⁴⁹² Article 604.

¹⁴⁹³ See discussion in section 4.3 of chapter 4. Also see Chinese Civil Code, Article 6.

¹⁴⁹⁴ China Civil Code, Article 608.

consigns goods to a carrier for the seller to be deemed to have performed his delivery obligations. In this instance, the seller will bear no liability for any loss, damage and destruction of goods that occurs afterwards. Ultimately, parties' agreement on place and time of delivery determines who bears liability for transit loss.

7.3.2 Withdrawal and Cancellation Rights

Prior to the coming into force of the China Consumer Protection Law (CPL) 2013, no mandatory withdrawal rights existed with regards to distance contracts.¹⁴⁹⁵ However, discretionary withdrawal rights were granted to consumers by some prominent e-commerce operators in China such as Taobao and Alibaba.¹⁴⁹⁶ These e-commerce operators provided consumers with contractual rights to return their online purchases within 7 days after physical receipt of goods, without providing any reasons or incurring any penalty, but subject to some exceptions.¹⁴⁹⁷ This right was eventually made mandatory on introduction into the CPL 2013 under Article 25.¹⁴⁹⁸

Article 25 of the CPL solely focuses on distant contracts. It states that “where proprietors sell goods by means such as the internet, television, telephone or by mail order, consumers have the right to return the goods within 7 days of receipt and need not give a reason.” This means that the right to cancel commences from the day the items ordered through the listed communication channels, are physically possessed by the consumer, with such right expiring 7 days after.

Under the CPL, cancellation right does not apply to: (a) customised products, (b) fresh or perishable goods, (c) audio-visuals, computer software or digitised goods which are downloaded online or opened by consumers and (d) delivered periodicals.¹⁴⁹⁹

¹⁴⁹⁵ Jianqiu Ge (n 166) 207.

¹⁴⁹⁶ Ibid.

¹⁴⁹⁷ This voluntary right did not apply to commodities such as cosmetics, gold, food, personal accessories, jewels, watches, nursing products, health products, virtual goods and paraphernalia.

¹⁴⁹⁸ See section 4.3.1 of chapter four.

¹⁴⁹⁹ CPL 2013, Article 25.

Furthermore, cancellation rights is not applicable to “goods unsuitable for return by their nature as confirmed by consumers at the time of purchase”.¹⁵⁰⁰

In addition to the explanation provided in section 7.2.2 of this chapter on why withdrawal rights cannot be applied to certain commodities, digital goods are also exempt under the Chinese law since the goods could be copied and reproduced, thereby violating the intellectual property right of owners.¹⁵⁰¹ The inclusion of ‘other goods unsuitable for return by their nature’ is used as a miscellaneous provision because the listed category of goods are not exhaustive.¹⁵⁰² To clarify the nature of the miscellaneous provision, the China SAIC promulgated the ‘Interim Measures for the Return without Reasons of Commodities Purchased Online within 7 Days’ 2017 (‘Interim Measures’).¹⁵⁰³ The Interim Measures provide that commodities which by their nature, are not eligible to be returned without reason, so long as same is confirmed by consumers at the time of purchase are as follows: (a) goods that can easily change in quality or affect personal one’s personal health and safety once unpacked, (b) products greatly devalued once used on a trial basis or activated, and (c) products which are either apparently flawed or near their expiration date, to the consumer’s knowledge.¹⁵⁰⁴

To provide further clarity on how consumers will be deemed to have taken notice that certain commodities are not returnable at the time of purchase, the Interim Measures adds that where a seller specifies that certain goods are not returnable, consumers must be informed at the time of purchase and confirmation obtained.¹⁵⁰⁵ Thus, a notice or announcement placed by a seller on his website is not sufficient to serve as confirmation that a consumer is aware of that a product cannot be returned; rather, a special process of drawing consumer’s knowledge to the terms associated with the sale of such products is

¹⁵⁰⁰ Ibid.

¹⁵⁰¹ Jianqiu Ge (n 166) 219

¹⁵⁰² Ibid.

¹⁵⁰³ Interim Measures for the Return without Reasons of Commodities Purchased Online within 7 Days, Order No. 90 of the State Administration for Industry and Commerce.

¹⁵⁰⁴ Ibid, Article 7.

¹⁵⁰⁵ Ibid.

accepted as proof of confirmation.¹⁵⁰⁶ As one can recall from the discussion in section 5.3 on unfair contract term, this requirement complements the provision of Article 26 of the CPL 2013, which requires online merchants to use specific symbols, signs, images and other rational measures to specifically draw consumer's attention to the "quality, [...] safety precautions, risk warnings, after-sales service, civil liability, and other information strongly tied to the interests of consumers, and provide explanations as requested by consumers."¹⁵⁰⁷ Thus, for sellers to specifically class items as not returnable under the miscellaneous provisions of the law, they need to prove that consumers are aware and such awareness can be confirmed according to the measures stipulated by the law.

To exercise the right to cancel a contract, Article 25 of the CPL requires consumers to ensure that goods are still in good condition before sending it back to the trader within the 7-day cooling off period. However, the CPL did not clarify the meaning of a commodity which is still in good condition. This creates the opportunity for sellers to refuse accepting goods based on their own discretionary rules on the criteria which satisfies the requirement of 'good condition'. This provision is vague and could be subject to multiple interpretations. Thus, there is need for the draftsmen or courts to resolve this ambiguity.

Jia, suggests that the 'good condition' requirement can be fulfilled if the value of the commodity has not depreciated at the time the right to cancel is exercised.¹⁵⁰⁸ The author notes that the value of commodities such as cameras, laptops and mobile phones may be devalued where unpacked or unfolded and the power turned on, even merely as a way of examining the products to confirm if they are free of unknown defects.¹⁵⁰⁹ Same applies to where sealed products are unsealed to verify its contents. Logically, a consumer needs to take these actions to ensure a product is fit for purpose. However, such actions could potentially reduce the value of a product when resold. Perhaps, this issue can be solved

¹⁵⁰⁶ Dongming Jia, *Understanding on the Law of the People's Republic of China on the Protection of Consumer Rights and Interests* (China Legal Publishing House, 2013) 109.

¹⁵⁰⁷ CPL 2013, Article 27.

¹⁵⁰⁸ Ibid, 111.

¹⁵⁰⁹ Ibid.

by classifying the products under the exceptions to withdrawal rights (for instance, goods and digital products who by their nature, cannot be returned).

Additionally, the CPL does not clarify which party bears the burden of proving that goods were in good condition when received by the consumer. This is because the consumer may claim that the product was not in good condition when received, while the seller can assert that the product was dispatched free from any defect and the damage occurred whilst in the possession of the consumer.¹⁵¹⁰ Nevertheless, in *Yanshen Liao v Guangzhou Jingdong Trading Co Ltd*,¹⁵¹¹ the court held that the burden lies with the consumer to prove that he examined the product on time and within 24 hours after receipt of goods, to ascertain if it was delivered in good condition. Failure to do that means that the consumer will bear the adverse consequences of the product not being in good condition, and therefore, not returnable.

Clearly, this issue raises a dilemma as to how to ensure that the exercise of cancellation rights protects consumer welfare whilst also enhancing the functioning of the market (by considering the financial interests of businesses). It further raises questions on whether withdrawal and cancellation rights should be made mandatory.¹⁵¹² This is because although withdrawal rights aim to protect consumers from the harsh realities of asymmetric information, the conditions attached to the exercise of this right can distort the market balance. At the same time, while few consumers may succeed in exercising this right since, not all consumers will benefit from the limitation attached by sellers as a prerequisite to the exercise of this rights.

The CPL is also silent on the method of activating the right of withdrawal and its subsequent effect on the contract. Put differently, the form in which notifications to sellers ought to assume, in addition to their content and effect on contractual rights and obligations, are not clarified by the CPL. However, the Interim Measures 2017 states that

¹⁵¹⁰ Keke Jin, 'Applicable Scope of Consumers' Withdrawal Rights' (2014) 12 Shanghai Municipal People's Congress 12.

¹⁵¹¹ Civil Judgment (2015) No 1064 of the Guangzhou Intermediate People's Court in Guangdong Province.

¹⁵¹² Jiangqiu Ge, 'Consumers' Withdrawal Rights: A Focus on the Interpretation through the Application of the Contract Law' (2015) 6 Tsinghua University Law Journal 95, 113.

“a consumer who chooses to return any commodity without reasons shall issue a goods return notice to the online seller concerned within 7 days of receipt of the commodity.”¹⁵¹³ Thus, it is sufficient if an online seller receives a notice of decision to cancel the contract for withdrawal rights to be activated, while a seller will wait to receive the goods before processing refunds, within another 7-day after the day of receipt.

On the effect of goods return notice, Ge argues that withdrawal rights have the same effect with termination rights in Chinese private law.¹⁵¹⁴ Article 557 of the Chinese Civil Code 2020 terminates the rights and obligations of parties once a contract is rescinded. This is complemented by Article 565 of the Code which states that “where one of the parties requests to rescind the contract in accordance with law, the other party shall be duly notified. The contract shall be rescinded at the time the notice reaches the other party.” Although the Civil Code clarifies the cessation of a contract on receipt of the goods return notice, the CPL requires that reimbursement by seller is dependent on goods being received back in good condition.

On who bears the general cost of returns and initial shipping costs, the CPL provides that the “shipping costs to return goods is borne by consumers; but where business operators and consumers have agreed otherwise, the agreement is followed”. Looking back at the obligation on sellers to refund consumers payment made towards a product on its receipt, the CPL does not clarify if the seller is obligated to refund the initial shipping cost. However, it appears that a seller is not expected to cover such costs except the parties agree to the contrary. This is because Article 25 of the Law essentially requires sellers to refund consumers the ‘payment for goods.’ On interpretation, this means that the cost expended on the product itself will only be refunded while the consumer will assume the initial cost of delivery.

The CPL is further silent on who bears the liability for damage and loss of goods while returning the product back to the seller. The issue of damage can be partly addressed by the requirement that goods should be returned in good condition. However, a consumer

¹⁵¹³ Interim Measure 2017, Article 10.

¹⁵¹⁴ Jiangqui Ge, (n 1503) 106-107.

may return the goods in good condition, but the damage and loss subsequently occur in transit. Although recourse may be had to the default rule on delivery and passage and risk, there is need to clarify this grey area in the law.

Overall, one can notice that the Chinese legal regime seeks more to balance the interest of consumers with those of businesses, judging by some its provisions that explain a seller's performance of his delivery obligations, the rules that clarify the delivery risk of loss, as well as the limited scope to enforcing withdrawals rights. Perhaps, due to China's socialist market ideals, a strictly consumer-oriented regulation could force traders to bear increased operating costs, consequently forcing them out of operation. This may not particularly be in the interest of micro or small and medium-sized enterprises (SMEs)¹⁵¹⁵ which, as is evident from the laws discussed so far in this thesis, are encouraged by the Chinese government to embrace innovative market practices. Recall from section 2.2.2 of chapter two that when discussing the Chinese definition of a consumer, it was explained that Article 62 of the CPL suggests that the law can by reference, apply to farmers and other businesses engaged in agricultural production. This is particularly due to their assumed lack of specialised knowledge and skilled negotiation abilities.¹⁵¹⁶ Therefore, the socio-economic context in China influences to a considerable degree, the nature and content of consumer protection rules in the country.

7.4 Application to TAM

In Comegys *et al*'s empirical study investigating the effect of trust and risk in online purchasing behaviour, they identify concerns around delivery and return policies as risk perceptions which generally affect the perceived usefulness and user behavioural intention to make online purchases.¹⁵¹⁷ Ogunsola and Akanji arrived at a similar conclusion when examining the influence of perceived risk on consumer online shopping

¹⁵¹⁵ See Fn 327.

¹⁵¹⁶ Jiangqiu Ge, (n 56) 76-77.

¹⁵¹⁷ Charles Comegys, Mika Hannula and Jaui Váisänen, 'Effects of Consumer Trust and Risk on Online Purchase Decision-making: A Comparison of Finnish and United States students' (2009) 26(2) International Journal of Management 295.

behaviour in Nigeria.¹⁵¹⁸ It was also observed that inadequate transportation networks and inefficient logistic management practices further worsen the perception of delivery risks in Nigeria, which has its impact on consumer trust in online merchants, consumer behavioural intention and ultimately, e-commerce adoption.¹⁵¹⁹

In the light of the foregoing, this section aims to demonstrate that perceived delivery and product return risks can impact on consumer trust in online merchants (H9) and their behavioural intention to make online purchases (H8₂). It also aims to prove that consumer awareness of laws (H12₁) can help limit these risk perceptions (H10). Furthermore, the role of facilitating conditions as a usage measure which impact on consumer behavioural intention (H13₁) and actual participation in ecommerce (H13₂) is affirmed. To justify these propositions, available data and empirical findings from literature on Nigeria, the UK and China will be employed.

Looking into consumer behaviour in Nigeria, it is revealed that consumers tend to trust and shop from e-commerce operators who employ lenient return policies and provide cash-on-delivery (COD) services to limit the perceived delivery and product return risks. For example, Oletowo examines the antecedents of online and in-store shopping behaviour by studying consumers' perception of trust towards six e-commerce operators with physical stores, namely Jumia, Konga, Dealdey, Olx, Slot and Fashionista.¹⁵²⁰ He finds that the respondents¹⁵²¹ shop more from Konga than the others due to timely delivery and easy returns policy, while preference for Jumia is linked to their provision of COD method of payment.¹⁵²² The influence of COD in limiting the perceived risk that goods may be lost or damaged in transit is further confirmed in Osio and Orubu's research which probes the perception of consumers towards online shopping in Nigeria.¹⁵²³

¹⁵¹⁸ Kemi Ogunsola and Oyenike S Akanji, 'Influence of Perceived Risk on Consumers' Online Shopping Behaviour in Nigeria' (2018) 8(3) African Journal of Sustainable Development 73-96.

¹⁵¹⁹ Landry Signe and Chelsea Johnson, 'Africa's Consumer Market Potential: Trends, Drivers, Opportunities and Challenges' (December 2018) 9, 23 [online] <<https://www.brookings.edu/wp-content/uploads/2018/12/africas-consumer-market-potential.pdf>> accessed 28 July 2021.

¹⁵²⁰ John Olotewo, (n 21)

¹⁵²¹ Sample population consists of 200 students from a higher education institution in Lagos state, Nigeria.

¹⁵²² John Olotewo (n 21).

¹⁵²³ Osio E Joyce and Orubu O Freeman, (n 125) 38-45.

A closer examination of Konga's delivery and return policies show that Konga offers free voluntary returns on eligible items within 7 days without requiring consumers to provide a justifiable reason.¹⁵²⁴ This is in addition to other refunds provided for wrong, defective, incomplete, damaged, and counterfeit products. Konga employs a lenient delivery and return policy to improve consumer trust in the quality of products offered through their platform.¹⁵²⁵ However, a consumer is required to file a complaint within 24 hours where he claims a product has been damaged on transit.¹⁵²⁶ This goes to show that in line with hypothesis (9), online merchants can build trust with consumers where they adopt policies that limit consumer perception of risks associated with delivery and product returns. Thus, implementing such policies as a matter of law, will most likely, have its positive impact on the behavioural intention of the online consumer in Nigeria.

In line with hypothesis (13), this research argues that limited availability of facilitating conditions can worsen the perception of delivery-related risks and consumer behavioural intention in Nigeria. Recall from section 4.1.1 that facilitating conditions could assume the dimension of a favourable regulatory policy, access to infrastructural capabilities, education and training of nationals and economic external controls.¹⁵²⁷ These dimensions are seen as catalysts to actual e-commerce use,¹⁵²⁸ meaning that irrespective of a consumer's intention to shop online, such intention may not necessarily materialise where facilitating conditions are deficient.¹⁵²⁹

In the light of the foregoing, Faajir and Zidan note that the absence of adequate infrastructure, economic challenges and shortage of skilled personnel have generally constrained the efficient operation of e-commerce logistic operators as carriers in the supply chain.¹⁵³⁰ Some infrastructural deficiencies are down to poor road and rail

¹⁵²⁴ Konga, 'Return Policy' [online] <<https://www.konga.com/content/return-policy>> accessed 28 July 2021.

¹⁵²⁵ John Olotewo (n 21).

¹⁵²⁶ Ibid.

¹⁵²⁷ Geoffrey Kirkman, Carlos Osorio and Jeffery Sachs, (n 668).

¹⁵²⁸ Ofunre Iriobe and Ojo A Ayotunde, (n 550)183.

¹⁵²⁹ Ibid.

¹⁵³⁰ Avanenge Faajir and Zizi Hassan Zidan, (n 126) 23.

networks, as well as the minimal use of track and trace technical functionalities.¹⁵³¹ Due to poor delivery networks in Nigeria, consumers do not trust that their products will arrive on time, in good condition or even arrive at all.¹⁵³² This is further worsened by restricted contractual return policies often employed by some online merchants to reduce operational costs accumulated from product returns.¹⁵³³ Olajide and Kwak's research affirm the negative impact infrastructural challenges have on the operations of online merchants.¹⁵³⁴ They find that such challenges not only affect customers' satisfaction with the delivery services provided by these merchants, but also deter them from making future online purchases.¹⁵³⁵ The author arrives at this conclusion judging by the 36.9% of customers who complained about lost and damaged orders, as well as the 32.6% who raised concerns about late deliveries.¹⁵³⁶

With respect to the UK and in line with hypothesis (12), a recent market research conducted by Sendcloud,¹⁵³⁷ an e-commerce shipping platform which connects online businesses to multiple carriers across the EU, shows the influence of awareness on consumer purchasing decisions.¹⁵³⁸ Sendcloud finds that most UK consumers consider the ability to return online purchases with ease as a fundamental aspect of their online shopping experience.¹⁵³⁹ They observe that more than half of UK consumers check the

¹⁵³¹ Emmanuel Paul, 'Inside the Deep Challenges of E-commerce and Logistics in Nigeria' (Tech Point Africa, 20 August 2020) <<https://techpoint.africa/2020/08/20/challenges-ecommerce-logistics-nigeria/>> 27 July 2021.

¹⁵³² Lazarus Okoroji *et al*, 'Measuring the Correlation between Logistics Service Quality and Consumer Satisfaction in Nigeria' (2017) 7(4) Greener Journal of Business and Management Studies 43.

¹⁵³³ For instance, 'Kara.com.ng', an online retail outlet only offers consumers a 3-day return policy for defective goods while 'Supermart.ng' has a non-refundable policy for all products, except for materially defective products discovered at the point of delivery. For more on the issues, see Habib Ullah Khan and Stellamaris Uwemi, 'What Are E-Commerce Possible Challenges in Developing Countries: A Case Study of Nigeria' (2018) 12(4) International Journal of Business and Systems Research 454.

¹⁵³⁴ Olatunde A Olajide and Dong-Wook Kwak, 'The Impacts of Logistics Challenges on Order Management: The Case of E-commerce Firms in Nigeria' (Annual Logistics Research Network Conference 2018).

¹⁵³⁵ *Ibid.*

¹⁵³⁶ In analysing customer complaints, 868 customer reviews were analysed from two online marketplaces in Nigeria using verbatim interpretation and classified into order cycle stages.

¹⁵³⁷ See Sendcloud's website at <<https://www.sendcloud.com/>> accessed 27 July 2021.

¹⁵³⁸ In this statistical market research, over 8000 consumers across the EU were surveyed, with over 1,000 from the UK. See Stephanie Butcher, 'E-commerce Statistics 2020: Insights from the UK' (Sendcloud, 2020) [online] <<https://www.sendcloud.co.uk/ecommerce-statistics/>> accessed 27 July 2021.

¹⁵³⁹ *Ibid.*

returns policy of online merchants before placing an order, and as a result, they are more aware of what constitutes a ‘satisfactory’ criterion for returns.¹⁵⁴⁰ This data is complemented by the finding which shows that 54% of the consumers ‘regularly’ return their purchases while 32% ‘sometimes’ do return their purchases, meaning that consumers generally consider their ability to return products with ease before placing online orders.

The general awareness of consumers of the importance of return policies is driven by the reality that most UK consumers already shop online,¹⁵⁴¹ and since they tend to browse through different e-commerce websites when shopping, they invariably learn about the different return options available to them, should they decide to inquire about a pending delivery or return their purchases. By implication, consumers will most likely trust an online merchant, and may place an order through the merchant’s website where they perceive that the risk associated with the possible inability to return a purchase, is curtailed by a clear and easily accessible returns policy assuring them of their cancellation or contractual rights of return.

On consumer awareness of their rights around delivery and product returns, another study conducted by Europe Economics on behalf of the UK Citizen Advice,¹⁵⁴² shows that 55% of consumers¹⁵⁴³ expressed general awareness of their rights, although 45% are less confident about the specific details of such rights.¹⁵⁴⁴ For instance, 58% thought they could exercise their cooling-off rights within 7 days after receipt of goods, while 25% rightly stated it was within 14 days post-delivery.¹⁵⁴⁵ On the other hand, 33% rightly stated that sellers refund the cost of the item and standard delivery when returning goods within

¹⁵⁴⁰ Ibid.

¹⁵⁴¹ As mentioned in section 4.6 of chapter 4, the 2018 European Commission report titled ‘‘Consumers Attitude Towards Cross-border Trade and Consumer Protection’ finds that 88.5% of consumers made online purchases 12 months preceding the day of the survey.

¹⁵⁴² Europe Economics, ‘Consumer Rights for Parcel Delivery’ (Citizens Advice, 24 March 2017) [online] <<https://www.citizensadvice.org.uk/Global/CitizensAdvice/Post%20and%20Telecoms/Consumer%20Rights%20for%20Parcels%20Delivery%20-%20Final%20Report.pdf>> accessed 27 July 2021.

¹⁵⁴³ The sample population of this study consists of 2005 UK online shoppers aged 18 years and above. It is important to note that in this survey, 54% of the respondents placed online orders through a retailer’s website while 35% shopped at an online platform.

¹⁵⁴⁴ Ibid 9.

¹⁵⁴⁵ Ibid 87.

the statutory cooling-off period, while 12% thought the seller only refunds the cost of the item without the cost of standard delivery.¹⁵⁴⁶ The foregoing notwithstanding, 90% understand that a seller must provide adequate information on delivery and necessary arrangements prior to purchase, while 80% are generally aware that online merchants bear the risk associated with delivery till the consumer has physical possession of the parcel.¹⁵⁴⁷ Since consumers are largely aware that sellers bear the risk of delivery till they receive their online purchases, in addition to their awareness of the limited time frame to exercise their cancellation rights, such awareness will most likely limit their perception of risks associated with delivery and returns.

On the importance of facilitating conditions, the survey finds that when making online purchases, nearly 40% of consumers stated that they would like to have information on not only on the basic details about their delivery (such as delivery costs and estimated arrival date), but also their tracking number.¹⁵⁴⁸ Shopping from a retailer who provides tracking details on dispatch of goods, helps assure consumers that a secure delivery management practice is in place. It further enhances their trust in the online merchant, which will have its corresponding effect in limiting the delivery risk of loss. This explains why same survey finds consumers more likely to make further purchases from an online merchant who provides tracking details when confirming dispatch than one who does not.¹⁵⁴⁹ Ultimately, the existence of laws (which are complied with by online merchants) and the availability of requisite technical infrastructure (such as personalised tracking software), act as facilitating conditions to e-commerce adoption.

With respect to China and in line with hypothesis (8₁) and (9), Hong finds that product delivery risks have a significant effect on consumer purchasing decisions when dealing with an unreliable online merchant, hence the importance of lenient return policies.¹⁵⁵⁰ Shao *et al* also find in their research which probes the impact of return policies on

¹⁵⁴⁶ Ibid 10

¹⁵⁴⁷ Ibid 11-13

¹⁵⁴⁸ Ibid 14.

¹⁵⁴⁹ Ibid.

¹⁵⁵⁰ Ilyoo Hong, (n 680).

consumer purchase intentions, that where lenient return policies are adopted by online retailers, consumers have lower perception of risks, which ultimately results in a higher intention to purchase.¹⁵⁵¹ They also find that the ‘7 days non-defective returns’ adopted as a standard provision by all e-commerce operators, acts as quality signal which guarantees the quality of products and reduces worries faced by consumers about such products.¹⁵⁵² Similarly, Zhang *et al* find that full refund policies or a long return window has a positive influence on consumer purchase intention.¹⁵⁵³ These empirical studies go to show that return policies which allow a consumer to return a purchase without providing reasons, act not only as a deterrent to online merchants who may want to sell low quality products, but it also enhances consumer perception of trust in the services provided by these merchants.

Overall, the practical implication of these findings for Nigeria cannot be overemphasised. Nigeria faces both infrastructural challenges and the existence of inadequate regulatory policies, compared to the legal and economic situation obtainable in the UK and China. This means that Nigerian consumers require more protection than what is currently obtainable in the country. Nigerian rules on delivery and passage of risk cannot be adapted to e-commerce, neither does the country offer mandatory cancellation policies to cushion the perceived effect of delivery and product return risks on its consumption population. Therefore, it may be useful for online merchants to first build trust in the services they provide by reducing the risks already associated with shopping from their platforms. This can be done by employing more lenient delivery and return policies, making such information conspicuous and easily accessible through their websites. Learning from the operations of Konga will be a good starting point for other merchants, especially, if the merchants are concerned about accumulating more operational costs. Nigerian law

¹⁵⁵¹ Bingjia Shao *et al*, ‘The Impact of Cross Border E-tailer's Return Policy on Consumer's Purchase Intention’ (2021) 59 Journal of Retailing and Consumer Services 1.

¹⁵⁵² Ibid.

¹⁵⁵³ J Zhang *et al*, ‘Examining the Signalling Effect of E-tailers’ Return Policies’ (2017) 57(3) Journal of Computer Information Systems 191.

makers also have a role to play in updating current laws to align with the unique nature of e-commerce before the possibility of introducing cancellation rights can be explored.

7.5 Comparative Analysis

On the first issue around delivery risk of loss, delivery obligations under the UK CRA are fulfilled where a seller promptly delivers goods to the consumer no more than 30 days after contract formation.¹⁵⁵⁴ Failure to comply with this provision entitles a consumer to end the contract, with the seller, expected to reimburse the consumer all payments made by the latter towards the contract.¹⁵⁵⁵ In this instance, goods remain at the seller's risk till it comes into the physical possession of the consumer or a person nominated by the consumer to take possession of the goods.¹⁵⁵⁶ China, on the other hand, provides that a seller is deemed to have performed his delivery obligations where he transfers ownership of the subject matter to a buyer at a time and place agreed to by the parties.¹⁵⁵⁷ Where the place of delivery is nevertheless unclear, delivery is performed where the seller consigns the goods to a carrier for onward delivery to a consumer.¹⁵⁵⁸ In this circumstance, risks of loss or damage lies with the seller prior to delivery, but is transferred to the buyer after delivery, unless the law provides otherwise or the parties agree to the contrary.¹⁵⁵⁹ However, where the place of delivery still remains unclear, risk transfers to the buyer where the seller consigns goods to a carrier on behalf of the buyer.¹⁵⁶⁰

On the other hand, in Nigeria, a seller is said to have performed his delivery obligations where he transfers the goods to a carrier, irrespective of whether such carrier is nominated by the buyer.¹⁵⁶¹ The SOGA 1893 further provides that risks passes to the buyer at the point of contract formation, irrespective of payment or delivery.¹⁵⁶² As argued in section

¹⁵⁵⁴ CRA, Section 28(2) and (3)

¹⁵⁵⁵ CRA, Section 28(9).

¹⁵⁵⁶ CRA, Section 30.

¹⁵⁵⁷ China Civil Code 2020, Article 601 and 602.

¹⁵⁵⁸ China Civil Code, Article 603(1).

¹⁵⁵⁹ China Civil Code, Article 604.

¹⁵⁶⁰ China Civil Code, Article 607.

¹⁵⁶¹ SOGA 1893, Section 32(1).

¹⁵⁶² SOGA 1893, Section 18 rules (1)(5) and Section 20.

7.1, this provision does not align with the nature of e-commerce and as such, needs to be amended to reflect more accurately, the ideals of a modern consumer.¹⁵⁶³

Since the SOGA 1893 is an English statute which has been repealed and its consumer provisions amended and consolidated into the CRA, it is suggested that Nigeria also draws inspiration from the CRA in amending the SOGA 1893. Alternatively, the amended provision can be consolidated into the FCCPA 2018, leaving the SOGA 1893 as a B2B legislation. The amendment would require a major change in its rules on delivery. As a default rule, the amended provision should deem a seller's delivery obligations as performed where goods are delivered without undue delay to a place agreed to by parties, as opposed to the current law which deems delivery as complete where goods are transferred to a carrier.

On the liability for loss or damage, learning from the UK is also recommended since in the UK, a seller bears liability till goods come into the physical possession of a buyer. This rule aligns more with the nature of e-commerce than the Chinese law since the Chinese law requires that seller's obligations can be varied by agreement contrary to the UK law. Same applies to the Chinese equivalent provision on transfer of risk. Having noted how the ideals of the Chinese socialist market economy influences its consumer policies by being sometimes, less pro-consumer, Nigeria and the UK share more capitalist commonalities. Consequently, the issue of consumer detriment will most likely be experienced by consumers in both countries; hence, the need for more consumer-friendly policies.

On the second issue of withdrawal or cancellation rights, it has already been established that there are no laws which regulate delivery and returns in Nigeria. However, some online merchants in the country employ varied lenient and strict contractual return policies, while the right to return online purchases without giving any reason or incurring

¹⁵⁶³ More protection is needed in view of the adverse effects of asymmetric information and consumer's weaker bargaining position in the market.

any liability is provided by only 'Konga.' As stated in the preceding section, Konga adopts this policy to build consumer trust in the quality of products and services they offer.

Looking back at the discussed mandatory cancellation rights contained in the UK CCR 2013 and the Chinese CPL 2013, one can notice certain similarities and differences in how this right operates in both jurisdictions.

Firstly, both the UK and Chinese legislators acknowledge that this right should apply to distance contracts. However, the UK extends the right to further cover off-premises contracts. Secondly, the CCR contains a longer, but specified list of contracts where withdrawal rights will not be applicable. On the other hand, the CPL only provides a list of four items, together with a miscellaneous provision which is left at the discretion of sellers to determine (subject to the consumer being notified at the time of purchase and the seller obtaining proof of consumer's confirmation). Thirdly, the length of their cooling-off period is worthy of note. While Chinese consumers have a 7-day window, UK consumers have a longer period of 14 days. Additionally, in the UK the exercise of cancellation rights depends not only on physical receipt of purchase, but also on the seller notifying the consumer about the existence of this right. Fourthly, China has a restrictive, but vague precondition that requires goods to be in good condition before the cancellation right can be exercised. On the other hand, the UK allows a seller to recover the value of a commodity where it depreciates beyond what is necessary to ascertain the nature, function and characteristics of the product. Finally, in the UK, a trader is required to reimburse the consumer all payments made towards the product, including the cost of standard delivery, within 14 days after receipt of returned item, although the consumer is expected to bear the shipping cost of returns except trader agrees to cover the cost. China, on the other hand, permits reimbursement of the cost of goods alone within 7 days, with the consumer required to foot the shipping cost of returns, except the trader also agrees otherwise.

From this outline of similarities and differences, it is evident that the essential aspects to the exercise of this right are alike in both jurisdictions looking at for instance, the scope, exceptions, consequences and cooling-off periods. As stated in section 1.3 of chapter one,

these similarities are expected since China transplanted this rule from the EU.¹⁵⁶⁴ However, as one can notice, fundamental differences still exist because it is presumed that China adapted this rule to suit its socio-economic context in two ways.

Firstly, China follows a flexible regulatory approach by reducing the element of certainty associated with the EU law.¹⁵⁶⁵ For example, the list of exempted contracts under the CPL are limited to four but made flexible with a fallback provision left to sellers to determine in accordance with their business needs. The implication here is that ascertaining the scope of application of this right will be subject to judicial interpretation.¹⁵⁶⁶ On the other hand, the UK has a longer list of items which appear specific in content and complete with no miscellaneous provision. As a result, its rules can provide a uniform standard for accessing the scope of application of this right in courts.

Secondly, the Chinese rules are more oriented towards balancing the interest of businesses with that of consumers, or perhaps, protecting a trader's interest as well. This is evident once again from the miscellaneous provision which gives traders wide discretion to regulate their own list of excluded commodities. The 7-day withdrawal period is also relatively shorter compared to the UK. Furthermore, in the UK, the exercise of cancellation rights is not affected if it is down to a consumer's exercise of his normal right to examine a product on delivery while in China, cancellation rights may not apply, especially since the trader is allowed to set his own standards for a product that will satisfy the 'good condition' criterion.

As stated earlier in this chapter, the above differences are certainly down to some socio-economic differences between these countries. Firstly, with China being a centrally planned and regulated economy slowly embracing the ideals of a market economy, are less likely to require a concrete set of pro-consumer rules compared to a highly competitive market like the UK where consumers will most likely be exploited due to less regulation of the market. Secondly, China's open-ended approach to regulation further

¹⁵⁶⁴ The rule was borrowed from the Consumer Rights Directive 2011/83/EU.

¹⁵⁶⁵ Jiangqiu Ge (n 56) 263-264.

¹⁵⁶⁶ Ibid.

aligns with the uncertainties surrounding the development of its consumption market.¹⁵⁶⁷ Recall from section 4.3.1.3 of chapter four that the Chinese market developed rapidly from the late 1970s, with no consumer protection policy in place prior to that period. Thus, it was safe to promulgate flexible rules that can be easily adapted to new eventualities of a market in transition. On the other hand, the UK rules derive from the EU, whose goal of developing the relatively competitive internal market requires explicit and precise legal rules that can reduce trade barriers and enhance consumer confidence in cross-border transactions within the single market.¹⁵⁶⁸ This is more so as the Consumer Rights Directive 2011/83/EU adopts a maximum harmonisation measure¹⁵⁶⁹ which strips member states (including pre-Brexit UK) of some legislative autonomy despite legal/national culture differences, all in the guise of achieving coherence of legal principles.¹⁵⁷⁰ Thus, the UK rules favour certainty and predictability over flexibility.

Table 6 below summarises the key similarities and differences between the delivery, passage of risk and cancellation rules of Nigeria and the comparative jurisdictions.

LEGAL ISSUES	NIGERIA	THE UK	CHINA
Performance of delivery obligation	Delivery to carrier- SOGA, Sec 32(1)	As agreed by parties but not more than 30 days after contract formation- CRA, Sec 28(2) & (3).	As agreed by parties. Where place of delivery is unclear, delivery to carrier is sufficient- CC, Arts 601-603.
Risk of loss	Passes from seller to buyer on contract formation- SOGA, Section 18 rules (1)(5)	Risk on seller till goods come into the physical possession of consumer or nominated carrier-CRA, Sec 30.	Risk on seller till performance of delivery obligations- Art 604.

¹⁵⁶⁷ Ibid 265.

¹⁵⁶⁸ Ibid.

¹⁵⁶⁹ Paula Giliker, (n 928) 5-28.

¹⁵⁷⁰ Stephen Weatherill, 'The Consumer Rights Directive: How and Why a Quest for "Coherence" has (largely) Failed' (2012) 49(4) Common Market Law Review 1279-317.

Withdrawal/ Cancellation Rights	None	1. Applicable to distance and off-premises contracts- CRA, Sec 29(1) 2. 14-day cooling-off period- Sec 30(3).	1. Applicable to distance contracts- CPL, Art 26 2. 7-day cooling-off period- Art 26.
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Table 6: Similarities and Differences between the Delivery, Passage of risk and Cancellation rules of Nigeria, the UK and China.

Irrespective of these differences, both laws have contributed to a certain degree in building consumer confidence in e-commerce transactions, enhancing greater trust in the quality of goods provided by online merchants and most importantly, reducing the perceived risks associated with product returns. Over half of UK consumers are aware of the existence of this right, with a majority going through an online merchant's delivery and return policies before placing an order.¹⁵⁷¹ More so, the earlier 2019 report on the CCR 2013 confirms that the right has made a positive impact on consumers purchasing behaviour.¹⁵⁷² In China, cancellation rights are also used as a quality signal which guarantees the quality of products and reduces worries faced by consumers about such products.¹⁵⁷³

In the light of the foregoing, it is submitted that as a mixed economy, Nigeria can enhance consumer confidence in e-commerce whilst also building trust in the quality of products supplied by online merchants where cancellation rights are incorporated into the FCCPA 2018. But firstly, the scope of the FCCPA needs to be extended to cover online transactions before cancellation rights can be introduced. On the parameters of this rule, a mixed approach derived from both the UK and China will most likely align with the Nigerian context. This is because the country lacks adequate infrastructural facilities and other facilitating conditions that worsen the prospects of e-commerce adoption through delivery risks, which conditions are available in both the UK and China. China, although

¹⁵⁷¹ Europe Economics (n 1533); Stephanie Butcher (n 1529).

¹⁵⁷² Department for Business, Energy & Industrial Strategy, (n 135).

¹⁵⁷³ Bingjia Shao *et al* (n 1542).

more advanced, is also a developing country, just like Nigeria. Thus, consideration given to SMEs in China may equally be applicable to Nigeria which also embodies some socialist ideals.

To this end, it is suggested that cancellation rights in Nigeria be applied only to distant contracts since consumers are already accustomed to offline shopping. However, a specified and complete list of commodities that are not eligible to be cancelled should be outlined to avoid creating an avenue for online merchants to tactfully deny consumers their cancellation rights. Having amended the rule of delivery and passage of risk in the prospective SOGA, it is suggested that cancellation rights be exercised 10 days after delivery or physical receipt of goods by consumer. The consumer will be expected to notify the trader of his intention to cancel and return the purchase, with the seller receiving the goods all within 10 days before reimbursement can be made. 10 days is also suggested as feasible since poor transportation networks can delay delivery. Nonetheless, where goods are damaged whilst returning the goods, the consumer will bear liability up to the value of the damage.

This cooling off period considers the interest of SMEs¹⁵⁷⁴ who may be economically constrained by the operation costs of returns, where for instance, a consumer expresses his intention on the 10th day, with goods expected to arrive days later, thereby, reducing the prospects of a quick resale for the seller. As a mixed economy which has limited socialist economic ideals like China, it is also necessary to protect SMEs. This is more so as China and Nigeria are developing countries. To further help reduce the financial burden on merchants, shipping cost of returns should be borne by the consumer except parties agree otherwise, while the merchant refunds only the cost paid towards the goods.

In summary, Nigeria can learn from the experiences of the UK and China on how they address delivery and product risks which have been established as having the potential to limit trust in the online merchant, to negatively affect consumer behavioural intention to make online purchases and consequently, their actual adoption of e-commerce. Although

¹⁵⁷⁴ See (Fn 327) where micro-enterprises are explained as businesses which have between 0-9 employees while small and medium-sized enterprises are those that employ between 10-99 members of staff.

limited facilitating conditions can impact on e-commerce use by both businesses and consumers, one can see how laws which are inherently bound to their national contexts, can be employed as a tool to purposely curtail user perception of risks associated with delivery and returns. Maintaining coherence of existing consumer policies by borrowing from other jurisdictions can only yield the desired effect where consumers are made aware of the laws' existence. In this instance, online merchants have an important role to play. They can build trust in the quality of their products while also reducing consumer perception of risks associated with shopping from their websites by alerting consumers to their cancellation rights, both prior to purchase and on delivery. This information can be clearly spelt out on their websites and made easily accessible to consumers whenever they need it. The overall objective is to help build consumer trust and confidence in e-commerce while the law, its enforcement institutions and market actors will act as catalysts to achieving this objective.

7.6 Conclusion

This chapter concludes the discussion on the central issues identified in this research as negatively affecting consumer adoption of e-commerce in Nigeria by considering the third issue associated with the delivery risk of loss and the product return risk of purchase cancellation. The chapter has also fulfilled its objective of providing a more detailed assessment of the relevant provisions of the Nigeria law linked to these two issues, identifying gaps within the Nigerian law, and proffering possible responses to reduce the perception of these risk factors. In fulfilling the objective of this chapter, several steps are followed but categorised into five major sections.

In the first section, the delivery and passage of risk rules of Nigeria's SOGA 1893 are discussed and analysed in relation to their potential application or adaptation to online contracts. Here, it is found that the relevant rules are so substantially flawed that they cannot be stretched further and adapted to regulate online sale contracts. This is quite expected seeing that in section 4.1.2 of chapter four, it is observed that the Act does not embody the modern-day consumer law principles. Looking at the second issue of contract

cancellation, it is also found that although online merchants may offer this as a voluntary right through their respective lenient delivery and return policies, it is entirely discretionary since the FCCPA does not recognise such right. This is once again expected since the scope of the Act does not cover online transactions. Nonetheless, in this case, the FCCPA rules may be tweaked and made amenable to e-commerce since the Act contains key pro-consumer rules that have the potential to protect the online consumer if the gaps within the rules are filled.

The second section commences by discussing the UK's delivery and passage of risk rules as contained in the CRA 2015. Unlike Nigeria's SOGA, it is found that the relevant provisions of the Act align with the unique features of the online environment, especially since risk only passes from the seller to the buyer where buyer has physical possession of the goods. This means that in the UK, a seller clearly bears the transit risk of loss unlike what is obtainable in the SOGA where risk passes to the buyer on contract formation. On the second issue of cancellation rights, it is found that the rights as contained in the CCR 2013 are applicable to not only distant contracts, but to also off-premises contracts, with consumers afforded a 14-day cooling off period. That notwithstanding, consumers in the UK may enjoy more favourable return policies offered by online merchants as contractual rights, especially since some of these policies offer a 30-day window for returns with shipping costs borne by the merchant, unlike cancellation rights.

The equivalent rules in China are discussed in the third section. Although it is found that China's delivery and passage of rule risks mirrors that of the UK, the policies are less pro-consumer than the UK rules. For example, the Chinese rules allow parties to vary the default rules or exclude liability for transit loss by agreement. It also suggests that delivery obligations may be deemed completed where a seller transfers good to a carrier, but only where the place of delivery is not apparent from the face of the contract. Looking at cancellation rights, the Chinese rules only apply to distant contracts and are limited to a 7-day cooling off period. Additionally, the rights can only be exercised where goods are in good condition, a criterion that is essentially determined by the seller. It is found that the wide discretion given to sellers to determine consumer eligibility for the exercise of

cancellation rights is linked to the Chinese socialist market ideals and their aim of protecting SMEs. Consequently, Chinese consumer protection policies are said to be mostly flexible to accommodate the interest of businesses and to be made easily amenable to their slow but steady socialist transition to a market economy.

In the fourth section, empirical data from literature on Nigeria, the UK and China are employed to prove that perceived delivery and product return risks adversely impact on consumer trust in online merchants and their behavioural intention to make online purchases. For instance, in Nigeria, it is found that consumers tend to trust and shop from online merchants who employ lenient return policies as this helps limit perceived risks associated with delivery. It is also found that inadequate road networks and poor technical infrastructure generally constrain the efficient operation of e-commerce logistic operators. These challenges not only affect customers' satisfaction with the delivery services provided by these merchants, but also deter them from making future online purchases. When considering the likely influence of laws in the UK, it is found that most consumers read delivery and return policies before placing online orders. As a result, they are to a reasonable degree, aware of their cancellation rights, with a majority regularly returning their purchases. Same applies to China where cancellation rights is said to act as a quality signal employed by online merchants to guarantee consumers of the quality of products sold on their platform. Therefore, this thesis argues that it is important for same right to be incorporated into the FCCPA but made subject to the country's peculiar socio-economic context.

The fifth section essentially compares the laws of the three jurisdictions, bearing in mind how socio-economic contexts shape consumer law policies in the compared jurisdictions. Here, regulatory responses geared towards filling the already identified gaps within Nigeria's FCCPA and SOGA are made by taking a cue from the UK and Chinese legal regime. For instance, it is suggested that Nigeria draws inspiration from the CRA in amending the SOGA 1893 since the latter law was transplanted from the UK. It is also suggested that Nigeria learns from the UK and China in developing a bespoke rule that allows consumers to exercise this right solely for distant contracts. Prior to the

introduction of this right, merchants can equally adopt measures that build trust and reduce consumer perception of risks by alerting consumers to their discretionary right of cancellation, both prior to purchase and on delivery. The goal is to ensure that consumers become responsive to the rules controlling delivery and product returns, in such a way that those rules exert a positive impact on their behavioural intention to make online purchases.

PART 3

CHAPTER EIGHT

CONCLUSION AND RECOMMENDATION

8.1 Introduction

This chapter seeks to provide a summary of all concluding remarks made in the previous chapters with the aim of demonstrating in unambiguous terms, how consumer protection policies can facilitate consumer adoption of e-commerce in Nigeria. To begin, a brief background of the approaches followed in answering the research questions will be provided. This is then followed by a summary of all chapters, made to show how the research approaches are integrated into the thesis. Drawing on the chapter summary, a discussion of how the research questions is answered and the research objectives, met, is then provided. From this discussion, the major research findings and observations are presented. This then leads us into highlighting the theoretical and practical contributions of the research, from which further recommendations are made. Finally, the future direction of the research is proposed.

8.2 Approach to Research

To answer the research questions, this thesis follows two major approaches. Firstly, this study examines the UK and China as model economies for Nigeria by weighing how their consumer laws may have contributed to promoting consumer confidence in e-commerce within their respective jurisdictions. Secondly, as both economies are ranked as having one of the largest global consumer e-commerce markets compared to the Nigerian consumption population which shows an overwhelming preference for offline transactions, this research examines online purchasing behaviour in the three jurisdictions with a view to demonstrating how legal and extra-legal factors exert a considerable degree of influence on consumer purchasing decisions.

A closer look at these two approaches suggests that an examination of the causal relationship between law and consumer online purchasing behaviour is needed. To

explore this relationship, three steps are further taken in this thesis. Firstly, existing literature on e-commerce is studied with a view to identifying some legal issues which tend to limit consumer trust and confidence in e-commerce. Here, unfair terms in consumer contracts, e-payment transaction security and measures that guarantee the physical delivery and cancellation of online purchases, are identified as the central research issues which act as perceived risk factors for consumers. Secondly, the Nigerian legal frameworks which purport to mitigate the impact of these risk factors are examined with a view to understanding their adequacy or otherwise when applied in an online context. Where gaps exist within these frameworks, rules are either tweaked from traditional legal principles to formulate a bespoke response that can best be adapted to the online equivalent, or the rules are cautiously borrowed from the UK and China, regard being had to their contextual fit to Nigeria's legal, socio-economic, and cultural conditions. Finally, the effectiveness of those rules is tested by gauging their potential influence on consumers in the three jurisdictions using the extended TAM 2, developed by researchers, but modified in this research to help predict the likelihood that a consumer would either engage in or reject e-commerce.

8.3 Research Summary

This research is divided into three parts. Part 1 consists of four chapters (1-4) which provide a detailed background of the research framework. Part 2 is divided into three chapters (5-7) which focus on addressing the three central issues raised in this research while Part 3 (chapter 8) concludes the research.

Chapter one introduces the background to this thesis by first explaining why this research focuses on B2C e-commerce. It goes further to outline why the UK and China are chosen as comparative models by looking into Nigeria's legal, historical, socio-economic, political and cultural affinities with the comparative jurisdictions. The significance of this varied contexts to the comparative technique lies in the fact that issues which affect e-commerce adoption can also be addressed from these other perspectives, with law being only a contributory factor. Nonetheless, law, without elements from these other different contexts, will most likely remain ineffective. Interestingly, this chapter introduces the

significance of the TAM framework and how its major constructs, ‘perceived usefulness’ and ‘perceived ease of use’ are confirmed by most researchers as impacting on user behavioural intention to adopt e-commerce, based on the influence of some external variables, some of whose elements fit within the identified varied contexts. Therefore, unlike existing e-commerce and behavioural economics research, viewing the effectiveness of laws through the lens of a sector-specific framework more suited to e-commerce, can help provide a robust insight into how the law and other self-regulatory policies can be employed as a tool to elicit a favourable behavioural response from consumers towards e-commerce. Thereafter, the central research issues, research questions and objectives, methodology, significance, and limitations are highlighted.

Chapter two commences by providing a background discussion of e-commerce. To be precise, the definition of e-commerce and the forms in which e-commerce can assume are provided. Thereafter, the general benefits of e-commerce are highlighted since reference to the benefits are implicitly made throughout the thesis when linking TAM’s ‘perceived usefulness’ construct to the other impact variables. To explore the benefits in the face of the perceived risks identified in chapter one, this chapter goes further to provide the fundamental reasons why the online consumer may need more legal protection than what is provided in an offline context. Drawing on the established reasons, this chapter then provides a limit to the class of legal entities eligible for protection by explaining the meaning of a ‘consumer’ using definitions provided by the consumer protection laws of Nigeria, the UK and China. Thereafter, the legalistic definition of a confident consumer is considered, after which an overview of the development and current state of B2C e-commerce in Nigeria is provided.

Chapter three extends the background discussion by providing a detailed analysis of the integrated research framework derived from the fusion of comparative law methodology with a modified version of the extended TAM, and developed by the writer to guide the conduct of this research. From the comparative angle, the functionalist and legal transplant theories are discussed since the findings and recommendations made throughout this thesis derive from comparing Nigeria with the UK and China. The

functionalist theory is first employed since the theory centrally focuses on the practical role or ‘function’ of law in a particular legal system, which in the context of this research, is to encourage consumer adoption of e-commerce in Nigeria. Due to the limitations of functionalism which hinges on the fact that it disregards the extra-legal dependencies in a legal system from which law derives its validity, recourse is had to the legal transplant theory to fill this gap. As legal transplant is purely theoretical with no means of ascertaining whether a transplant will most likely fulfil the objectives for which it was borrowed, the TAM framework is introduced. This framework serves as the practical element to this research which helps predict the likelihood that any borrowed law will fulfil its desired function in the new territory, regard being had to the socio-economic and cultural contexts for which TAM is also predicated upon. Here, the influence of the law on TAM variables empirically tested and validly confirmed by current literature as having a significant impact on e-commerce adoption, is explored. For the legal-related variables, a discussion of ‘perceived risk’, ‘trust in online merchant’ and ‘awareness’ is made and adapted to the context of the three jurisdictions while same approach is applied to the extra-legal variables of ‘culture’ and ‘facilitating conditions.’

Chapter four discusses major consumer e-commerce-related laws applicable in the three jurisdictions, some of whose provisions are extensively applied in assessing the central research issues identified in chapter one. The Nigerian laws discussed are the Federal Competition and Consumer Protection Act (FCCPA) 2018, the Sale of Goods Act (SOGA) 1893 and the pending Nigerian Electronic Transaction Bill (ETB) 2017. For the UK, the Consumer Rights Act (CRA) 2015¹⁵⁷⁵ is discussed while China’s Consumer Protection Law (CPL) 2013¹⁵⁷⁶ and E-Commerce Law (ECL) 2018 are assessed. The essence of these discussions is to understand the purposes of the laws, their legal background, and the socio-economic condition in the three jurisdictions which may have

¹⁵⁷⁵ Under the discussion of the CRA, reference is made to the Consumer Contracts (Information, Cancellation and. Additional Charges) Regulations 2013 and the Consumer Rights (Payment Surcharges) Regulations (CRR) 2012 both of which partly implements the Consumer Rights Directive 2011/83/EU. The CRR is now repealed and replaced by the UK Payment Services Regulation 2017.

¹⁵⁷⁶ Under the discussion of the CPL, reference is made to the China Civil Code 2020, which repeals, amends and consolidates the China Contract Law 1999.

influenced the drafting of the laws. The discussion further highlights the actual and potential impact of some UK and Chinese laws in building consumer confidence in e-commerce using existing empirical reports published by government institutions. To ensure that any possible borrowing of laws from the UK and China aligns with the unique context in Nigeria, a comparative analysis of their contextual background is also made.

Having set the foundation for the research arguments, chapter five delves into the first legal issue of unfair terms. Here, the adequacy or otherwise of the substance and form of unfair contract terms' rules under Nigeria's FCCPA are assessed with a view to identifying the gaps that exist within. The relevant provisions of the UK's CRA are thereafter, examined and adapted to online contracts. Same approach is followed when analysing the relevant provisions of China's CPL and Civil Code. To understand how consumers respond to the perceived risk of unfair terms use, the influence of this risk factor on 'trust in online merchants', 'perceived usefulness', and 'behavioural intention' is assessed using empirical reports from the UK. Correspondingly, the underlying influence of laws is also demonstrated using the UK report to show that consumer 'awareness' of laws has the potential to heighten 'trust in online merchants,' limit the 'perceived risk' associated with an online merchant's use of unfair terms, ultimately affecting their 'behavioural intention' to make online purchases. The possible influence of 'culture' is also highlighted. Drawing on the findings from the report and the laws of exemplary jurisdictions, a comparative analysis of the three jurisdictions is made with a view to eliciting adequate responses from the UK and China which can be applied to not only fill the gap within Nigeria's FCCPA, but to also positively influence online consumer behaviour using the law as a tool.

Chapter six discusses the second legal issue identified as e-payment transaction security risk. Here, two sub-issues related to the enforcement of minimum safety standards and the liability regime for e-payment fraud, are identified as gaps within the Nigerian CBN Guidelines 2020 and the CPF 2016. Their equivalent provisions in the UK's PSR 2017¹⁵⁷⁷ and China's ECL 2018 are also assessed. Thereafter, the influence of perceived e-payment

¹⁵⁷⁷ SI 2017/752.

security risk on consumer ‘perceived usefulness’ and ‘behavioural intention’ to engage in e-commerce is demonstrated using empirical research from existing Nigerian literature. Data from same literature is analysed to show how consumer ‘awareness’ of laws can limit their ‘perception of e-payment risks.’ Another UK data is analysed to show how awareness of laws can improve consumer confidence in online transactions. This is in addition to the influence of ‘culture’ on consumer ‘behavioural intention’ to make online purchases. For China, a different data is employed to justify the influence of ‘e-payment security risk’ on ‘trust in online merchants’. Drawing on the findings from these discussions, a comparative analysis of the three jurisdictions is made and possible recommendation for Nigeria, proposed.

In chapter seven, the third legal issue associated with the delivery risk of loss and product return risk of cancellation are discussed. How these two issues are dealt with under the Nigerian SOGA 1893 and the FCCPA 2018 are assessed for their adequacy in an online context. Same approach is followed while discussing the relevant provisions of the UK’s CRA 2015 and the CCR 2013. China’s delivery provisions under the ECL 2018 and the Civil Code 2020 are also assessed, together with the cancellation rights under the CPL 2013. To understand consumer online purchasing behaviour, empirical literature from China is employed to demonstrate how perceived delivery and product return risks can impact on consumer ‘trust in online merchants’ and consequently, their ‘behavioural intention’ to make online purchases. Data from the UK is further analysed to illustrate how consumer ‘awareness’ of laws can help limit the risk perceptions associated with delivery and product returns. A different empirical research from Nigeria is then employed to demonstrate the impact of ‘facilitating conditions’ on ‘behavioural intention’ and e-commerce adoption. Finally, like chapters five and six, recommendations are made following a comparative analysis of the three jurisdictions.

8.4 Answers to Research Questions

The research questions as answered below considers different topics discussed under chapters one to seven.

Question 1: What is the current state of consumer e-commerce adoption in Nigeria?

The answer to this question is evident from some discussions made in chapters one, two and three. In section 1.1 of chapter one, it is briefly noted that consumer e-commerce adoption in Nigeria remains at a rudimentary stage because most consumers show overwhelming preference for offline transactions. It is also noted that only about 38% of the consumption population engage in e-commerce transactions.¹⁵⁷⁸ Ironically, the value of Nigeria's e-commerce market is mostly dependent on the volume of B2C sales.¹⁵⁷⁹

Due to Nigeria's potential to be an attractive market based on its population size, section 2.6.1 of chapter two explains why the prospects of achieving the forecast revenue of the 75 billion USD by 2025¹⁵⁸⁰ is questionable. In this chapter, the evolution of e-commerce in Nigeria is examined, together with how the emergence of prominent online marketplaces like Jumia, Konga and Jiji increased consumer participation in e-commerce. That notwithstanding, data which shows how Nigeria ranks lower than other less populated African countries in the estimated percentage of online retail sales (figure 6) was employed to further justify the need to improve B2C e-commerce adoption.

To understand why the current state of e-commerce adoption in Nigeria remains bleak, section 3.2 of chapter three attempts to study consumer purchasing behaviour using the TAM. Through this framework, it is found that Nigerian consumers are sometimes, negatively influenced by certain contextual, external and impact factors, all of which further worsen the state of e-commerce adoption in Nigeria.

Question 2: What major risk factors affect consumer adoption of e-commerce in Nigeria?

Some aspects of chapters one, three, five, six and seven provide answers to this question by identifying three important risk factors associated with the use of unfair contract terms, e-payment security, and delivery loss and cancellation of online purchases.

¹⁵⁷⁸ Chinyere E Iluno and Asmau J Yakubu (n 6).

¹⁵⁷⁹ McKinsey & Company (n 5).

¹⁵⁸⁰ Ibid.

The first risk factor is identified in chapters one, three and five as the performance/information risk of unfair contract terms. This risk is said to negatively impact on consumer behavioural intention to make online purchases, especially where a consumer may have had previous unsatisfactory experiences after consciously or unconsciously accepting standard terms in click wrap and browse wrap contracts. The unsatisfactory experience increases consumer's perception that such experience may reoccur, should the consumer make online purchases in the future. As a result, consumer trust in online merchants may generally be affected.

The second risk factor is identified in chapters one, three and six as e-payment transaction security risk which affects consumer adoption of e-commerce in Nigeria, especially, where the alternative cash-on-delivery method of payment is unavailable. The perception that an e-payment portal may be vulnerable to threats of fraud due to compromises in security standards can limit trust in the payment services provided by online merchants, the perceived usefulness of e-commerce as well as consumer behavioural intention to make online purchases in the future.

Chapters one, three and seven identify the third risk factor as the delivery risk of loss and the product return risk associated with the cancellation of online purchases. Where consumers perceive the risk of transit loss and the likelihood that such risk may be borne by them, they will most likely avoid making online purchases. Same applies to where tangible goods are delivered and due to an online merchant's delivery and return policies, consumers are unable to return the goods. While product return risk is also evident in offline transactions, this risk is made worse in an online context due to lack of physical examination of goods and the greater vulnerability of consumers to information bias. Since research shows that consumers mostly read online delivery and returns information before placing an order,¹⁵⁸¹ lack of information on delivery and returns or the use of very strict return policies can increase consumer perception of these risks, limiting their trust

¹⁵⁸¹ Stephanie Butcher (n 1529).

in the online merchants and ultimately affecting their behavioural intention to make online purchases in the future.

Question 3: Are existing Nigerian laws enough to address the central risk factors inhibiting consumer adoption of e-commerce in the country?

To answer this question, a coherentist regulatory approach was predominantly applied when fashioning out appropriate regulatory responses that could encourage greater consumer adoption of e-commerce in Nigeria. Nevertheless, being a doctrinal research, current Nigerian laws were critiqued with a view to understanding the extent to which their provisions can practically be applied to online transactions. Gaps, inconsistencies, and ambiguities were found which necessitated seeking some guidance from the legal regimes of comparative jurisdiction. As a result, this thesis argues that current Nigerian laws are inadequate, are more suited to offline transactions and will need to be updated accordingly to reflect the unique nature of e-commerce transactions.

To be specific, some aspects of chapters one, two, four, five, six and seven all support the submission that existing Nigerian laws need to be revised and updated to align with the unique nature of e-commerce transactions. These chapters identify gaps, ambiguities, and inconsistencies within the FCCPA 2018, the SOGA 1893 and the pending ETB 2017, while in some cases, the possibility of adapting their substantive provisions to an online context is highly questionable. This is more so as neither the FCCPA nor the SOGA expressly cover online transactions, while the ETB, which could have filled some of these gaps, is still pending as at the time of writing.

The inadequacy of existing Nigerian laws is demonstrated in chapter one when outlining the legal-related issues which act as risk factors to consumer adoption of e-commerce, while in section 2.5 of chapter two, gaps are apparent when explaining the meaning of a consumer who is eligible for protection under the law. Chapter four extensively considers the background of some of the applicable laws, while chapters five six and seven analyses the laws which purport to address each of the three central research issues. The insufficiency of these laws is made more obvious when compared to their corresponding

equivalents in the UK¹⁵⁸² and China,¹⁵⁸³ especially since the laws of the comparative jurisdictions clearly extend to online transactions. Consequently, most regulatory responses suggested to fill the gap in the Nigerian laws, derive from applicable UK and Chinese legislations.

Question 4: How can insights from the Technology Acceptance Model (TAM) help shape the law-making process of consumer e-commerce-related policies in Nigeria?

To answer this question, some aspects of chapters one to seven provide guidance when adapting the TAM framework to law. As TAM-related e-commerce research accesses the variables which have a negative or positive influence on the possibility that a consumer would likely adopt e-commerce, TAM helps predict consumer online purchasing behaviour through the lens of its major constructs by probing their causal relationship with other impact variables.

The relevance of TAM in relation to clarifying the impact of perceived risk factors is briefly highlighted in chapter one, while some of the benefits of e-commerce highlighted in chapter two reflect TAM's 'perceived usefulness' construct. Chapter three presents an integrated research framework which fuses comparative law methodology with TAM to show how the theoretical aspect of law can be balanced with a more practical framework. This is demonstrated by modifying the extended TAM 2 to show how awareness of the law or lack thereof, can impact of consumer online purchasing decisions.

The influence of the law is proven by exposing how consumer awareness or perception of the existence of laws can limit perceived risks,¹⁵⁸⁴ increase their trust in online merchants, promote the perceived ease of use and perceived usefulness of online shopping (either directly or indirectly), impact on their behavioural intention to make online purchases, and equally act as a facilitating condition that enhances actual e-commerce adoption. Where consumers who are aware of the law are shown to be positively

¹⁵⁸² Examples are the CRA 2015, the PSR 2017 and the CCR 2013.

¹⁵⁸³ Examples include the CPL 2013, the ECL 2018 and the China Civil Code 2020.

¹⁵⁸⁴ These risks relate to the central issue of unfair contract terms, e-payment security and physical delivery and cancellation of online purchases.

influenced by it prior to placing an online order, it presupposes that law can indeed act as a contributory factor to promoting consumer confidence in e-commerce, and this is confirmed by empirical data from existing consumer e-commerce related reports on Nigeria, China and the UK. For consumers who are unaware of the law and are also less confident in e-commerce transactions, more consumer education is recommended.

Having understood consumer's likely reaction towards the law and its possible influence on their online purchasing behaviour using tested and validated TAM variables, law makers can learn from the findings by drafting policies which are confirmed to have gained positive reception from consumers and are relied upon by them before placing orders online. An example is the empirical report in section 7.2 of chapter seven that shows that majority of UK consumers read delivery and return policies before placing an order.¹⁵⁸⁵ This suggests that where such policies are overly strict, consumers are less likely to shop from that online merchant. Consequently, online merchants may want to make their policies more lenient to reduce consumer perception of risks. Nigerian legislators may also want to incorporate cancellation rights into the FCCPA, seeing that same is reported to have contributed to improving the confidence of online shoppers in the UK.¹⁵⁸⁶ Similarly, on e-payment security, Nigerian legislators may consider strengthening the security measures for all e-payment transactions, seeing that from section 6.4 of chapter six, an empirical study finds that 68% of surveyed consumers are very frequently deterred from shopping online in Nigeria due to e-payment fraud.¹⁵⁸⁷

8.5 Achievement of Research Objectives

Like the answers to the research questions, the objectives of this research are achieved by looking at different topics discussed from chapters one to seven.

Objective 1: To identify some risk factors which inhibit consumer adoption of e-commerce in Nigeria.

¹⁵⁸⁵ Stephanie Butcher (n 1529).

¹⁵⁸⁶ Department for Business, Energy & Industrial Strategy (n 135).

¹⁵⁸⁷ Sunday O Oyeyemi *et al* (n 1375).

To achieve this objective, chapters one, three, five, six and seven identify three legal-related issues which according to existing literature, need to be controlled to protect the interest of the online consumers. These issues are then classed as risk factors, drawing on their underlying roles in altering the expected rights and obligations conferred on each contractual party. Chapters one, three and five class unfair contract terms as a performance or information-related risk, which particular risk factor depends on the effect of unfair terms on consumer's contractual rights. Chapters one, three and six also classify e-payment security as a transaction security risk drawing upon relevant literature while chapters one, three and seven classify the physical delivery and cancellation of online purchases under delivery/performance risks and product returns risks, respectively. In addition, recall that section 1.3 of chapter one identifies the three central issues which act as risk factors while section 3.2 of chapter three explains the concept of 'perceived risks' under the TAM framework, from which the three identified legal issues are classified.

Objective 2: To propose a framework which can help predict the likelihood that Nigerian consumers will engage in e-commerce, drawing on existing laws and the identified risk factors.

This objective is met by the discussions provided in chapters one and three, which are further reflected throughout the thesis. Here the extended TAM 2 is employed and modified to depict the possible influence of the law in limiting the perception of risk held by consumers who are aware of the law's existence. As explained in section 3.2 of chapter three, the external variables analysed through the lens of the law are 'perceived risk', 'trust in online merchant' and 'awareness.' Awareness is the most significant of the variables since the influence of the law cannot be felt by consumers who are unaware of its existence. This means that the law's influence on 'perceived risks' and 'trust in online merchants' is essentially predicated on consumer awareness. However, as noted in section 5.4 of chapter five which applies the risk of unfair contract terms to TAM, the exception to awareness is the likely influence of consumers' nationalistic belief, where for instance, some collectivists societies like Nigeria believe that their domestic laws are generally inadequate, even without having actual knowledge of the law.

The foregoing brings us to the influence of extra-legal/contextual factors further integrated into the proposed TAM framework. Here, culture is used to depict the normative beliefs commonly held by group of people which impact on consumer 'perceived usefulness' and 'behavioural intention'. Additionally, 'facilitating condition' is employed as a socio-economic factor which reflects consumer's perception of the support and resources received at the macro-level that impacts on behavioural intention and actual e-commerce adoption. The cumulative effect of these legal and extra-legal related factors is their role in helping legislators, market actors and other stakeholders, understand online consumer purchasing behaviour, which insight can be applied to formulate more effective Nigerian rules that have the potential to improve consumer confidence in e-commerce.

Objective 3: To demonstrate from a comparative perspective, how awareness of laws can help build consumer confidence in e-commerce.

This objective is fulfilled by showing for instance that some consumers in the UK and China are aware of their cancellation rights, with such rights affirmed in empirical reports as having improved the confidence of online consumers in both comparative economies.

Section 2.3 of chapter two raises the issue of awareness by linking it to existing literature explaining the legalistic definition of a confident consumer according to the EU law, most of whose Directives and Regulations are implemented by pre-Brexit UK and are still retained by the EUWA 2018. For example, the consumer confidence argument is found in Recital 6 of the Consumer Rights Directive (2011/83/EU), which Directive is now partly implemented in the UK by the CCR 2013. One can recall that in section 4.2.1 of chapter four, a 2019 UK report confirms the Regulation as having contributed to improving consumer confidence, especially with respect to consumers' ability to exercise their cancellation rights.¹⁵⁸⁸ This is complemented by an earlier 2018 European

¹⁵⁸⁸ Department for Business, Energy & Industrial Strategy (n 135).

Commission report which reveals 54% of surveyed UK consumers to be aware of their cancellation rights.¹⁵⁸⁹

Looking at China, section 4.3.1 of chapter four explains how the CPL 2013 was drafted to improve the confidence of the Chinese consumption population. A subsequent survey conducted by the China Consumer Association in 2014 to investigate the reception of cancellation rights introduced by the CPL shows that 88.1% agreed to being confident when making online purchases in the month preceding the day of participation in the survey while 20% of those consumers indicated performing their withdrawal rights.¹⁵⁹⁰ Thus, the exercise of cancellation rights by one-fifth of consumers who made online purchases the same year the right was introduced into the CPL, shows a reasonable awareness of the right and the likelihood that such right may have instilled greater confidence in consumers in China.

As noted in section 4.1.1 of chapter four, Nigeria's FCCPA does not expressly extend to online transactions. Legal awareness is also quite low as confirmed by the 2014 report published by Consumer International.¹⁵⁹¹ Nevertheless, as stated earlier, findings from the research framework suggest that awareness of laws has a significant impact on consumer behavioural intention to make online purchases. Therefore, this research argues that where laws are drafted to promote consumer confidence, especially where the laws aim to address the specific issues which act as risk factors, promoting greater awareness of such laws will most likely aid in yielding the desired regulatory effect on consumers.

Objective 4: To assess policy implications from the proposed framework and suggest legal and extra-legal responses to reducing the militating risk factors to e-commerce adoption.

This objective is fulfilled in chapters three to seven of this thesis where the modified TAM framework is predominantly applied. Each of these chapters conclude with policy recommendations/future proposed courses of action geared towards either filling the gaps

¹⁵⁸⁹ European Commission (n 293).

¹⁵⁹⁰ China Consumer Association (n 658).

¹⁵⁹¹ Consumers International (n 648).

in existing laws and updating them accordingly or borrowing from comparative regimes (legal). Necessary courses of action which go beyond revising or updating existing rules (extra-legal) are also suggested.

For instance, seeing that ‘perceived risks’ reduces ‘trust in online merchants’, traders may want to take strategic actions beyond what is required by law to boost consumer trust in their quality of products and services. This is evident where merchants extend cancellation rights beyond the 14 days required by the UK law, or where more information on after sales services is provided not only at the point of purchase, but also at the time of delivery. Same goes with notifying consumers about their legal rights by placing enforcement information on their websites and making same easily accessible whenever such information is needed by the consumer. Government institutions and other relevant stakeholders like consumer organisations may also organise consumer rights enlightenment campaigns to foster education on the benefits and risks associated with e-commerce, together with their risk mitigation measures. Additionally, since ‘facilitating conditions’ play an important role in improving behavioural intention and enhancing actual e-commerce adoption, the government could make it a priority to provide financial support to payment service providers to ensure they acquire and maintain security proof technologies on their websites. Same goes to ensuring that adequate ICT infrastructure and usage training are available to consumers in the remote parts of the country.

Therefore, insights from the proposed framework presents legislators and other relevant actors with the tool needed to ensure they take effective legal or extra-legal measures that can enhance more participation of consumers in e-commerce.

8.6 Major Research Findings

The research findings are discussed in various sections of this thesis, some of which have also been covered briefly in the preceding sections of this chapter. However, this section presents the key research findings in table 7 below:

LEGAL ISSUES	UNFAIR CONTRACT TERMS	E-PAYMENT SECURITY	DELIVERY AND CANCELLATION
Perceived Risk Factor	Performance/Information Risks	Security Risk	Performance/Delivery risk of loss and Product Returns Risk
Applicable Nigerian Law	Sec 127(1) (2) and 128 of FCCPA 2018.	CBN CPF 2016, Rules 2.6.1 and 2.6.1.5; Guidelines 2020- Rules 3.4.5.5 and 3.4.6.5.	SOGA 1893, Sections 18, 20, 32 and 33.
Issues Identified	<ul style="list-style-type: none"> 1. No transparency requirement. 2. Consequences of unfair terms on consumer and contract omitted. 3. No practical measures for drawing consumer attention to contract except prominence requirement. 4. No list of potentially unfair terms. 	<ul style="list-style-type: none"> 1. Vague and inadequate security standards. 2. Weak liability regime for e-payment fraud which places default liability and burden of proof on consumers. 	<ul style="list-style-type: none"> 1. Delivery duties performed where goods are transferred to carrier. 2. Risk of loss passes to consumer on contract formation, irrespective of payment or delivery. 3. No cancellation rights.
Corresponding UK Provision	<ul style="list-style-type: none"> 1. Transparency requirement – CRA, Sec 64(2)(3). 2. Unfair terms not binding on consumer- CRA, Sec 62(1)-(3); Contract continues as far as practicable- CRA, Sec 67. 	<ul style="list-style-type: none"> 1. Strong customer authentication- PSR 2017-Art 2 and 100(1)-(3). 2. Liability and burden of proof on payment service provider. However, consumer bears 	<ul style="list-style-type: none"> 1. Seller to deliver goods to consumer not more than 30 days after contract formation- CRA, Sec 28(2), (3), (6a). 2. Risk of loss lies with seller till goods come into physical

	<p>3. No practical measures, except requirement to be prominent- CRA, Sec 64(2)(4).</p> <p>4. Grey List- CRA, Sec 63 and Schedule 2; Blacklist- CRA, Sec 65.</p>	<p>liability where fraud or gross negligence is alleged- PSR, Art 75-77.</p>	<p>possession of consumer/nominated carrier- CRA, Sec 29.</p> <p>3. Withdrawal/ Cancellation rights- CCR 2013, Part 3.</p>
Corresponding Chinese Provision	<p>1. Transparency requirement- Civil Code 2020, Art 496 (voidable)</p> <p>2. Term not binding on consumer, contract continues- CPL 2013, Art 26; ECL 2018, Art 49.</p> <p>3. Prominence requirement satisfied with special marks, symbols, fonts and signs on key product characteristics- CPL, Art 26.</p> <p>4. No Grey list except black list- Civil Code (CC), Art 497.</p>	<p>1. Inadequate security standards just like Nigeria- ECL, Art 53; Administration of Payment Rules 2010, Art 33.</p> <p>2. Liability and onus of proof for e-payment fraud lies with payment service provider- ECL Art 57.</p>	<p>1. Delivery by seller complete when signed off by consignee- ECL, Art 20 and 51; CC, Art 598. Where unclear, delivery to carrier is sufficient- CC, Art 603(1).</p> <p>2. Seller bears risk of loss until delivery to consumer unless place of delivery is unclear- ECL, Art 20; CC, Art 607(1)</p> <p>3. Withdrawal/ Cancellation rights- CPL, Art 25.</p>
TAM Findings	<p>1. Low consumer readership of terms and conditions, hence, need for regulation.</p> <p>2. Law indirectly impacts on perceive ease of use</p>	<p>1. Perceived e-payment risks negatively impact on trust in online merchants, perceived</p>	<p>1. Perceived delivery and product return risks negatively impact on trust in online merchants and</p>

	through online merchant's compliance with rules.	usefulness, and behavioural intention.	consumer behavioural intention to use
	3. Perceived risk through past shopping experiences negatively influence perceived usefulness.	2. Stronger security measures improve consumer confidence than ease of use.	2. Awareness of laws regulating delivery and cancellation limits perceived risks.
	4. Awareness of rules on unfair terms limit perceived risk, heightens trust in online merchants and positively impacts on behavioural intention.	3. Awareness of laws reduces perceived payment security risks.	3. Facilitating conditions such as limited availability of good road/rail networks, adversely affect the services of e-commerce logistic operators, which invariably heightens consumer perception of delivery risks.
	5. Culture/Nationalistic belief on effectiveness of laws impact on behavioural intention.	4. Low uncertainty avoidance cultures are more likely to embrace e-payments than higher cultures.	

Table 7: Summary of Research Findings

8.7 Research Recommendation

This section outlines some legal and extra-legal courses of action that can be followed by Nigerian legislators and market actors to increase consumer participation in e-commerce. Although already briefly covered in section 8.5.5 of this chapter as the fifth research objective, a clearer outline of these measures is presented as follows:

8.7.1 Legal Response:

There is need is to revise and update the provisions of the FCCPA 2018 to take cognisance of the peculiar nature of online transactions, having demonstrated through existing TAM

literature and other empirical reports, the possible influence of the law and contextual factors on consumer adoption of e-commerce. The goal is to ensure that its provisions contribute to improving consumer confidence in e-commerce whilst also achieving the desired reception from consumers, especially with regards to the central research issues. This is more so as high uncertainty avoidance and collectivist cultures like Nigeria are said to rely more on firm institutional structures and assurance in the form of laws or rules to embrace innovation.¹⁵⁹² To this end, the following considerations should be made:

- i. Following the discussion in section 2.2.2 of chapter two, it is suggested that the exact category of consumers who are eligible for protection under the FCCPA need to be clarified. Section 167 of the Act mostly focuses on transactions made by any person for any purposes other than resale or manufacturing activity, with the definition of a trader omitted. This indicates that C2C transactions may also be covered under the Act. To clarify this ambiguity, it is suggested that legislators consider the UK definition of consumer provided under section 2(3) of the CRA by adding that the consumer must be wholly or mainly acting for purposes outside their business, profession, craft or trade. Similarly, the definition of a trader under section 2(2) of the CRA can also be borrowed and adapted to the Nigerian context.¹⁵⁹³
- ii. Although section 4.1.1 of chapter four reveals the Federal Competition and Consumer Protection Commission (FCCPC) as the government agency tasked with the responsibility of overseeing compliance with the provisions of the Act, other trade institutions need to be established to assist the FCCPC with its duties. This is because it is almost impracticable to expect a single regulatory institution to oversee the operations of businesses in a highly populous country with 36 states and 774 local government areas. One is also not oblivious to the fact that this institution is also expected to oversee other competition-related matters under the

¹⁵⁹² Patricia M Doney, Joseph P Cannon and Michael R Mullen (n 716).

¹⁵⁹³ Section 2(2) of the CRA 2015 defines 'trader' as "a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf."

Act. Leaving the FCCPC with such enormous responsibilities will most likely lead to dereliction of duty, which may affect consumer rights enforcement.

- iii. With regards to unfair terms, the Nigerian legislature should clarify the implications of using unfair terms not only on businesses, but also on consumers which are supposedly bound by such terms. Clauses which exclude liability for death and damages caused by negligence should also be blacklisted, while the grey list contained in Schedule 4 of the abandoned Consumer Contract (Unfair Terms) Bill (CCB) 2010, should be reintroduced into a revised FCCPA. Nigerian law makers can also consider incorporating into the FCCPA, the UK and China's transparency requirement provisions which expect contract terms to be legible, plain and expressed in intelligible language since studies show that this factor complicates readership of contract terms and conditions.¹⁵⁹⁴
- iv. On e-payment, the CBN should update its 2020 Guidelines on e-payments to clarify the required security standards expected of all payment service providers since this requirement is also lacking under the CPF 2016. This could entail requiring service providers to implement two-factor authentication on all payment transactions. The CBN should also monitor compliance with the rule to ensure payment service providers do not compromise on security standards. For coherency of rules and enforcement standards, it is further suggested that financial products and services be exclusively regulated by the CBN. Alternatively, the FCCPA could incorporate the CPF by reference, just like the provisions of the Electronic Transaction Bill (ETB) 2017.¹⁵⁹⁵ Additionally, to ensure that payment service providers adopt maximum security measures to safeguard transactions processed through their servers, the CBN can place the default liability for e-payment fraud on service providers except in instances where gross negligence or fraudulent conduct is proven against affected customers.

¹⁵⁹⁴ Elshout Maartje *et al* (n 364).

¹⁵⁹⁵ See the discussion under section 4.1.3 of chapter four.

- v. With regards to delivery risk of loss, the SOGA 1893 needs to be updated. Since the 1893 Act is an English statute which has been repealed and its consumer provisions amended and consolidated into the CRA, it is suggested that Nigeria also draws inspiration from the CRA in amending the Act. Alternatively, the amended provision can be consolidated into the FCCPA 2018, leaving the SOGA 1893 as a B2B legislation. The amendment would require a major change in its rules on delivery. As a default rule, the amended provision should deem a seller's delivery obligations as performed where goods are delivered without undue delay to a place agreed to by parties, as opposed to the current law which deems delivery as complete where goods are transferred to a carrier. On the liability for transit loss, learning from the UK is also recommended since as expected in e-commerce transactions, a seller bears liability till goods are physically possessed by a buyer.
- vi. Seeing how the exercise of withdrawal/cancellation right has helped improve consumer confidence in the UK and China by reducing consumer perception of risks and improving trust in online merchants, it is important to introduce this right into Nigeria's FCCPA. As proposed in the preceding chapter, this right should only be applicable to distant contracts with a 10-day cooling off period. The parameters of this rule should be drafted in such a way that it considers the possible financial impact the exercise of this right could have on SMEs, the infrastructural deficiencies in the country which could worsen the safe and speedy return of products by buyers, as well as Nigeria's economic status as a developing country with mixed economic ideals. Pending the introduction of this mandatory right, online merchants can reduce consumer risk perceptions on them and foster trust by implementing this policy as a discretionary contractual right.

8.7.2 Extra-legal Response:

Here, particular attention needs to be paid to awareness since this research finds it to be a major variable that determines the possible influence of laws. In the same vein, the effect of contextual factors should also be considered. Therefore, in addition to the explanation

provided in section 8.5.5 of this chapter clarifying how the fifth objective is satisfied, the following responses might also be worth considering.

- i. Consumer education and more legal rights awareness should be promoted by actors such as online merchants, government institutions and NGOs. These actors should provide readily available information on their websites for ease of access by consumers, should they require more information at any stage of the transaction process. Awareness could also assume the form of monthly public enlightenment campaign conducted by relevant public sector or private organisations to draw consumers' attention to their legal rights and means of enforcement. This will not only empower consumers thereby making them more confident, but it will also serve as an opportunity to draw consumers' attention to the benefits and risks associated with e-commerce transactions, together with their risk mitigation measures.
- ii. Nigerian payment service providers and online merchants may not necessarily have the requisite financial capabilities to acquire and retain technologies that can ensure the secure processing of e-payments transactions. Thus, it is recommended that government support in the form of grants, tax breaks and other financial incentives be awarded to eligible businesses.
- iii. Online merchants can reduce delivery risks associated with placing orders through their websites by maintaining a transparent tracking system easily accessible to buyers once online purchases have been processed for delivery. This tracking system should be provided to all customers, irrespective of the mode of the mode of transportation employed.

8.8 Research Contributions

The steps taken to fulfil the objectives of this research contributes to existing literature on both comparative consumer law and TAM-related e-commerce adoption studies. More importantly, it supplements the dearth of literature around the consumer provisions of

Nigeria's FCCPA 2018. Generally, in line with the research framework, the contribution of this thesis can be viewed from a theoretical and practical perspective.

8.8.1 Theoretical Contribution

This research follows a literary approach in analysing findings from existing empirical studies on TAM and e-commerce, adapting same to consumer law research in Nigeria, the UK and China. To achieve this, a conceptual framework is developed from the extended TAM 2 already proven to be more suited to internet transaction-related enquiry like e-commerce.¹⁵⁹⁶ With TAM impact variables validly tested and generally applied by researchers to understand consumer behaviour towards e-commerce, adapting the framework to the model economies of the UK and China is necessary since consumers in these economies exhibit greater level of trust and confidence in e-commerce than those in Nigeria. It was also important to ascertain whether there are influential variables which steer consumers in the comparative economies towards e-commerce, which factors could be lacking in Nigeria. Nonetheless, amongst several factors identified in section 1.1 of chapter one as inhibiting e-commerce adoption in Nigeria, legal factors are chosen as the focus of this study.

Since this research views law as a contributory factor to e-commerce adoption, integrating comparative law theories to arrive at an effective solution to the research problem became necessary. Functionalist theory is more interested in the role of law in fulfilling the 'function' of solving a particular (socio-economic) need of the state, irrespective of their unique contextual influences while legal transplant theory stresses more on the ability of the law to fulfil the said function where there is commonality of contexts between an originating and adopting country. The writer, thus, develops a modified TAM framework to help predict whether the function of such law will most likely be fulfilled, regard being had to the degree of the new law's bindingness to its contexts as it relates to e-commerce.

The influence of awareness, trust in online merchants and perceived risks (that is, performance/information risk of unfair terms, e-payment security risk,

¹⁵⁹⁶ Hamed Taherdoost (n 490); Nikola Marangunić and Andrina Granić (n 473) 85.

performance/delivery risk of loss and product return risk) on perceived usefulness, perceived ease of use, behavioural intention to use and actual usage is ascertained using different empirical reports and academic literature. To ensure the transferred law does not act as a social irritant, the cultural and socio-economic (facilitating conditions) contexts, which are explained in sections 3.2.5.3 of chapter three as being inherently bound to the law as well, are integrated into the research framework. This is what distinguishes this approach from other legal insights derived from behavioural economics literature. TAM is used as a more robust and sector-specific framework which rationalises human behaviour from multiple perspectives with the aim of arriving at one outcome, being e-commerce adoption. Thus, from a theoretical perspective, this research is significant for developing a framework derived from the extended TAM 2 which can help predict the likely effectiveness of a rule in fulfilling its policy objectives as it relates to e-commerce transactions. This prediction is based on consumer reaction to similar rules from the comparative jurisdictions which share some commonalities with Nigeria.

8.8.2 Practical Contribution

From a practical perspective, the Nigerian government, online merchants, and legislators can benefit from the research findings in the following ways:

- i. With regards to the Nigerian government, the potential economic benefits derived from an increased volume of online B2C transactions will inevitably have a positive impact in the growth of Nigeria's e-commerce market.
- ii. Online merchants will also play a significant role in achieving this economic objective whilst in pursuit of other business interests. This is because findings from this research can guide the merchants into adopting more effective self-regulatory measures which have the potential to reduce market risks, improve consumer trust and drive more sales. For instance, since the minority consumers who read online terms and conditions are most likely influenced by it, it will be to the advantage of an online merchant to ensure that obviously unfair terms are not incorporated into an online contract. Similarly, online merchants will appreciate

the need to be more transparent when providing information on core terms that affect party rights and obligations. Same goes to the tactic of drafting lenient return policies which incorporate the contractual right to cancel without any liability and justification, subject to defined rules on eligibility.

- iii. Legislators will be most guided to consider the peculiar needs and conditions of consumers when deliberating on the parameters of a potential law. Understanding how consumers react to transaction risks, their belief system on the effectiveness of domestic laws, and the likely impact of a bespoke law in improving consumer confidence, can help shape the substantive provisions of the potential law.

8.9 Concluding Remarks

This chapter recaps the discussions in preceding chapters. It demonstrates how the research questions are answered and the research objectives, met. Some risks which heighten consumers' preference for offline transactions in Nigeria are further highlighted with a view to proffering adequate legal and extra-legal responses that may help limit those risks. The research findings are corroborated with empirical data from existing TAM-related literature and other relevant statistical reports on Nigeria, the UK and China.

As this research essentially attempts to address the problems associated with e-commerce adoption from a legal perspective, this study argues that for consumers to be encouraged to engage in e-commerce transaction in Nigeria, their confidence needs to be improved. An important way to achieve this is to draft laws whose objective is geared towards achieving the said confidence, especially by focusing on the already identified issues of unfair contract terms, e-payment security and physical delivery and cancellation of online purchases. The research already establishes that existing Nigerian laws, such as the FCCPA 2018 and the SOGA 1893 cannot sufficiently address these issues. Thus, the study suggests that these Nigerian laws be revised and updated to reflect the unique nature of online transactions, regard being had to the consumer law regimes of the UK and China.

The foregoing notwithstanding, the mere drafting or borrowing of laws cannot guarantee its utility or effectiveness without understanding how consumers react to those laws when

making online purchasing decisions. As a result, this research develops a modified TAM framework derived from the extended TAM 2, with a view to predicting with more accuracy, whether consumers who are aware of the law will most likely rely on the guarantees it provides to make purchases; such guarantees being the reduction of perceived risks generally associated with e-commerce transactions.

To formulate a more bespoke rule for Nigeria, a consideration of the country's legal, socio-economic and cultural contexts is made. This is because despite the semblance of contexts outlined in sections 1.2 of chapter two as existing between the UK, China and Nigeria, some contextual differences may still impact on consumer behavioural intention to adopt e-commerce in the respective jurisdictions. This explains why this research is of utmost significance to the Nigerian government, market actors, legislators and other relevant stakeholders; the importance being to generally understand the online purchasing behaviour of consumers from different perspectives and apply insights from the findings to shape the development of more adequate and effective online consumer policies that suit the peculiarities of the Nigerian situation.

8.10 Future Research Direction

To further the work done so far in this research, the following steps need to be taken in the future.

- i. There is need to conduct a longitudinal study which tests the reliability of the TAM findings. This is to ensure the generalisation of findings in all consumer-related e-commerce adoption research in Nigeria. This step is necessary since the research predominantly relies on existing secondary data to validate the TAM hypotheses. Recall from section 3.2.5.4 of chapter three that although this research introduces the law as an underlying external factor, the influence of the law is not applied independently of other external variables. This is to ensure validity and coherency of research findings with current literature. Here, validity is linked to trust in online merchants, perceived risk, and awareness, which are common influencing factors validly tested and confirmed as reliable in practically most TAM-related

research.¹⁵⁹⁷ More so, the influence of facilitating conditions and culture have been empirically studied by other researchers.¹⁵⁹⁸ Thus, to ensure that the legal element incorporated into the research can be reliably generalised, future empirical research is suggested.

- ii. It will also be interesting to know how the research model can fit within a B2B context. Researchers may want to explore existing literature on B2B e-commerce to understand whether the modified TAM model will yield similar findings when studied from a business perspective. Where possible, identifying significant differences that exist when compared to a B2C context may be worth exploring. Such examination may be conducted by focusing on a specific business sector either within a single or diverse socio-cultural context. This is because differences may exist in business adoption behaviour which may vary within industries due to macro-environmental influences or differences in organisational culture. More so, due to the presumed equal bargaining power between businesses, rules regulating B2B transactions vary from B2C transactions.
- iii. Academics and researchers may also want to extend the integrated research framework to digital goods and services, bearing in mind the dearth of legislation on digital content in Nigeria.
- iv. The extended TAM is an open framework subject to modification and further extension by researchers in line with their research contexts. Perceived risks, trust in online merchants and awareness are employed as variables in this thesis due to their underlying correlation with the law, the law being the major research context. Since the extended TAM introduces additional variables as explained in section 3.2.2 of chapter three, new variables and their influence on consumers (or businesses) can also be explored in the future.

¹⁵⁹⁷ See sections 3.3.3 and 3.3.4 on the application of TAM to other research areas and to e-commerce, respectively.

¹⁵⁹⁸ Ibid.

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