Regulating Online Commerce

Review of SON E-Commerce Guidelines

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Executive Summary

This review focuses on the Guidelines for E-Commerce (Online Marketing) issued by the Standards Organisation of Nigeria (SON), Nigeria's standards body. The SON ensures uniformity of goods and services manufactured in, developed, packaged, or imported into the Nigerian market through three marks – Mandatory Conformity Assessment Programme (MANCAP), Standards Organisation of Nigeria Conformity Assessment Program (SONCAP), and Nigerian Quality Award (NQA). Product and service standardisation is carried out through technical groups under the SON. The Guidelines in question were developed mainly by the Service Standards Group, which oversees services.

The Guidelines were developed to recognise the burgeoning e-commerce space in Nigeria, provide operational guidelines and extend existing standards to digital commerce. The Guidelines cover e-commerce players who own their platforms and those who rely on other platforms. As long as those platforms allow their users to sell goods and services and provide a channel for receiving payment, they may be covered by the Guidelines.

The Guidelines provide for consumer rights without great detail. Instead, reference is made to the Federal Competition and Consumer Protection Act (FCCPA) 2018. The Guidelines also mention the Federal Competition and Consumer Protection Commission (FCCPC) as the statutory consumer protection agency. However, the enabling law in this respect, the FCCPA 2018, fails to refer to e-commerce or internet-based transactions, a gap that the Guidelines can fill.

Sellers and manufacturers under the Guidelines have common duties to offer products and services. They ensure that products and services are available as presented and agreed with the consumer, implying that sellers/manufacturers could incur liability if products delivered vary from what was presented to the consumer at the point of purchase or payment. The Guidelines also introduce requirements for e-marketplaces to incorporate returns policy, payment procedures, and delivery options on their web pages.

Compared to the FCCPA 2018, the Guidelines provide a wider variety of product warranties, thus supporting competition and consumer options. For example, the FCCPA only provides for an implied warranty of quality, but the Guidelines provide six warranties: one of them is the manufacturer's warranty. With this warranty, consumers can go for the manufacturer that offers the best warranty terms rather than being restricted to three months under an implied warranty in the FCCPA.

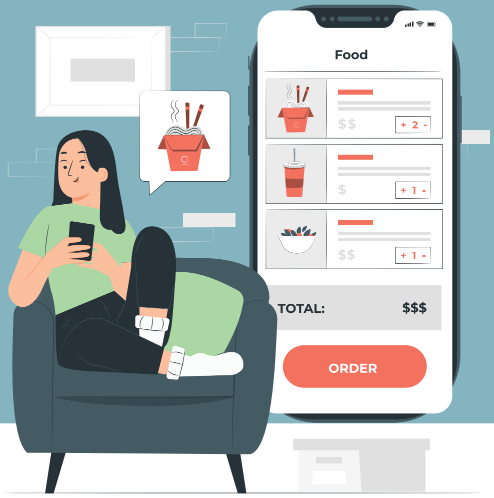
The Guidelines do not exist in a vacuum, as they rely on and draw from several international standards. Among them is ISO 10008:2018 *Quality Management – Customer Satisfaction Guidelines for Business-to-Consumer Electronic Commerce Transactions,* which provides further details on some Guidelines provisions. Therefore, e-commerce operators should implement the Guidelines alongside the relevant international standards to ensure robust compliance.

ISO 10008 provides that customer representatives should be trained in complaints handling, treating customers courteously, and showing good interpersonal communication skills, which are not found in the Guidelines. Another international standard is ISO 10393:2013 *Consumer Product Recall – Guidelines for Suppliers.* While the Guidelines define the types of recall, they do not guide how recalls should be carried out. Such guidance can be found in ISO 10393, and the Guidelines expressly refer readers to this international standard.

The SON shares responsibility for the e-commerce space with other agencies like the FCCPC, the National Agency for Food and Drug Administration and Control (NAFDAC), the Nigerian Customs Service (NCS), and the National Information Technology Development Agency (NITDA), on a case-by-case basis. On matters relating to consumer rights, the priority of the FCCPC is undisputed, but the FCCPA 2018 and the Guidelines are complementary.

The Guidelines, however, surprisingly fail to define what e-commerce is, yet it seeks to regulate e-commerce. Notwithstanding, e-commerce stakeholders are advised to study it alongside the FCCPA and international standards to ensure full compliance. Some highlights of the review are as follows:

- Nigeria's e-commerce space is projected to grow to $75 billion in revenue per annum by 2025, from its current valuation of $12 billion.
- The Guidelines focus on B2C e-commerce only, excluding B2B, C2B, and C2C e-commerce.
- NITDA may soon acquire the power to create incentives to promote e-commerce under the NITDA Bill before the National Assembly
- Concerning faulty and substandard goods, the Food and Drugs Act provides that the punishment is a fine of not less than N50,000, a term of imprisonment of not more than two years, or both.
- The term 'e-commerce platform' is used twice in the second half of the Guidelines, whereas it was not defined or referred to in the terminology section.
- Retailers can offer extended warranty terms longer than the duration provided by the manufacturer.
- The Guidelines cover Fintechs and social media platforms that offer e-commerce features.



Introduction

'What I ordered v. What I got'

This common social media caption accompanies images, often telling a story of online shopping gone wrong. Typically, a customer sees a nice picture of something they'd like to buy, ranging from clothes, shoes, gadgets, and in some cases, even houses and cars; only for them to make payment, and upon delivery, the actual goods are starkly different from what was posted online.

Occurrences like this are common in Nigeria's e-commerce space which largely operates like the Wild Wild West. To bring sanity to this space and provide operational standards to e-commerce operators, the Standards Organisation of Nigeria (SON) has issued the *Guidelines for E-commerce (Online Marketing).* While I will focus this review on the Guidelines, I will break it into three broad parts. The first part will focus on the background of the SON, which is vital, considering that this agency is not the most popular in tech conversations, compared to NITDA, NCC, and CBN, to mention a few. The second part will be the review itself. Finally, the third part will consider whether the SON is the best-equipped agency to regulate e-commerce, compared to either NITDA or the FCCPC, for example, and recommendations for regulators and stakeholders.

Background to the SON

The SON is Nigeria's standards body that ensures the standardisation of products manufactured or imported into Nigeria and provides quality assurance through its marks, such as MANCAP, SONCAP, and NQA. So far, it has certified over 2,300 products.[1] MANCAP, SONCAP, and NQA are collectively referred to as Nigerian Industrial Standard (NIS). NIS is a *"document established by consensus and approved by the Standards Council of SON, that provides, for common and repeated use, rules, guidelines, or characteristics for products and services, and related processes or production methods, aimed at the achievement of the optimum degree of order in a given context...Standards, therefore, help to make sure that products and services are fit for their purpose and are comparable and compatible."*[2]

Standardisation activities are managed by the Director of Standards, who works with Group Heads of several Technical Groups. These Technical Groups are Electrical/Electronic Group,

[1] Home Page, Standards Organisation of Nigeria (SON) https://son.gov.ng/ accessed Nov. 15, 2021

[2] 'About our Standards' Standards Organisation of Nigeria (SON) https://son.gov.ng/about-our-standards accessed Nov. 15, 2021

Food/Codex Group, Chemical Technology Group, Civil/Building Group, Service Standards Group, Mechanical/Metrology Group, Textile & Leather Group, International Standards Group, and Technical Library. In the foreword to the Guidelines, it was mentioned that the Technical Committee on Service Standards prepared it. The Service Standards Group is tasked with developing standards in the service sector[3] (which e-commerce falls under). There are 59 Technical Committees within this group, focused on one aspect of services, ranging from nutrition and health, distribution services, toy safety, beaches, publishing and media services, professional services, education services, alternative medicine, and surgical instruments. However, there is no mention of a technical committee focused on e-commerce or online marketing. The closest would be the Technical Committee on Marketing Services (SON/TC 160/SC 01) and Consumer Issues (SON/TC 160/SC 02).[4]

The rationale for the Guidelines

The Guidelines' Foreword states that it was developed due to the realisation that commerce is gradually shifting to the electronic space. It is meant to provide operational guidelines to the players in the e-commerce space concerning their processes and operational requirements.

Relevant International Standards

Reference is made to four international standards, which are referred to in the body of the Guidelines as follows:

- ISO 10002:2013 *Quality Management – Customer Satisfaction Guidelines for Complaints Handling in Organisations*
- ISO 10393:2013 *Consumer Product Recall – Guidelines for Suppliers*
- ISO 10008:2018 *Quality Management – Customer Satisfaction Guidelines for Business-to-Consumer Electronic Commerce Transactions*
- ISO 22059:2020 *Guidelines on Consumer Warranties/Guarantees*

Who and What is covered by the Guidelines

'Consumer' is defined in the Guidelines as an individual member of the general public purchasing or using a product or service, implying that the Guidelines only apply to B2C e-commerce and do not extend to B2B e-commerce.

[3] 'Standardisation' Standards Organisation of Nigeria (SON) https://son.gov.ng/standardization accessed Nov. 15, 2021

[4] 'Services – Technical Committees', Standards Organisation of Nigeria (SON) https://son.gov.ng/services-technical-committees accessed Nov. 15, 2021

It further defines 'e-market place' as an online platform (usually hosted by the seller) that serves as an intermediary between buyer and seller, allowing for exchanging information about products or services and setting the stage for parties to enter into and conduct an electronic commerce transaction. In this definition, the seller's concession may not always host the said online platform is noted. Without this concession, the Guidelines would have been limited in scope and enforceability from the beginning. It also implicitly captures many online platforms such as social media platforms and fintech companies that offer e-commerce features.

The Nigerian e-commerce space is dominated by Jumia and Konga, sellers who host their online platform or e-marketplace. However, many Nigerian entrepreneurs also do not own their platforms. Instead, they leverage social media sites like Instagram to display their wares and carry out the business of e-commerce. Instagram might be an online platform and an intermediary because it allows users to register accounts as a business and offers packages to support their publicity and reach. It also offers a 'Shop Now' option that users with business accounts can activate to sell directly on their accounts. Facebook also has a similar feature and can be considered an e-marketplace under these Guidelines. As such, any social media platform that does the following:

- purposefully extends features to users to advance commercial ends
- promotes the user's goods and services,
- and acts as a sales funnel,

could be considered an e-marketplace under these Guidelines.

Fintech companies like Flutterwave and Paystack that offer e-commerce solutions like Flutterwave Store and Paystack Commerce may also be captured by this definition. As such, they are subject to the relevant provisions of the Guidelines as they relate to e-marketplaces.

Paystack Commerce, for instance, allows merchants to set up a product page on the Paystack website, displaying images of their goods, making payments directly on the website, managing their inventory, and handling shipping.[5] Flutterwave Store also offers similar features.[6] These features show that fintech companies that act as an intermediary between buyer and seller and set the stage for an e-commerce transaction can be captured by this regulation.

The Guidelines are thus relevant for the following, apart from buyers and sellers online:

- Companies set up specifically for e-commerce, e.g., Jumia, Konga
- Social media platforms offering e-commerce features, e.g., Instagram, Facebook
- Fintech companies offering e-commerce features, e.g., Flutterwave, Paystack, OPay (OMall)
- Companies that offer goods and services from their website, such as subscriptions, books, etc., e.g., Medium, Stears Business

[5] 'Introducing Paystack Commerce', Paystack, 23 June 2020 https://paystack.com/blog/product/commerce accessed 17 November 2021

[6] 'Start selling online now with Flutterwave store' Flutterwave https://flutterwave.com/ng/store accessed 17 November 2021

The Guidelines also define manufacturers and sellers. These definitions will be referred to in the course of this review. A manufacturer is a product seller who designs, produces, makes, fabricates, constructs, or remanufactures the relevant product or part of a product before its sale to a user or consumer. A seller is any person or entity engaged in selling products, whether the sale is for resale or use or consumption. It further says that the term 'seller' also covers a 'manufacturer' and retailer.

Consumer Rights

The Guidelines stipulate six consumer rights as follows:

- The right to obtain a reasonable benefit for the product or service purchased
- The right to safety or protection from hazardous goods
- The right to be informed about alternatives and protection from false and misleading claims in advertising and labelling practises
- The right to privacy
- The right to choose
- The right to redress

These rights already exist under several provisions of the Federal Competition and Consumer Protection Act (FCCPA) 2018 with greater detail.

- **Section 114 –** Right to information in plain and understandable language
- **Section 116 –** Product labelling and trade descriptions
- **Section 119 –** Consumers' right to select suppliers
- **Section 121 –** Consumers' right to choose or examine goods
- **Section 122 –** Consumers' right to return goods
- **Section 125 –** False, misleading or deceptive representation
- **Section 130 –** Rights pertaining to the quality and safety of goods and services
- **Section 131 –** Consumers' rights to safe, good quality goods
- **Section 133 –** Safety monitoring and recall

ISO 10008:2018 *Quality Management – Customer Satisfaction Guidelines for Business-to-Consumer Electronic Commerce Transactions* sheds light on the consumer's right to privacy under the Guidelines. Under ISO 10002, confidentiality is a guiding principle. Here, personally identifiable information of the complainant (consumer) should only be available when needed to address the complaint, and actively protected from disclosure, unless the customer consents or disclosure is required by law. This duty to preserve the consumer's privacy also extends to financial service providers involved in the e-commerce system.

Under these rules, Paystack or Facebook, for example, double as e-marketplaces and financial service providers as the payment processor, which involves additional responsibilities. Those duties are as follows:[7]

- Duty to ensure data protection
- Duty to ensure privacy and disclosure to prevent or reduce exposure to cybercrimes
- Provide real-time information on transactions with updates
- Provide prompt notification on activity on customer account
- Provide prompt action on customer requests based on feedback on notification

Seller & Manufacturer Responsibility

The Guidelines tie both together, providing in 4.3.1 that the seller is to assume the manufacturer's responsibility, except where explicitly stated. The manufacturer in question has three duties under the Guidelines:

- Duty to offer a product or service
- Duty to agree to produce, make, fabricate, construct, or remanufacture the relevant product or part of a product at some consideration
- Duty to provide product or service in condition as agreed upon between self and consumer.

Extending the manufacturer's responsibility to the seller implies a strict liability that goods displayed or offered for sale must be available. If they are not when an order is made, the seller must take steps to ensure that the goods are produced or acquired to meet the order as made by the user or consumer.

Transaction Stages

Before a purchase is made, prospective customers have the right to the following information from retailers (sellers):

- Delivery options
- Payment policies and payment procedures
- Withdrawal and cancellation policy

[7] Guidelines for E-commerce (Online Marketing) 2020, Rule 4.5.1

- Return and exchange policy
- Applicable taxes and charges related to product/transaction

Some established e-commerce brands provide these details to customers before checkout. In addition, for retailers who use e-marketplaces like fintechs and e-commerce websites, such e-marketplaces can require such retailers to provide these details as part of their registration. This way, such platforms can avoid the risk of liability.

But for retailers who rely on social media platforms like Instagram or Facebook, the incentive to provide these details or even require them is lower due to the relative informality of e-commerce on social media. Notwithstanding, it would be in the best interest of such platforms to require such, as this would help to restore the battered legitimacy of e-commerce on such platforms. An example is Instagram in Nigeria. To ease this process for retailers, e-marketplaces could partially automate providing the required information by providing fill-in forms, drop-down options, and editable templates that retailers could use. Making this a requirement for retailers would ensure compliance across the board.

Some of these requirements are found in the FCCPA 2018. For example, section 120 provides a consumer with the right to cancel any booking, reservation or order for goods and services, subject to a reasonable cancellation charge by the supplier or service provider.

Rule 5.3 of the Guidelines builds on this by requiring that the returns policy be easy to understand, unambiguous, easy to read, clearly stated on the website, and define logistics for making returns. In this aspect, though, there is a slight contradiction. In the definition section, the Guidelines conceded that the seller may not always own the e-marketplace. This review has shown that e-marketplaces can include fintechs and social media platforms. In both cases, they are not the seller and may not be able to impose a one-size-fits-all returns policy for all retailers on their platform.

Implementing this rule may require a significant redesign of web pages, especially for social media platforms, which are not originally meant for e-commerce, even though they now support such efforts. But, again, this goes back to the earlier recommendation that such platforms should consider partially automating the process of providing this information. For instance, Instagram could integrate returns policy, payment procedures, delivery options etc., as permanent story highlights on business pages.

Types of Warranties and their application in e-commerce transactions

ISO 22059:2020 *Guidelines on Consumer Warranties/Guarantees* treat warranties and guarantees synonymously, unlike the Guidelines, which makes a distinction. ISO 22059 defines a warranty/guarantee as an enforceable promise given by the manufacturer or supplier to a consumer to properly repair, replace or refund a faulty product. If the repair is not satisfactory, the consumer has the right to replace or refund.[8]

[8] ISO 22059:2020 Guidelines on Consumer Warranties/Guarantees, Rule 3.15

The Guidelines introduce several types of warranties, such as:[9]

- **Express warranty:** one that is clearly stated or expressed verbally or in writing
- **Implied warranty:** one that is not explicitly stated but implied by the contract or stipulated by legislation
- **Limited warranty:** one that automatically covers most consumer goods of a certain amount but provides a base level of protection for consumers only.
- **Full warranty:** as the name implies, this one covers everything, from the cost of repair or replacement of a consumer product
- **Warranty against defects (manufacturer's warranty):** this is a representation to the consumer made at the time goods are supplied that if they are found to be defective, in whole or part, the business will repair, replace, resupply, fix, or provide compensation. However, this warranty is time-limited, but the Guidelines do not recommend how much time should elapse before this warranty expires.
- **Extended warranty:** offered by retailers to extend the time given by manufacturers' warranty

The FCCPA 2018, however, only provides one form of warranty – implied warranty under section 132. It provides an implied warranty of quality that the goods supplied are suitable for their intended purpose, of good quality, in good working order, free of defects, usable and durable for a reasonable period, and comply with industry-specific regulations. The Guidelines here may qualify as such a regulation.

It may be said that the Guidelines provide more options to both consumers and sellers than the FCCPA. An implied warranty may be the gold standard as provided under the law. Still, a manufacturer's warranty can step in to ease the adverse effects on a customer when a product has defects. Giving a wider variety of warranties provides a legal framework that supports enhanced choice for the customer and competition in the e-commerce sector. Rather than settle for the minimum implied warranty under the FCCPA, customers can go with the seller that offers the best warranty terms for their pocket, thus engendering healthy competition in the e-commerce space.

The above does not say that an implied warranty under the FCCPA does not extend the customer any benefits. Section 132(2) provides that within three months of delivery, the customer can return the goods where they fail to meet the stated standards, and the seller will have to repair, replace, or refund the customer.

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[9] Ibid 7, Rule 5.2.1

The demerit with an implied warranty under the Act is that it is time-bound. However, the Guidelines provide a range of warranties without specifying time limits, thus leaving it to the manufacturer/seller, another competitive angle that sellers can leverage, giving the longest time limits above three months under the law.

Whatever the applicable warranty, the seller must make its information available to the consumer in easy-to-read and understandable language. The seller must provide the following information:

- Type of warranty
- Name, business address, phone number, and email of person or business providing the warranty
- Steps to be taken on the part of buyer and seller/manufacturer to claim warranty, and honour it, respectively
- Stating that the warranty is given alongside customer guarantees and does not exclude them
- The period of the warranty

Complaint handling

The Guidelines provide that e-commerce platforms shall include processes for complaint handling. However, this is the first time the term 'e-commerce platform' has been used in the Guidelines.[10] One may assume that it is synonymous with e-marketplaces which the Guidelines define as an intermediary between the buyer and seller. There is room for improvement by either sticking to one term or adjusting the definition section that e-marketplaces also refer to as e-commerce platforms.

Irrespective, e-commerce platforms are expected to include a prominent phone number and email address in the complaints handling process. It should be incorporated into their brochures, website home page, and phone books and disclose complaint handling procedures.[11]

Most relevant to this is ISO 10008:2018 *Quality Management – Customer Satisfaction Guidelines for Business-to-Consumer Electronic Commerce Transactions.* It places the responsibility for setting up and complaints handling process on the top management. They are also to continually improve it, promote awareness, and communicate to customers about it.[12]

Managers involved in the complaints handling process are also required that the process is monitored and recorded. Managers must also take action to correct the problem, prevent re-occurrence, and record the event.[13] The Guidelines have similar provisions under Rule 8.1.7, which provide that e-commerce platforms (the second mention of this term) shall ensure reporting systems on complaints, improvement initiatives, and implementation of corrective/remedial action.

[10] Ibid 7, Rule 8.1
[11] Ibid, Rule 8.1.1
[12] Ibid 8, Rule 5.4.1
[13] Ibid, Rule 5.4.3

ISO 10008:2018 further states that personnel interacting with customers and complaints should be trained to handle complaints, comply with internal complaint reporting requirements, treat customers courteously, and show good interpersonal and communication skills.[14]

The FCCPA 2018 is not as detailed as the Guidelines or ISO 10008 concerning internal complaints handling. Therefore, reference is only made to this as one of the ways to enforce consumer rights under section 146(1), alongside reporting to the relevant industry regulator or filing a complaint directly with the Commission (FCCPC). Concerning the latter option, the FCCPC has a Consumer Complaint Portal on its website[15] and a Consumer Complaints App on Google Playstore.[16] On both platforms, consumers will provide details of their complaints using drop-down forms to select a range of complaints[17] and provide further details by typing in and attaching evidence.

Product Recall

Product recall is a request from a manufacturer to return a product after discovering safety issues or product defects that might endanger the consumer or put the maker/seller at risk of legal action.[18] The Guidelines define six situations that may warrant product recall:

- **Class I Recall:** A serious emergency recall situation involving a product that may have an immediate or long-range effect on the life or health of aquatic animals or human consumers
- **Class II Recall:** A priority situation involving a product that may be a potential hazard to human or animal life or health.
- **Class III Recall:** A situation involving a product that does not pose a health hazard but which may have serious or widespread customer or public relations implications
- **External Recall:** The removal of a product from the market in which distribution has been made beyond the direct control of the feed miller's organisation
- **Internal Recall:** The removal of a product from the market, none of which has left the direct control of the manufacturer
- **Retention:** Holding product from the market or further processing or shipment when there is evidence of a quality or labelling deviation in the formula for the target species

Reference is made here to ISO 10393:2013 Consumer *Product Recall – Guidelines for Supplier* for practical guidance to suppliers and retailers on handling product recalls, and corrective steps to take after the product has left the manufacturer.[19] Notwithstanding, Annex C of the Guidelines sets out an example of a product recall checklist that defines the responsibilities of retailers and suppliers. For instance, suppliers and retailers are responsible for stopping sales and distributing

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[14] Ibid, Rule 5.4.4

[15] 'Do you feel you have been treated unfairly' FCCPC https://user.fccpc.gov.ng/noauth

[16] FCCPC Consumer Complaints App https://play.google.com/store/apps/details?id=com.softcom.cpc.android&hl=en&gl=US

[17] Such as denial of service, failed transactions, price hiking, overcharging, service delivery, sub-standard goods, and others.

[18] Ibid 7, Rule 9

[19] ibid

the affected product further. The retailer is to follow the supplier's instructions for product removal from the supply chain or directly from consumers. Finally, the supplier is responsible for identifying all affected retailers and potential consumers.

The Guidelines under Rule 9 also state a product recall can be initiated in compliance with instructions from a regulator. In this respect, sections 133(10)(e) and 133(2) of the FCCPA 2018 empower the FCCPC to recall goods for repair, replacement or refund if they are found to be unsafe by written notice to the undertaking to recall the goods under terms defined by the Commission.

Penalties and collaborating agencies

The Guidelines state that regulators impose penalties for fraudulent transactions, late delivery of goods, faulty and substandard goods, and unfair and unreasonable contract terms. The Guidelines, however, fail to state what the penalties or sanctions are. The SON Act of 2015 also does not make mention of penalties for the acts stated. Failure to expressly state the sanction for such acts may give room for regulatory overreach in enforcement.

Although a note states the SON or other regulatory agency is mandated to penalise parties, this note is restricted to matters relating to faulty and substandard goods.[20] It is possible to look to the National Agency for Food and Drug Administration and Control (NAFDAC) and the Nigerian Customs Service (NCS) to impose penalties. The Food and Drugs Act in section 6 prohibits the manufacture of any food, drug, or cosmetic under unsanitary conditions. Punishment for this is a fine of not less than N50,000, a term of imprisonment of not more than two years, or both.[21]

But for fraudulent transactions and late delivery of goods, no collaborating agency or law is mentioned that could provide clarity on the sanctions.

SON will be collaborating with NAFDAC and the NCS for matters relating to faulty and substandard goods. Where it involves unfair and unreasonable contract terms, SON will rely on the Consumer Protection Framework of the CBN Act 2007 and FCCPA 2018. The Guidelines also recognise the FCCPC as the government agency responsible for protecting consumer rights and curbing unfair competition.

[20] Ibid, Rule 10.3

[21] Food and Drugs Act, s. 17(1)

SON as an E-commerce Regulator

The introduction states that the SON is not the most popular government agency in tech conversations. Notwithstanding, its position as Nigeria's standards body gives it a say in how goods and services are developed and packaged for the final consumer. The Guidelines and the international standards it draws from have provisions to enhance customer trust in e-commerce and enhance competition if enforced. However, the SON is not the only agency interested in the e-commerce space.

The Guidelines admit that the FCCPC has the protection of consumer rights as one of its key responsibilities. The FCCPA 2018 and the Guidelines have significant overlap. In some cases, the FCCPA has more detail, for example, consumer rights. In some other instances, the Guidelines are more detailed regarding warranties and product recall. The FCCPA also fails to make mention of e-commerce or internet-based transactions of any sort. No subsidiary legislation has also been issued by the FCCPC that touches on e-commerce, directly or indirectly, a gap that the Guidelines fill.

SON is, however, not the only government agency with ambitions in the e-commerce space. Section 5(7) of the NITDA Bill seeks to empower the National Information Technology Development Agency (NITDA) to create incentives to promote digital commerce. Section 6(4) notably seeks to empower NITDA to collaborate with the SON to develop and enforce standards relating to the bill's scope and make inputs to international standards on IT and the digital economy. SON already has representation on NITDA's board[22] which is maintained in the amendment bill[23]

The emerging e-commerce regulatory framework is not likely to be dominated by one agency. Rather, it will rely on the collaborative efforts of government agencies such as SON, NITDA, FCCPC, NAFDAC, and the NCS, as the case may be. The express mention of other agencies in the NITDA Bill and the Guidelines is a step in the right direction to prevent regulatory clashes and needless uncertainty in the e-commerce space. Nigeria's e-commerce space has its challenges, with some players exiting after years of business without profit.[24] Adding regulatory uncertainty into the mix would only worsen things.

There is proof that inter-agency collaboration to regulate an activity is doable. For example, NITDA and FCCPC recently announced a collaboration to curb the sharp practices of digital lenders.[25]

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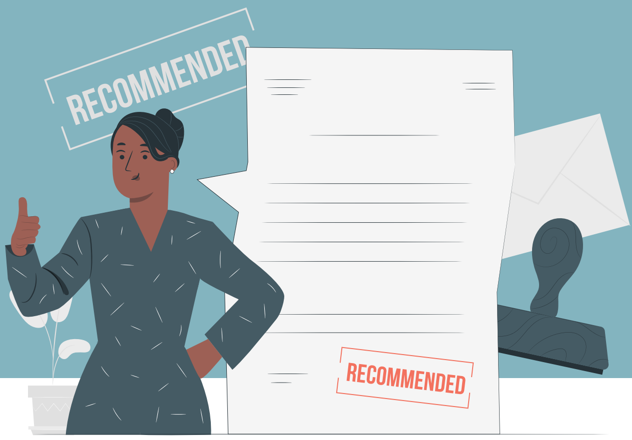
[22] NITDA Act 2007, s. 2(2)(iv)

[23] NITDA Bill, s. 7(2)(iii)

[24] Janet John, 'Start to fail: Why e-commerce startups fail fast in Nigeria' Nairametrics, 16 September 2021 https://nairametrics.com/2021/09/16/start-to-fail-why-e-commerce-startups-fail-fast-in-nigeria/ accessed 21 November 2021

[25] Ubah Jeremiah Ifeanyi, 'NITDA, FCCPC to sanction money lending fintechs for abuse of customers' data privacy' Nairametrics, 12 November 2021 https://nairametrics.com/2021/11/12/353469/ accessed 21 November 2021



Recommendations for improving the Guidelines

Although the Guidelines are a step in the right direction, it is not without flaws.

- In the build-up to the Guidelines, there was a failure to set up a Technical Committee on E-commerce under the Service Standards Group. If the SON seeks to play a prominent role in the Nigerian e-commerce space and for future revisions of the Guidelines, a dedicated committee for e-commerce or digital services should be set up
- For subsidiary legislation that seeks to regulate e-commerce, it is surprising that the Guidelines fail to define what e-commerce is. This omission might have been less important, but the sudden introduction of the term 'e-commerce platforms' halfway through the Guidelines might be confusing and discordant when no attempt was made to define it. Considering the scope of those affected by the regulation, the exactitude of terms is vital. Therefore, the Guidelines should be reviewed to define e-commerce and e-commerce platforms or expressly refer to an international standard.
- The consumer definition clarifies that the Guidelines are focused on B2C e-commerce exclusively, in line with ISO 1008:2018 *Quality Management – Customer Satisfaction Guidelines for Business-to-Consumer Electronic Commerce Transactions,* which is focused on B2C e-commerce only. It ignores other e-commerce models thriving in Nigeria, such as B2B, C2B, and C2C. It would require more work and a wider range of consultations. Still, the result would be a more comprehensive regulation or substantive law that fully covers the e-commerce ecosystem in Nigeria.
- The Guidelines fail to define penalties for fraudulent transactions and late delivery of goods. Even though no penalties are defined for faulty/substandard goods and unfair/unreasonable contractual terms, there is at least a reference to other laws or government agencies. The same should be done to prevent abuse of power concerning enforcement. The CBN, EFCC and the Cybercrimes Act 2015 are relevant concerning fraudulent transactions.

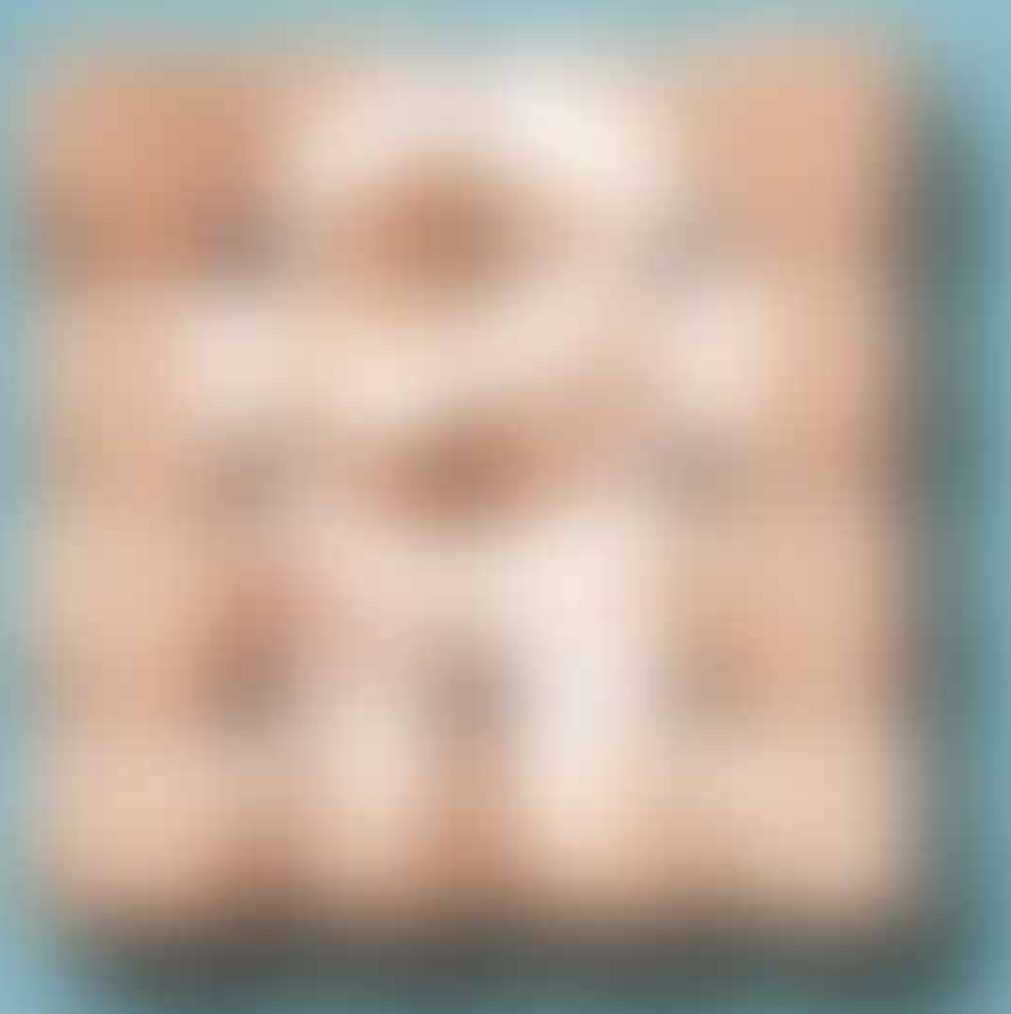
Recommendations for E-commerce players

If any activity lasts long enough, it is sure to catch the attention of regulators. Nigeria's e-commerce space had grown from humble beginnings when Jumia entered the market in 2012, to its current valuation of $12 billion, based on spending, projected to hit $75 billion by 2025 in terms of revenue per annum[26] - an increasing growth rate of 131% per annum.

The Guidelines for E-Commerce (Online Marketing) represent the first definite step towards e-commerce regulation. In this review, several suggestions have been made about how e-commerce stakeholders can achieve compliance. The reader should note that this review has focused on the Guidelines, though juxtaposed with the FCCPA 2018 and international standards. For a more nuanced understanding of navigating the regulatory landscape, stakeholders should undertake an in-depth study of the Guidelines, consumer rights under the FCCPA 2018, and international standards referred to in this work.

Doing so will ensure that the e-commerce players are a step ahead and avoid the risk of regulatory sanction.

[26] 'Nigeria – Country Commercial Guide: eCommerce' International Trade Administration, 13 October 2021 https://www.trade.gov/country-commercial-guides/nigeria-ecommerce accessed 21 November 2021



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