



“Consumer Protection in Ethiopia's Telecom Sector: New Beginnings and Prospects”

Mekdes Bekele Tefera

Supervisor: Kinfe Yilma (Ph.D.)

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Declaration

I, Mekdes Bekele Tefera, hereby declare that this thesis is original and has never been presented in any other institution. To the best of my knowledge and belief, I also declare that any information used has been duly acknowledged.

LL.M Candidate Name:

Mekdes Bekele

Signature: _____

Date: _____

This thesis has been submitted for examination with my approval as University Supervisor.

Supervisor:

Kinfe Yilma (PhD)

Signature: _____

Date: _____

Approval Page

Addis Ababa University, College of Law and Governance Studies

The thesis entitled " Consumer Protection in Ethiopia's Telecom Sector: New Beginnings and Prospects " by Mekdes Bekele is approved for the Degree of Master of Laws (LL.M) in Business Law.

Approved by Board of Examiners:

	<u>Name</u>	<u>Signature</u>	<u>Date</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____

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List of Acronyms and Abbreviations

ADR	Alternative Dispute Resolution
CAP	Consumer Advisory Panel
TCRPD	Telecommunications Consumer Rights and Protection Directive
ECA	Ethiopian Communications Authority
EthCSP	Ethiopian Communications Service Proclamation
EU	European Union
EUECC	European Union Electronic Communications Code
EUUSO	European Union Universal Service Obligations
ICASA	Independent Communications Authority of South Africa
LEAs	Law Enforcement Agencies
NRAs	National Regulatory Authorities
NB-ICS	Number-Based Interpersonal Communications Service
PEC	Privacy and Electronic Communications
PWD	Person with Disability
QoS	Quality of Services
RSA	Republic of South Africa
RSAECA	Republic of South African Electronic Communications Act
SADC	Southern African Development Community
SMS	Short Messaging Service
SNP	Service Number Portability
TCCPP	Trade Competition and Consumer Protection Proclamation
TFEU	Treaty on the Functioning of the European Union
TFOP	Telecom Fraud Offense Proclamation
USO	Universal Service Obligations
VOIP	Voice Over Internet Protocol

Abstract

A few sectors have been selected for special treatment because of their unique importance to society. The telecom industry is one such identified sector in which consumers have legal protection. Telecom consumers' legal protection has progressed through several stages. This thesis examines the legal protection of consumers in Ethiopia's telecommunication sector. Ethiopia had no tailored consumer protection laws for telecom consumers, and safeguards were only made with generic consumer laws. Special telecom consumer protection has been enacted as a result of the recent (and ongoing) telecom policy reform. In line with international trends, Ethiopia's consumer laws in the telecom sector consider the particular characteristics of telecom consumers. The laws are designed to counter the power gap in bargaining power between consumers and telecom operators, uphold social justice, address knowledge asymmetry and transaction costs. The quality of legal and institutional framework of consumer protection determines the effectiveness of consumer protection in the sector. The thesis examines Ethiopia's consumer protection framework based on comparative studies. It argues that current Ethiopian law exhibits several normative gaps that undermine consumer rights. The country fails to legislate laws to protect vulnerable consumer rights, a structurally independent regulator, consumer civil association representation in the regulator, net neutrality rules on Voice over Internet Protocol (VOIP) services, and data breach notification standards. There are no clear rules and an independent investigative team made up of system managers in the Ethiopian Communications Authority (ECA) to determine operator's violation of consumer privacy. The Ethiopian Communications Service Proclamation (EthCSP) specifies access rights to Service Number Portability (SNP), but not how the procedures shall be carried out. Surveillance of Internet and phone correspondence is permitted under a number of broad statutes with a low burden of proof that has only rudimentary protection for the right to privacy. In addition, the modest survey of the practice shows there was an awareness gap among consumers about their own rights in the industry. The operator fails to have disclosure terms on privacy and data protection on the subscriber's service agreement. And the contract is an adhesive in nature that does not include the rights of consumers in a clear manner which needs amendment. The ECA is yet to educate consumers and inform their rights.

Keywords: *Consumer Protection, Telecom Consumer, Telecommunications Service, EthCSP, ECA*

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Chapter 1

1. Introduction

1.1. Background of the Study

Over the past 150 years, the meaning of telecommunication consumers has developed to include telephone users, mobile phone users, and Internet users.¹ Voice, data, and video services can now be accessible on the same platform due to the emergence of Internet Protocol and broadband networks.² The application and the infrastructure for telecommunications and computer technologies have become indistinct.³

Telecommunications consumers are regarded as a weaker party, with less bargaining power than telecom sector operators. They have weaker bargaining power in contract terms than telecom operators.⁴ They are also the weaker party in terms of knowledge of the characteristics of the products or services they are contracting.⁵ As a result, telecom consumers must receive reliable, impartial, and sufficient information about the products and services purchased from telecom operators. To protect consumer's needs, a consumer protection framework is required. Telecommunications consumer protection safeguards the well-being and interests of consumers through education, mobilization, and representation.⁶ The law guarantees the choice, cost, and quality of the products and services businesses offer to consumers.⁷

In Ethiopia, consumer legal rights can be found in civil and criminal laws such as the law of persons,⁸ extra-contractual law,⁹ the 1995 FDRE Constitution,¹⁰ and the 1997 Criminal Code of

¹ ITU-D Study-Group 1, 'Consumer Information, Protection and Rights: Laws, Regulation, Economic Bases, Consumer Networks', (ITU 6th Study Period 2014-2017, 2017) 1.

Available at < https://www.itu.int/dms_pub/itu-d/opb/stg/D-STG-SG01.06.3-2017-PDF-E.pdf>

² Rosalind Stevens, 'Regulation and Consumer Protection in a Converging Environment', (ITU report on Regulatory and market environment Telecommunication Development Sector, ITU March 2013) 1.

Available at < https://www.itu.int/ITU-D/finance/Studies/consumer_protection.pdf>.

³ David Messerschmitt, 'The Convergence of Telecommunications and Computing: What are the Implications Today?', (1996) 84 Journal of Proceedings of the IEEE 1167.

Available at https://www.researchgate.net/publication/2985046_The_convergence_of_telecommunications_and_computing_What_are_the_implications_today

⁴ Jami Solli, 'A Guide to Developing Consumer Protection Law', (Consumer International April 2011) 10.

⁵ Ibid.

⁶ Ibid.

⁷ Elizabeth Newman, 'Consumer Protection and Telecommunications', in Ian Walden(ed.), *Telecommunications Law and Regulation*, (5th edn, Oxford University Press 2018) 493.

⁸ The Civil Code of the Empire of Ethiopia, Proclamation No. 165/1960, Art.31.

Ethiopia.¹¹ The Trade Competition and Consumer Protection Proclamation (TCCPP) No. 813/2013 is the general consumer protection law currently in operation in Ethiopia. This proclamation defines a consumer as a natural person¹² and stipulates consumer rights and protections.¹³ The telecommunication sector was recently regulated by telecommunication Proclamation No. 49/1996 and No.281/2002 (as amended), Telecommunication Services Council of Ministers Regulation No 47/1999, and Telecom Fraud Offense Proclamation (TFOP) No. 761/2012. Under these laws, Ethio-telecom, the state-owned telecom monopoly, has been the sole telecommunication service provider in Ethiopia. By then, there were no provisions in Ethiopian telecommunications laws dealing with consumer rights and protection mechanisms other than defining the term 'basic telecommunication service' as per Art.2 (3) of Proclamation No. 49/1996.

Ethiopia's telecom sector is being liberalized and privatized to increase market competition. Only a portion of Ethio Telecom's capital will be made available to the public and other private operators. A new law to that effect has been recently introduced, repealing the majority of pre-existing laws.¹⁴ This new development will have an impact on the protection of consumer interests. The EthCSP No.1148/ 2019 fails to specify who is to be classified as telecommunication consumers. Only the Telecommunications Consumer Rights and Protection Directive (TCRPD) defines "Consumer" as any person who receives or has received telecommunications services from a service provider through a service subscription agreement into which he enters or accepts the terms set by the telecom service provider.¹⁵ The word consumer may apply to someone who uses or requests service for non-business purposes and is not contractually bound to the provider.¹⁶

The primary goal of consumer protection regulation is to protect consumers, and thus a sound legal and institutional framework for consumer protection must be developed. Ethiopia needs to put adequate policies, laws, and regulations to ensure that consumers are protected from harmful

⁹ Ibid, Art.2027.

¹⁰ The FDRE Constitution Proclamation No.1/1995, Art. 26(2).

¹¹ The Criminal Code of the FDRE Proclamation No. 414/2004, Art.606.

¹² Trade Competition and Consumers Protection Proclamation No. 813/2013, Art 2(4).

¹³ Ibid, Art. 14 up to Art.30.

¹⁴ Ethiopian Communication Services Proclamation No.1148/ 2019, Art.55(1) and Sub (2).

¹⁵ Telecommunications Consumer Rights Protection Directive No.832/2021, Art.2(6).

¹⁶ Newman (n 7) 494.

business practices. This thesis investigates the legal protection of telecom consumers under Ethiopian law. It examines the extent to which current and draft laws uphold the rights and interests of consumers in Ethiopia's telecom sector.

1.2. Statement of the Problem

Telecom is an important sector of concern for all Ethiopian consumers. Telecom services are enhanced and used as a vehicle for developing social, cultural, and economic activities, including trade and investments. Ethio-telecom provides consumers with alternative customer services such as fixed and mobile telephony, broadband, Domain Name Service (DNS), Web Hosting, Virtual Private Network Service, Roaming, Value Added Service (VAS), and data service.¹⁷

To give a better service to its consumers, the operator has implemented a number of steps and improvements to its telecom service. However, controversial consumer issues are examined with a variety of customer services.¹⁸ Among the identified telecom service problems¹⁹:

1. Situations of poor network service quality have persisted and continue to cause serious controversies between consumers and the service provider (Ethio-Telecom). These include the inability to re-charge due to defective recharge card or network failures, as well as call setup failures such as service interruption, cross talk, dropped calls, and voice impairment;
2. Ethio-telecom has suspended internet service access without notifying its customers. The suspension is due to either its actions or the Ethiopian government, which unilaterally disconnects internet services. The act forbids consumer information sharing and online shopping, as well as electronically rendered commercial undertakings. Even if Ethiopia's Internet marketing is showing slight improvement, the telecom service provider creates such kind of unlawful barriers;
3. Other complaints concern unsolicited Short Messaging Service (SMS) and scam messages sent to subscribers by the service provider and Ads agents. Customers of mobile services are not well informed about the nature and costs of value added service. Customers are also unaware of easily accessible unsubscribe mechanisms.

¹⁷ Available at: < <https://www.ethiotelecom.et/>>.

¹⁸ Available at:

<<https://m.facebook.com/ethiotelecom/photos/a.836009829849305/1982305721886371/?type=3&source=57>>

¹⁹ The company's Official page on Social Media : Available at: <<https://www.facebook.com/ethiotelecom/>> .

4. Ethio-Telecom requires sensitive private data and personal information to register Subscriber Identification Module (SIM) cards. Art.51 (1) of the EthCSP No.1148/2019 doesn't clarify data security standards. The fate of data belonging to telecom operators in general, and Ethio-telecom in particular, is uncertain, especially in terms of data abuse and misuse.

The anticipation of special consumer law in the telecom sector aims to protect consumers' communications' interests. The sector regulator has the power to investigate consumer complaints on its own and/or order the respective telecommunication operators to have a code of conduct that specifies the consumer's rights, including the consumer's right to privacy. Furthermore, the introduction of private telecom business operators is seen as generally beneficial to consumers in terms of telecom service choice, cost, and quality.

With these considerations in mind, this thesis critically examines Ethiopia's relevant legal framework dealing with consumer protection in the context of telecom services. Informed by a comparative perspective, it seeks to offer some recommendations to improve consumer protection in the telecom sector.

1.3. Research Question

The thesis seeks to address the following central research question: whether and the extent to which Ethiopian law protects the rights and interests of consumers in the telecommunication sector.

1.4. The Objectives of the Study

1.4.1. General Objective

The primary goal of this study is to evaluate the state of consumer rights protection in Ethiopia's telecom sector. Consumers are frequently in a weaker position than service providers in terms of protecting their rights and interests. They are weaker party often due to a lack of access to information, knowledge, and skills, as well as the influence of external forces and other factors.

1.4.2. Specific Objectives

Specifically, the objectives of the study are:

1. To critically examine whether and the extent to which Ethiopian law protects the rights and interests of consumers in the telecom sector;

2. To examine the current institutional framework for the protection of telecom consumers in Ethiopia; and
3. To recommend ways of improving telecom laws, policies, and regulations to alleviate impediments for the protection and promotion of consumer rights.

1.5. The Methodology of the Study

The thesis adopts a doctrinal research method primarily. Qualitative data is collected, and both primary and secondary sources of information are used. All relevant proclamations, regulations, directives, treaties, and EU and RSA laws are included in the primary source. Books, journals, magazines, periodicals, scholarly articles, relevant websites, and the like are included in the secondary source. Furthermore, the analysis used a comparative approach that will enable us to understand the laws of the European Union (EU) and the Republic of South Africa (RSA). The thesis then attempts to evaluate international jurisdictions to draw lessons for the section of the paper that looks at the prospects for consumer protection in Ethiopia.

To comprehend slight practice of consumer protection, empirical data is collected from a population- sample group of consumers, telecom operator, and the Regulator. The method of data collection is an interview. Five telecom service consumers and officials of telecom operator and the Regulator is held to solicit their attitudes and experiences. Participants of the interviews are selected based on a purposive (judgmental) sampling method taking into account their daily utility of telecom service, position, knowledge and experience in the area. A semi-structured type of interviewing is undertaken in conducting the interview because such an approach allows the researcher to be consistent and flexible in asking questions to probe essential data. The data collected through the interview was objectively analyzed to reach the conclusion.

In general, since the thesis used a qualitative approach, the research is of the analytical research type, and therefore text and comparative analysis are used to analyze the collected data.

1.6. The Scope of the Study

The scope of this study focuses on an examination of existing and proposed Ethiopian consumer rights laws, policies, and regulations.

In particular, the study looks into relevant Ethiopian laws, as consumers may benefit from both sector-specific and general rules. In addition, the study explores how the sector regulator and service providers protect consumer rights and interests.

Also, comparative laws such as those of the EU and the RSA laws are included to determine the extent to which Ethiopian laws are in line with international best practices in the legal protection of telecom consumers.

1.7. Limitations of the Study

Because the country has only recently begun liberalizing the telecom sector, it will be some time before new telecom companies enter the market. As a result, the study is limited in its consideration of consumer protection in a technically monopolized sector by the incumbent Ethio-telecom. This is particularly true when looking at actual practice.

However, once new operators enter the Ethiopian telecom market, the thesis will still be relevant. Another limitation is that there are no other new telecom operators who have competed in the market. So, the study encountered a scarcity of consumer affairs in various services received from alternative operators used to compare and examine consumers' live experiences.

The law is new, and after that, the regulator, many regulatory issues are not tested in practice. Moreover, most laws have only recently been approved. Thus, there is no such case to analyze. But, exploring the practice is secondary in this thesis since the main focus of the study is to examine the new beginnings and prospects of the law. Another limitation that emerged during data collection is the inconvenience of interviewees.

1.8. The Significance of the Study

The significance of the study can be seen in two dimensions, from the perspective of the sector regulator and consumer rights.

On both sides: it has a lot of importance in promoting and safeguarding E-commerce which ultimately induces trade and investment, ensuring whether consumers have all the information they need to make informed choices and have adequate protection and redress mechanism if things go wrong, safeguarding trust in the internet by developing a robust cybercrime strategy and data protection and privacy strategy that is future proved to cope with new technologies,

safeguarding trust in the internet, creating a simpler, clearer regulatory framework, protection of personal data and privacy, knowing the right to complain and consumer complaint handling procedure.

1.9. Literature Review

Legal scholars in Ethiopia have yet to perform extensive studies on consumer rights in the telecommunications industry. There are, however, fewer and unpublished scholarly works in different legal aspects. As a result, one study was conducted on various pre-identified consumer abuses and shown the possible gaps and challenges in the consumer protection regime.²⁰ This study looked at the legal frameworks of consumer protection enforcement mechanisms found in the TCCPP No.813/2014 and Trade Practice and Consumer Protection Proclamation (TPCPP) No.685/2010. In contrast to this work, this thesis examines identified problems related to telecom sector consumers broadly, primarily due to telemarketing.

The other independent, unpublished work was done in Ethiopia's legal and institutional framework for consumer protection. This study, once again, focuses on consumer rights as outlined in TPCPP No.685/2010.²¹

In another way, a legal scholar examines the regulatory issues that future telecom liberalization will give rise to.²² He argues that Ethiopia's interconnection regime should properly consider consumer affairs when the government initiates reform in the telecom sector.²³ The author elucidates that the country's interconnection regime, found in Article 56 of Telecom Reg.No.47/99, is objectively general and far from complete.²⁴ In contrast to this study, this thesis examines how the new proclamation's interconnection rules are designed in accordance with consumer interconnection rights. A qualitative analysis of the rules of interconnection will be conducted, primarily in terms of future subscribers of different telecom operators.

²⁰ Tessema Elias, 'Gaps and Challenges in the Enforcement Framework for Consumer Protection in Ethiopia' (September 2015) 9 Mizan Law Review 83.

²¹ Dessalegn Adera, 'The Legal and Institutional Framework for Consumer Protection in Ethiopia', (unpublished LLM Thesis, Addis Ababa University 2011).

²² Yazachew Belew, 'Telecommunications Services Liberalization in Ethiopia: Implications for Regulatory Issues' (2014) 26 J Ethiopian L 55.

²³ Ibid, 83.

²⁴ Ibid, 85.

Besides, other research work also considers the regulatory issue of telecommunication consumer affairs.²⁵ This study was conducted after the government decided to privatize the sector but before the country approved the new telecom regulatory law. As a result, the analysis was conducted through a broad prediction of how consumer affairs should be reconsidered as legal and institutional frameworks are developed. This thesis, in contrast, investigates how consumer protection laws in telecommunications are designed.

To fill a gap in the literature, this thesis investigates the legal protection of telecom consumers in Ethiopia more comprehensively. It examines, using comparative literature and doctrinal analysis, the extent to which and whether Ethiopian law protects telecom consumers' rights and interests.

1.10. Organization of the Thesis

This thesis is organized into four chapters. The first chapter provides introductory background. The second chapter examines the nature and scope of consumer protection in the telecommunication sector in general and telecom consumer protection, informed by EU and RSA laws. Chapter three examines the current and draft Ethiopian laws to determine whether and to what extent they protect telecom consumers. Informed by comparative discussion in chapter two, examination of telecom consumer rights will be studied. Finally, chapter four covers the conclusion and recommendations of the thesis.

²⁵ Lishan Adam, 'Risks and Opportunities of Late Telecom Privatization: The Case of Ethio Telecom' (2019) Research ICT Africa, 5. available at <https://researchictafrica.net/2019_after-access-steps-and-issues-in-the-privatisation-of-the-telecommunication-sector-in-ethiopia/>.

Chapter 2

2. Nature and Scope of Consumer Protection in the Telecommunication Sector

2.1. Introduction

Consumer protection as a modern concept is a recent phenomenon dating back to the 1960s when President John F. Kennedy made an impassioned call for more substantial consumer rights.²⁶ There is an international consensus that consumers must be legally protected, requiring states to enact consumer legislation.²⁷ Since its establishment in UN Resolution 39/248 of 16 April 1985, the United Nations Consumer Protection Guideline (extended in 1999) is the basis of consumer protection legislation in many countries worldwide. Telecommunications services are one of the concerns of international consumer legislation, which affirms the legal protection of telecoms consumer interests.²⁸ The expansion of digital technologies has dramatically altered the way telecommunications services are delivered to consumers. To protect the rights and interests of consumers, the new technological environment requires legislation and institutional arrangements that take this new environment into account.

This chapter examines the nature and extent of consumer protection in the telecom sector. While discussing the nature of consumer protection, the need for consumer protection unique to this sector is also analyzed. The chapter discusses issues common to telecommunications consumers and how the interests of telecommunications consumers are protected by legislation. Telecommunications consumer issues and protections are access to telecommunications services, consumer protections in a competitive market, contractual arrangements and dispute settlement, quality of service, vulnerable consumer groups, and privacy and data protection. Based on these common issues, the chapter examines the EU and the RSA laws to learn how the interests of telecom consumers are protected.

²⁶ Special Message on Protecting the Consumer Interest, Statement read by President John F Kennedy Thursday, 15 March 1962.

Available at : < <https://www.jfklibrary.org/asset-viewer/archives/JFKPOF/037/JFKPOF-037-028> >.

²⁷ United Nation Conference on Trade and Development Manual on Consumer Protection, The United Nations Guidelines for Consumer Protection (2016) Section V 13(A) and Art. 14.

²⁸ United Nations Conference on Trade and Development, Manual on Consumer Protection, (edn.2016) 23.

2.2. Protection of Telecom Consumers

2.2.1. Telecom Consumer Defined

The definition of consumer is helpful in clearly delineating the scope of consumer rights. There is no universally accepted definition for the consumer. Different consumer laws, be they criminal or civil, try to define the term consumer according to their respective legislative objectives.²⁹

The Black's Law Dictionary defines a "Consumer" as "*one who uses economic goods and so diminishes or destroys their utilities; as opposed to a producer.*"³⁰ Particularly, a telecom consumer is described as someone who uses or requests service for usage purposes and does not have a contractual relationship with the provider.³¹ Another Author defines the term "consumer" in telecommunications as the ultimate beneficiary of all members of society.³² As a result, consumer protection covers a fairly broad spectrum, large enough to assure universal service and small enough to ensure contract conditions.³³ A subscriber who agrees to the contract term for his or her personal use or the personal use of others qualifies as a telecom user.

For this thesis, a telecommunications consumer contractually subscribes to a telecommunications service for his or her or another's personal use.

2.2.2. Nature of Consumer Protection in Telecommunication Sector

Telecommunications consumers are distinct from other types of consumers. The unique characteristics of telecommunication consumers are Six. First, the consumer receives the telecommunications service from service providers in a contractual relationship that binds them for a fixed period and affects them.³⁴ The terms and conditions of telecom service contracts are usually made in a standard form, and among these, online agreements may be made which is sensitive and unique. The consumer has access to limited information or suffers from decision-making biases. In telecom service contracts, the special needs of older persons, those with low incomes, and persons with disabilities require additional protections because they are more

²⁹ Peter Cartwright, *Consumer Protection and the Criminal Law: Law, Theory and Policy in the UK* (Cambridge University Press 2004) 2.

³⁰ Black's Law Dictionary, (4th edn., West Publishing Co.1968).

³¹ Newman, (n 7), 494.

³² Li Enhan, 'Competition and Regulation in Telecommunications Industry', (DPhil Thesis, University of Barcelona 2016) 32.

³³ Ibid.

³⁴ Jeannie Marie Paterson and Jonathan Gadir, 'Looking at the Fine Print: Standard Form Contracts for Telecommunications Products and Consumer Protection Law in Australia' (2013) 37 *UW Aust. L Rev* 45.

vulnerable in various ways.³⁵ Second, the sector involves dynamic technological innovation, and even operators cannot predict potential future innovations. As a result, the impact of technological innovation on consumer behavior and the possibility for service challenges needs safety and regulation.³⁶ Third, telecommunications operators are obligated to provide their customers with professional, high-quality, and reliable services. Fourth, the sector is of great significance to the government because it affects nearly every state's socioeconomic and political affair. Fifth, telecom companies have access to consumers' sensitive personal information both during and after the service contract. Offenders can intercept user communications.³⁷ The majority of countries have made unauthorized phone interceptions illegal to preserve the use of telecommunications networks. The implementation of emerging technology presents a challenge in preventing unauthorized access to personal information, cybercrime, and network security threats.³⁸ States need to have special care for consumers.³⁹ Sixth, telecommunications is a network market with many sunk costs and investments.⁴⁰ During operations, the incumbent operators require a substantial profit margin. Telecom companies can take advantage of their considerable market power and take advantage of the market structure.⁴¹ Customers are exposed to acquiring expensive telecom services due to a lack of alternatives and poor service efficiency. Telecom consumer protection is made up of many consumer regulations and institutional mechanisms that consider all of these specific characteristics of telecom consumers. Telecom rules, telecom company licensing requirements, National Regulatory Authority regulations, and other related consumer laws provide legislative mechanisms for consumer protection in the telecom sector.⁴²

³⁵ See United Nations Guidelines for Consumer Protection 2016, Sec. III, No.5(b).

³⁶ Stevens (n 2) 6-7.

³⁷ Franck Leprévost, 'Encryption and Cryptosystems in Electronic Surveillance: A Survey of the Technology Assessment Issues' (April 1999) European Parliament Directorate General for Research The STOA Programme. < [http:// www.itu.int/ITU-D/cyb/cybersecurity/legislation.html](http://www.itu.int/ITU-D/cyb/cybersecurity/legislation.html). > accessed 28 March 2021.

³⁸ We refer Section B (35) of 'Declaration of Principles Building the Information Society: a Global Challenge in the New Millennium' (World Summit on the Information Society, Geneva 2003 - Tunis 2005). Available at : < <https://www.itu.int/net/wsis/docs/geneva/official/dop.html> >.

³⁹ Ibid.

⁴⁰ Leprévost (n 37) 12.

⁴¹ Newman (n 7) 493.

⁴² Available At: < <https://www.itu.int/pub/D-STG-SG01.18.2> >.

2.3. Consumer Protection Rationales in the Telecommunication sector

Three key factors contribute to the need for sector-specific consumer rights in the telecoms industry.

Firstly, telecommunication services are regarded as such an essential aspect of people's lives that steps have been taken to ensure that they are available to them and not prevented from utilizing them.⁴³

The second factor is that certain consumer characteristics necessitate additional safeguards. Protecting specific kinds of consumers, such as those vulnerable or experiencing financial hardship, is one of the unique demands of telecom consumer protection.⁴⁴ The sector must ensure that vulnerable consumers have equal access to and use telecom services and equipment.

The third factor is the protection of consumers' economic interests. Consumers in the telecommunications business require competitive pricing that is proportionate to the quality of service and alternative options. Consumers are frequently in a weaker position than providers when it comes to safeguarding their rights and interests, typically due to a lack of information, expertise, and skills, as well as the influence of external forces and other factors.⁴⁵ Consumers cannot read and evaluate all of the conditions of standard form contracts, and they lack the bargaining power to defend themselves against unfair conditions throughout the bargaining process.⁴⁶ Telecom operators have a competitive advantage in terms of infrastructure, finance, and technological capabilities.⁴⁷ Consumer protection laws are crucial in restoring bargaining power in the market.⁴⁸

2.3.1. Common Issues of Consumer Protection in the Telecom Sector

Consumer protection issues in the telecommunications sector can be classified into six categories. Among these are consumer access, telecom market competitiveness, contractual

⁴³ Newman (n7) 492.

⁴⁴ Christopher Decker, 'Consumer Protection Frameworks for new Energy Products and the Traditional Sale of Energy in Australia', (Australian Energy Market Commission, March 2020), 58.

⁴⁵ Available at : < <http://lawtimesjournal.in/the-concept-of-and-need-for-consumer-protection/> > accessed 15 October 2020.

⁴⁶ J M Paterson, 'Looking at the Fine Print: Standard Form Contracts for Telecommunications Services and Consumer Protection Law in Australia' (2014) University of Western Australia Law Review 51.

⁴⁷ Ibid.

⁴⁸ Hilda Mwaka, 'Consumer Protection in the Telecommunication Markets in the Post Liberalization Era- the Case of Tanzania' (PhD Thesis, University of Waseda March 2017) 67.

agreements and dispute resolution, telecom service quality, vulnerable consumer groups, and consumer privacy and data protection.

2.3.1.1. Consumer Access Rights in Telecom Sector

Telecommunications services are becoming increasingly crucial in developed and emerging countries for consumers' active involvement in civic society and the commercial sector.⁴⁹ Telecommunication regulations seek to ensure that everybody has access to these facilities.⁵⁰ The concept "universal access" refers to a condition in which everyone has equal access to freely accessible telephone and community internet access terminals.⁵¹ One approach would be to make universal service more accessible. Universal service is a safety net that assures that most telecommunication services, which are vital to achieving social and economic integration, are made available to all upon reasonable request, adequately, and at a reasonable cost.⁵² The goal of the Universal Services Obligation (USO) is to keep the safety net in place. To meet this obligation, different mechanisms for telecom market interconnection are used. Among these are market-based reform, mandatory service obligations, access shortage charges, universality grants, and cross-subsidies.⁵³

The International Telecommunication Union (ITU) broadly defines universal service as referring to a telephone for every household,⁵⁴ whereas universal access refers to a publicly available telephone (not necessarily in one's home), which might be provided through payphones, telecentres, multi-purpose community centers or other community-based centers.⁵⁵ Understanding the difference between the terms is important, yet the objectives underlying both are similar. In particular, the focus of such policies is to ensure the provision of services to rural, remote, and lower-income users who would not, in the absence of such policies, be served.⁵⁶

⁴⁹ See e.g. Mark Warchauer, *Technology and Social Inclusion: Rethinking the Digital Divide*, (The MIT Press, 2004) 8 and 11.

⁵⁰ Ian Walden et-al., 'Regulatory Regimes The Telecommunications Regime in The United Kingdom', in Ian Walden(ed.), *Telecommunications Law and Regulation*, (5th edn, Oxford University Press 2018) 135.

⁵¹ HishamTahat, 'ITU Regional Workshop on Competition in Telecommunications Market' (Consumer Protection and Universal Access in Telecom, Khartoum-Sudan, 24-26 May 2016).

⁵² EU Policy and Law on Universal Service Ofel, 'Universal Telecommunication Services' (July 1999) Chapter 4, Sect. 4.8.

⁵³ Tahat (n 51).

⁵⁴ H Intven 'Module 6: Universal Service' in Intven H and McCarthy Tetrault (eds.), *Telecommunications Regulation Handbook* (McCarthy Tetrault LLP, World Bank, 2000) 6-1.

⁵⁵ Ibid.

⁵⁶ Ibid.

Further, universal service and universal access are regulated in order to permit full access to modern technologies, to promote economic development, and to eliminate disparities between rural and urban areas⁵⁷ and, in South Africa, to eliminate disparities between racial groups.

2.3.1.2. Consumer Protection in Telecom Market Competition

The laws governing competition and consumer protection are intricately linked. Competition law is concerned with preserving the competitive process among businesses and aiming to rectify behavioral and systemic flaws to re-establish successful market competition. As a result, economic efficiency, innovation, and consumer welfare all improve.⁵⁸ Consumer protection is aimed at promoting general consumer interest and so converges with competition law.⁵⁹

The general consumer protection legislation was used to enhance consumer care when purchasing telecommunication services, specifically by prohibiting misleading actions, promoting equal contract terms, and encouraging contract transparency.⁶⁰ Consumer protection rules for telecommunications products were enacted to address issues of particular concern to users of telecommunications products and are not adequately addressed by more general legislation.⁶¹ Consumer protection regulations, both general and industry-specific, are used to assist consumers in meeting their equal and equitable treatment requirements while contracting, choosing between various telephone service providers, and encouraging competition in the telecommunication sector.⁶²

2.3.1.3. Consumer Protection in Telecoms Service Contractual Agreements and Dispute Resolution

In the telecommunication sector, consumer protection involves identifying possible pressure points where the regulator may interfere to protect the consumer at various phases of the contractual relationship between the consumer and the operator.⁶³ During the pre-contractual and

⁵⁷ Ibid., 6-3.

⁵⁸ Ian Walden(ed.), *Telecommunications Law and Regulation*, (5th edn, Oxford University Press 2018) 21.

⁵⁹ Fikremarkos Merse et-al., *Review of the Legal and Institutional Framework for Market Competition in Ethiopia*, (Addis Ababa Chamber of Commerce and Sectoral Associations 2009) 13.

⁶⁰ *Consumer Protection Digests and Case Studies: A Policy Guide*, Vol. 1 (Association of Southeast Asian Nations November 2014) 39.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Solli (n 4).

post-contractual periods, the legislator will enforce consumer regulations.⁶⁴ Unfair terms regulation protects customers from unbalanced and burdensome terms that are not reasonably appropriate to protect operators' legitimate interests. Many countries' consumer protection laws contain provisions to protect consumers from unfair contract terms. These vary from broad prohibitions against unfair terms to specific prohibitions against specific types of terms that have a negative effect on customers, such as certain types of exclusion clauses,⁶⁵ termination clauses, and variance rights.⁶⁶

Disagreements between telecommunications customers and service providers can arise due to complaints about service billing, service charges, payment of charges, slamming, privacy, efficiency, service terms, and advertising.⁶⁷ In dealing with such conflicts, regulatory approaches may be proactive or reactive.⁶⁸ In this situation, sectoral conflict resolution schemes are intended to correct an unavoidable disparity between the parties while also facilitating consumer access to justice. Consumer alternative dispute resolution has recently become available, and disputes between consumers and entrepreneurs are unique enough to warrant using Alternative Dispute Resolution (ADR) approaches specifically for this type of dispute. Resolving consumer business issues in court is both expensive and time-consuming. Formalized judicial processes, involvement, trials, and attorney costs usually turn off consumers. As a result, consumers are more likely to turn to an ADR organization to resolve their issue quickly, cheaply, and without unnecessary red tape.⁶⁹

⁶⁴ Ibid.

⁶⁵ See e.g. Brunei Unfair Contract Terms Act 1999 ss3-6; Malaysia Consumer Protection (Amendment) Act 2010 s 24D.

⁶⁶ See e.g. Indonesia Law on Consumers' Protection 1999 Art. 18.

⁶⁷ Robert R. Bruce, Rory Macmillan and etal, 'Dispute Resolution in the Telecommunications Sector: Current Practices and Future Directions', (The International Telecommunication Union and The World Bank 2004), 40. Available at:

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiOz9fo7fzwAhUPLBoKHbonC7EQFjAAegQIAhAD&url=https%3A%2F%2Fwww.itu.int%2FITU-D%2Freg%2Fpublications%2FITU_WB_Dispute_Res-E.pdf&usg=AOvVaw0NKUwNiJO4uM65Q4IS47ql > .

⁶⁸ Ibid.

⁶⁹ Jagna Mucha, 'Alternative Dispute Resolution for consumer disputes in the EU: Challenges and Opportunities', (2015) 28 Queen Marry L J 31.

2.3.1.4. Consumer Protection in Telecommunications Quality of Service

Service quality is often described as measuring how well the standard of offered services meets or exceeds consumer expectations.⁷⁰ Quality of Services (QoS) objectives include maintaining a fundamental minimum standard of quality, ensuring that consumers have a range of quality options, and encouraging consumers to prioritize quality over price.⁷¹

QoS regulation is a type of consumer protection that enables consumers to understand the quality of service provided by telecom operators/Internet Service Providers (ISPs) through networks (mobile and fixed) and make their judgments.⁷² In addition, consumers should understand the essence of the services, including costs and how they are measured, and the standard of service offered.⁷³ QoS regulation may include establishing and updating minimum service quality requirements and specifications for emerging technology and systems on a regular basis, testing network service providers, and evaluating telecom/ICT services on a regular basis.⁷⁴

2.3.1.5. Protection of Vulnerable Consumer Groups in Telecommunications Service

According to the United Nations resolution on consumer protection (2016), member states shall ensure the protection of vulnerable and disadvantaged consumers. The International Telecommunication Union adopted Resolution 175 in 2014 on telecommunications/information and communication technology accessibility for People With Disabilities (PWD) and special needs.⁷⁵ International Telecommunication Union has attempted to make ICTs more accessible to individuals with disabilities by developing inventions such as eye-foot mice and text-to-speech technology.

PWD shall have equal access to, use of, and compliance with telecom facilities and equipment. As a result, PWD is given special protection, requiring service providers to make their goods and services accessible, compatible with peripheral devices, and equipped with appropriate client

⁷⁰ Jessica Santos, 'E-service Quality: a Model of Virtual Service Quality Dimensions', (2003) 13 No.3 Managing Service Quality: An International Journal 233-246.

⁷¹ Telecommunication Development Bureau (BDT), 'Quality of Service and Quality of Experience Regulation', (ITU World Telecommunication Development Conference, Buenos Aires Argentina, 9-20 October 2017).

⁷² ITU-T E-Series Recommendations, Supp. 9 (12/2013) to ITU –T E.800- series Recommendations (Guidelines on regulatory aspects of QoS) of E.800 Series.

⁷³ Available at : < <https://www.itu.int/en/ITU-D/Conferences/GSR/Pages/gsr2014/default.aspx> > .

⁷⁴ Ibid.

⁷⁵ ITU-D Study Group 1, 'Telecommunication/Information and Communication Technology Accessibility for Persons With Disabilities and Persons With Specific Needs', (2014-2017) 43.

Available at : < www.itu.int/ITU-D/study-groups > .

premises equipment.⁷⁶ This special interest includes hardware and software, mobile network technology, and telecommunications equipment used in the home or business. Callers can choose from a menu of basic and specialized telecommunications services such as regular phone calls, call waiting, caller identification speed dialing, call forwarding, and so on.⁷⁷

2.3.1.6. Telecom Consumer's Right to Privacy and Protection of Personal Information

The right to privacy is closely linked to and overlaps with data protection law. Though privacy law has always taken a broad view of what constitutes correspondence, data protection law is solely concerned with the availability of publicly accessible electronic communications networks.⁷⁸ The right to uninterrupted and uncensored interactions with others includes freedom from unlawful interference with one's correspondence.⁷⁹ The basic elements of privacy rights in communications include communications content, traffic data, and subscriber data.⁸⁰ Calls and e-mail are examples of communications content, while traffic data refers to a person's current location.⁸¹ Subscriber data is the information submitted by consumers to service providers when they sign up for the service. Service providers are prohibited from disclosing the presence or content of a subscriber's profile, data, or contact unless the user authorizes it or the law allows it.⁸²

Telecom operators must develop and publish a comprehensive privacy policy that limits employee access to customer information and establishes requirements for those who need to know and impose mandatory confidentiality agreements with their employees, vendors, representatives, and agents.⁸³ Operators must commit to greater transparency in data collection, obtain customers' consent via opt-in before sharing their data, and give users the option to explicitly decide the nature of their communications (public or private). Users should make informed decisions about how much of their data is accessible to others and how third parties use

⁷⁶ Resolution 175, 'Telecommunication/information and communication technology accessibility for persons with disabilities and persons with specific needs', (The Plenipotentiary Conference of the ITU, Rev. Dubai, 2018).

⁷⁷ Edward L. Myers III, 'Disability and Technology' (2004) 65 Mont. L. Rev 290.

⁷⁸ Walden(ed.) (n 50) 650.

⁷⁹ Kinfe Micheal Yilma and Halefom Hailu, 'The Internet and Regulatory Responses in Ethiopia: Telecoms, Cybercrimes, Privacy, E-commerce, and the New Media' (2015) 9 J Ethiopian L 108.

⁸⁰ Walden(ed.) (n 50) 651.

⁸¹ Ibid, 652-653.

⁸² Festus O. Ukwueze, 'Consumer Protection in the Regulation of Telecommunications Services in Nigeria: Not Yet "Uhuru" for Consumers', (2014) 12 The Nigerian Juridical Rev. 125.

⁸³ Tahat (n 51).

the data.⁸⁴ Unless otherwise, operators and third-party suppliers are forbidden from using consumer telecom service numbers for advertising or unsolicited telemarketing.

2.4. Approaches to Consumer Protection in the Telecom Sector

Consumer protection in the telecommunications sector is provided through a combination of general and sector-specific consumer legislation.

If a country has both a competition and a business regulator, the regulatory framework must resolve any conflicts of jurisdiction and ensure that regulatory approaches to anti-competitive behavior and consumer regulation are consistent throughout both regimes.⁸⁵ Prescriptive and principles-based regulatory approaches are used to create consumer protection regulations. Different types of "hybrid" systems, which incorporate elements of each approach to regulation, are commonly used in practice.⁸⁶

2.4.1. Telecom Consumer Protection in the European Union Law

The essential legislative underpinnings for European consumer protection policy are found on the Treaty on the Functioning of the European Union (TFEU) and Article 38 of the Charter of Fundamental Rights of the European Union.⁸⁷

The rules of consumer protection envisaged in the TFEU are changing very often.⁸⁸ However, the meaning of this rule still causes the interpretative difficulties. The European Commission aims to begin consumer protection under Article 114 TFEU with a high level of protection. However, the consumer protection was not still included to the single policies of the EU and the "consumer" is not clearly defined by the legal definition. There is no consistent and uniform definition of consumer in EU law and there are also divergences amongst the Member States, partly as a result of transposing EU directives into national legislation. In the current EU consumer acquis each EU instrument defines the notion of consumer separately for its own purposes.

⁸⁴ ITU-D Study-Group 1 (n 1) 102.

⁸⁵ Ann Buckingham. et al, 'Telecommunications Reform in Emerging Markets', in Ian Walden(ed.), *Telecommunications Law and Regulation*, (5th edn, Oxford University Press 2018) 860.

⁸⁶ Decker (n 44) 48.

⁸⁷ Consolidated Version of the Treaty on the Functioning of the European Union (TFEU) 2012, Articles 4(2)(f), 12, 114(3), and 169.

Available at: < http://data.europa.eu/eli/treaty/tfeu_2012/oj >.

⁸⁸ Ibid, Art.169.

By the wording of the Article 169 (2a) of the TFEU, it cannot be used as a self-base for the adoption of legally binding rules, either directives or regulations. Its role consists in development of the internal market together with the Article 114 of the TFEU by the harmonization legal binding rules. In concerns of consumer protection, Article 114 of the TFEU can also be used as a self-base for the adoption of legally enforceable measures in the absence of Article 169 of the TFEU. It seems Article 169 (2a) of the TFEU has the only formal function.

On the other hand, Article 169 (2b) of the TFEU is problematic in its interpretation. Only the fact that the measures can be taken through the ordinary legislative procedure is clear from the wording of Articles 169 (2b) and 169 (3) of the TFEU; that is, legal binding actions for consumer protection can be adopted. The European lawmaker has a duty to create or leave an area for lawmakers of the Member States to adopt or to maintain stricter national legal rules.⁸⁹ The interpretation of the Article 169 (2b) of the TFEU raised the question of what the terms "support," "supplement," and "monitor" meant. The article has only function to support, supplement or monitor beside the legislative activities of Member States in consumer protection. A contrario, its role is only to support, supplement or monitor their policies in consumer protection, but not to harmonize or to change their legal rules. The uncertainty of these words causes that Article 169 (2b) of the TFEU has been not very often used as a legal base for EU secondary legislation. the Article 169 of the TFEU represents the consumer policy as one of the single policies of the EU, but this article is not a self-base for adoption of EU secondary law in the consumer protection matters per se.

In EU, the consumer protection is realized by the EU secondary law both through regulations or directives but, the legal basis of the law of consumer protection has to be in the EU primary law which seems not yet.

Under the provision of Title III, the European Union Electronic Communications Code (EUECC)((Recast) (EU) 2018/1972) enshrines regulations concerning end users' rights in communication services. The National Regulatory Authorities (NRAs) have three major

⁸⁹ Ibid, Art.169(2b) and (4).

responsibilities,⁹⁰ the most basic of which is consumer protection, which includes six primary elements of consumer concerns in general.⁹¹

The first telecom consumer issue in the EU is access rights, which include receiving traditional telephony and internet services (over-the-top services) from a provider. Member States shall ensure that all consumers in their territories have access at an affordable price, in light of specific national conditions, to an available adequate broadband internet access service and to voice communications services at the quality specified in their territories, including the underlying connection, at a fixed location.⁹² Number portability is seen as a key facilitator of consumer choice and effective competition. The EUECC sets out requirement that providers of electronic communications networks and services must not apply any discriminatory requirements or conditions of access or use on end- users based on nationality or place of residence unless such differences are objectively justified.⁹³ This considers the fundamental rights of consumer enshrined by the Charter of Fundamental Rights of the EU.

The EU Universal Service Obligations Directives have been found to serve the duties of delivering public services and protecting vulnerable customers by ensuring access, reliability, and quality of service. The internet is critical for education, freedom of speech, and information access. A USO, according to scholars such as Finger and Finon (2011), is a “means to shield the poorest people from market liberalization.”⁹⁴ The new EUECC guarantees that all people have access to affordable communications facilities and the availability of services such as universal internet access.⁹⁵ This code benefits and protects end consumers that interact with traditional (phone calls, SMS) or web-based services. In the EU, the NRAs have legal obligations to ensure

⁹⁰ Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 Establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency of Support for (BEREC Office), Amending Regulation (EU) 2015/2120 and Repealing Regulation (EC) NO 1211/2009 Text With EEC Relevance

Available at: < <http://data.eu/eli/reg/2018/1971/oj> >.

⁹¹ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast)Text with EEA relevance.

Available at: < <http://data.europa.eu/eli/dir/2018/1972/oj> >.

⁹² Ibid, Art. 84-86.

⁹³ Ibid, Art.99.

⁹⁴ Matthias Finger and Dominique Finon, *From the “Public Service” Model to the “Universal Service” Obligation*, (Edward Elgar publisher 2011)10.

Available at:< http://www.centrecired.fr/IMG/pdf/Finger_Finon_Public_service_Universal_service.pdf >.

⁹⁵ European Electronic Communications Code (n 91) Art. 108.

adequate access and interconnection, and interoperability of services.⁹⁶ In particular, NRAs may impose access- related conditions to ensure end- to- end connectivity, and to ensure accessibility for end- users to communications service. However, the EUECC doesn't put the minimum levels of quality and bandwidth that internet services must deliver and fails to show complying the net neutrality obligations under the regulation 2120/2015. Hence, the code's approach is desirable and better approach that limits the full harmonizing provisions and when necessary, insert opening clause to allow that national rights and measures can be maintained.

According to EU law, consumers also have the right to bundled service packages that include internet connectivity or a publicly accessible Number-Based Interpersonal Communications Service (NB-ICS).⁹⁷ Consumers can quickly switch service providers while keeping the same phone number, and they can receive reimbursement if the process fails or takes too long.⁹⁸

The second European telecom consumer concern is consumer protection in competitive telecom markets. The introduction of competition in telecommunications is seen as being generally beneficial to consumers in terms of choice, cost, and quality. In EU, the continued inclusion of consumer protection measures in the light of competition law is justified in two ways. Primary, competition alone may not be enough to satisfy the needs of all citizens and protect users' rights. Additional protections are needed, both in the form of the universal service, and in the form of consumer protection laws that help to balance the respective bargaining positions of consumers and the companies with whom they contract. Consumer protection law also plays a role in stimulating competition. Most EU measures are focused on stimulating competition from the supply- side, but consumer protection measures help to stimulate competition from the demand- side.⁹⁹ Competition rules work in collaboration with sector-specific regulations to provide innovative and affordable services to European consumers.¹⁰⁰ The EU is committed to maintaining robust competition and considers that competitor defense is essential for consumer welfare. Ex-ante access regulation, combined with competition law compliance, has been crucial in ensuring that EU telecommunication markets are more competitive, allowing customers and

⁹⁶ Ibid, Art.61(b).

⁹⁷ Ibid, Art.107.

⁹⁸ Ibid, Art.106.

⁹⁹ Newman (n 7) 494.

¹⁰⁰ Available at: < https://ec.europa.eu/competition/sectors/telecommunications/overview_en.html >.

businesses to benefit from more options, lower costs, higher quality, and creative services.¹⁰¹ Beyond the strict intent of competition policy, telecoms providers are subject to more stringent control than other participants in the value chain.¹⁰²

Thirdly, the European telecom consumer issues cover contractual agreements and dispute resolution. The EU law establishes information requirements for telecom service contracts that customers must have, although it is unclear if the obligation is for pre-contractual or contractual information.¹⁰³ Provisions that require communications providers to publish information about their services enable end- users and consumers to make informed choices about the services they plan to purchase, and back up the provisions on what must be included in contracts.¹⁰⁴ Telecom service providers must give information on their business model, consistency, transparency, up-to-datedness, clarification, user-friendliness, and other aspects that customers use to make comparisons. According to Art.103 of the recent EUECC (2018/1972), public interest information is a comparative tool for electronic communications services, including number-independent interpersonal communications services. Another safeguard for telecom customers is fair and unambiguous contract termination terms. Consumer rights are included in EU law as a means of controlling demand and accumulating unused credit. To prevent end-users from bill shock, measures on usage caps are added in the preamble, section (266) of the current EUECC (2018/1972). EU enacts provision on bundled offers intended to avoid unwanted lock- in effects, so that adding on additional services to a bundle cannot restart the overall contract period unless a special promotional price is available only on conditions that the existing contract period is restarted.

Furthermore, EU consumer protection legislation contains dispute resolution methods to reduce legal costs for both consumers and businesses. The EU system is set up toward finding and resolving issues as early as possible, thereby avoiding the courts.¹⁰⁵ Scholars contend that consumer alternative dispute resolution is fully independent of court processes and that, rather than complementing courts, it replaces state court operations in consumer disputes.¹⁰⁶ Judges and

¹⁰¹ Ibid.

¹⁰² Finger and Finon (n 94).

¹⁰³ European Electronic Communications Code (n 91), Art.102.

¹⁰⁴ Ibid, Art.20 and 21.

¹⁰⁵ Newman (n 7) 524.

¹⁰⁶ Mucha (n 69) 32.

legal professionals with an in-depth understanding of the law and a dedication to fundamental fair process ideals are thought to be the best persons to manage mandatory consumer rights.¹⁰⁷ The ADR has been adopted by a number of European countries as well as Organization for Economic Co-operation and Development (OECD) countries. Online Dispute Resolution is another complaint tool allowed by regulators, mainly in the EU. The Online Dispute Resolution system helps you to complete all or part of the complaint process online.

Fourthly, the EU adopts laws governing the availability and efficiency of internet access facilities and publicly available interpersonal communication services.¹⁰⁸ Service providers must compete on both price and quality of service, and they must meet their consumers' requirements and demands in both areas. NRAs are under a requirement to specify QoS parameters on communications providers. In doing so, they have to take account of guidelines to be produced by the Body of European Regulators for Electronic Communications. NRAs would also have to specify the applicable measurement methods and the way the information should be published including possible quality certification mechanisms. NRAs can, where appropriate, use the parameters, definitions, and measurement methods set out in the Annex.

Fifthly, the EU takes into account the special rights of disadvantaged consumers and protects PWD in particular. The European Commission's initiatives are focused on supporting the most disadvantaged consumer groups, who are the least capable of switching their existing service provider or gathering and evaluating the different service offers available to them. In terms of disabilities, the new code ensures that end-users with disabilities have equal access to communications, and as a result, operators are improving accessibility for disabled customers.¹⁰⁹

The sixth and final telecom consumer right relates to data protection and privacy issues. The General Data Protection Regulation is the appropriate data protection regulation in the EU to give effect to Article 8 of the EU Charter of Fundamental Rights. It includes rules about the processing of personal data. These rules apply to data processing without the permission of the data topic. The current EU e-privacy laws, on the other hand, are more restricted. Many of the e-privacy Directive's provisions only extend to providers of publicly accessible electronic

¹⁰⁷ Horst edinmuller and Martin Engel, 'Against False Settlement: Design in Efficient Consumer Rights Enforcement Systems in Europe' (2014) 29 Ohio State Journal on Dispute Resolution 269.

¹⁰⁸ European Electronic Communications Code (n 91), Art. 104 and Art.108.

¹⁰⁹ Ibid, Art.111.

communications networks and facilities. The EU data protection regime forbids data transfers from EU member states to third-party countries unless the third-party country meets an acceptable data protection requirement.¹¹⁰ The Directive on privacy and electronic communications (PEC) harmonizes the provisions of the Member States required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy, with respect to the processing of personal data in the electronic communication sector and to ensure the free movement of such data and of electronic communication equipment and services in the Community. The Directive also address state interference in two provisions. First, Member States are required to ensure the confidentiality of communications and related traffic data, by prohibiting ‘listening, tapping, storage or other kinds of interception or surveillance of communications’.¹¹¹ Under the PEC Directive, service providers are required to establish internal procedures for responding to data requests by law enforcement Agencies (LEAs).¹¹² In addition, data about the number of requests made by LEAs, the legal basis for the request, and the service provider’s response should be reported to a competent authority, to enable oversight of the exercise of these LEA powers. This provision implies that any data obtained from service providers must be mediated through the service provider, rather than permitting Law Enforcement Agencies direct access to a service provider’s network.

Data security is also recognized as being integral to the position of telecommunication networks and services as critical national infrastructure, on which users and interconnected networks are highly dependent.¹¹³ Under the PEC Directive, the general obligation to maintain security measures is repeated and elaborated upon in respect of providers of ‘publicly available electronic communication services’.¹¹⁴ The security obligations on service providers includes a security breach notification requirement.¹¹⁵

¹¹⁰ Ann Buckingham. etal. (n 85) 889.

¹¹¹ Directive 2002/58/EC of the European Parliament and the Council of 12 July 2002 concerning the Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector (Directive on Privacy and Electronic Communications, Art.5(1).

Available at: <http://data.europa.eu/eli/dir/2002/58/oj> .

¹¹² Privacy and Electronic Communications (PEC) Directive, at Art 5(1b), inserted by Directive 2009/136/EC (Citizens’ Rights’), Art 2(9), OJ L 337/ 11, 18 December 2009.

¹¹³ Privacy and Electronic Communications (PEC) Directive, Art. 4(1)).

¹¹⁴ Ibid.

¹¹⁵ Ibid, Art. 4(2)).

2.4.2. Telecom Consumer Protection in the South Africa Law

Telecom consumer protection in the south Africa are composed of legislation, regulatory frameworks and standard setting. The Republic of South African Electronic Communications Act (RSAECA) No.36/2005 governs consumer concerns in the electronic communications industry. One of the RSAECA's main goals is to promote and protect consumers' interests in terms of price, quality, and variety of licensed services.¹¹⁶ The Act contains an entire chapter devoted to “Consumer Issues”, dealing with a “code of conduct, an end-user and subscriber service charter”, “people with disabilities” and the establishment of a “Consumer Advisory Panel”.¹¹⁷ The term "end-user" is defined in RSAECA as a subscriber and those who use the services of a licensed provider referred to in Chapter 3 of this Act. Under this act, subscriber also further defined as a person who lawfully accesses, uses or receives a retail service of a licensee referred to in Chapter 3 for a fee or the retail services of a person providing a service pursuant to a license exemption. Thus, the resale of telecoms services is permitted. A reseller of telecom service is exempted from the requirement to obtain a license and is required only to submit a notification to ICASA. A reseller who uses or receives telecom service of a licensee is an end user and eligible to exercise consumer legal rights.

Depending on the extent of its mandate in the enabling legislation, ICASA have the power to create its own consumer frameworks by issuing regulations. ICASA is a licensing body, a regulator and a quasi-judicial body because it licenses, regulates, adjudicates and issues sanctions. The primary object of the ICASA Act of 2006 (ICASA Amendment Act) was to provide for the regulation and control of telecommunication matters in the public interest. It sought, among others, to promote the universal and affordable provision of telecommunication services. The Authority has subsection named as consumer affairs division which is responsible for protecting consumers from unfair business practices, ensuring access to safe and good quality products, and protecting the interests of people with disabilities in relation to the provision of communications.

In April 2016, Independent Communications Authority of South Africa (ICASA) proclaimed End -user and Subscriber Service Charter Regulations 2016, which has become the reference document for both consumers and operators. In terms of it, each licensed operator is required to

¹¹⁶ Republic of South Africa Electronic Communications Act No.36/2005, Art. 2(n).

¹¹⁷ Ibid, Chapter 12.

produce and submit a Code of Practice, which has to be reviewed and approved by the Authority. The Service Charter stipulates service level agreements, responsibilities and rights of each party, and procedure for resolving disagreements whenever they arise between parties.¹¹⁸

In general, the ICASA's code of ethical conduct contains essential obligations requiring telecommunications licensees to ensure consumer rights and interests. Provision of information to consumers (Art.4), Advertisement and representation of services (Art.5), consumer billing, charging, collection and credit practices(Art.8), consumer obligations, protection of consumer information, complaints handling (Art 12), code compliance (Art.17) are the basic obligations underpinning on telecommunications licensees.

Below based on each consumer issues on the sector examination on the relevant legislations will be conducted.

The first telecom consumer issue in the South Africa is telecom universal service and access rights. This country governs universal service and access to enable full access to modern technology, encourage economic development, and narrow the gap between rural and urban areas.¹¹⁹ The Universal Service and Access Agency of South Africa (USAASA) is established under the RSAECA to promote the goals of universal access and universal service in the under serviced areas of South Africa.¹²⁰ Licensees are required to contribute to the Universal Service and Access Fund (USAF) which is intended for use in incentivizing and subsidizing the roll-out of electronic communications networks in under-serviced areas

There are three pillars to a Universal Access and Service (UAS) policy, which are aimed at ensuring the affordability, availability and efficiency of services. Chapter 14 (sections 80-91) of the RSAECA contains the regulatory framework for achieving UAS in South Africa. Among other things, it establishes the Universal Service and Access Agency (USAASA) of South Africa, sets out how the Universal Service and Access Fund (USAF) should be administered and empowers ICASA to prescribe various regulations required for the achievement of UAS, including the Regulations in respect of the prescribed annual contributions of Licensees to the

¹¹⁸ End User and Subscriber Service Charter Regulations No. 39898/2016, Art.9 and Art.12.

¹¹⁹ Stevens (n 2) 6-7.

¹²⁰ Republic of South Africa Electronic Communications (n116), Art. 80.

Universal Service and Access Fund (2011), Regulations on the definition of under-served areas, and Regulations in respect of E-Rate.

Various efforts have been undertaken in the past to achieve UAS in South Africa, including licensing operators in underserved areas, establishing a Universal Service and Access Fund, implementing an E-Rate regime for public schools and imposing universal service obligations on licensees.

The Emergency Call Regulations also govern access to the public emergency operations center.¹²¹ The E-rate regulations require licensees to offer discounted internet access to colleges.¹²² The other issue is number portability, which is described as the country's declaration of ICASA rules and regulations under the RSAECA.¹²³

The second consumer issue relates with consumer protection in market competition. In telecom market, ICASA is responsible for promoting competition, innovation and investment in services and facilities.¹²⁴ The Authority regulates the competition matters of communication services which indirectly have positive impact to consumer interests to have alternative choice both in price and quality of service on the sector.¹²⁵ On the other hand, the End User and Subscriber Service Charter Regulations amendment proposed by ICASA in 2018 aims to protect consumers from unfair market practices and promote transparency. Anti-competitive practices are subject both to ex ante regulation by ICASA in terms of the sector-specific communications legislation, the RSAECA, as well as to general competition laws, which are implemented by the competition authorities, the Competition Commission of South Africa and the Competition Tribunal. In terms of the RSAECA, ICASA may impose specific pro-competitive conditions on telecoms licensees who act in a manner preventing or lessening competition in a particular market through undue preference or discrimination in relation to any other operator. ICASA may also, in terms of regulations to be published under the RSAECA, designate a particular operator as having significant market power (SMP) in a certain market. Pro-competitive conditions may also be imposed on such operators. The country's Consumer Protection Act No.68/2008 is a general

¹²¹ The ICASA Reg. No. 31230/2008.

¹²² The ICASA E-Rate Reg. No.31979/2009, Art.5.

¹²³ The ICASA Number Portability Reg. No. 41949 /2018.

¹²⁴ Republic of South Africa Electronic Communications (n116), Art 67.

¹²⁵ Ibid.

consumer protection statute that applies to telecommunications service providers.¹²⁶ In the RSA's telecoms market, the Competition Authority and ICASA have concurrent authority in investigating consumer concerns. However, the precise mechanism for this has yet to be identified, which contributes to both regulators' limited effectiveness. The Competition Commission must recognize and remedy anticompetitive conduct, while ICASA is responsible for implementing and enforcing ex-ante regulation.¹²⁷ Consumer Protection Act No.68/2008 Section 5(1) (a) states it applies to all transactions occurring within the Republic unless they are exempted by subsection (2) or in terms of subsections (3) and (4). Thus, ICASA or the National Consumer Commission may be contacted with complaints about the provision of services approved under the RSAECA.¹²⁸ A consumer may lodge a complaint with the Complaints and Compliance Committee in electronic communications. Complaints adjudicated by the Complaints and Compliance Committee include the exchange of information by voice, data, and video transmission by electronic communications service licensees. Since the authorities' higher officials are appointed by the government and the funding system is often associated with the government, critics question the institutions' independence and impartiality.¹²⁹

The third issue of sectoral consumer protection in South Africa linked with contract terms and dispute settlement mechanism. In RSA, telecom operators shall provide necessary details to customers during the pre-contractual and post-contractual phases of their products/services.¹³⁰ All licensee and its agents must inform an end user minimum standards on contract terms and conditions, and consumer handling procedures at the point of sale, or prior to contracting. This may help the country to protect the rights of end-users in the telecom sector mainly, providing an end-user with sufficient information to enable informed decisions, ensuring the efficient and effective resolution of complaints and facilitating redress to an end-user where appropriate. Customer agreements are required to use plain and understandable language, and clearly indicate the nature of the contract, the minimum duration of the contract, any payment for early

¹²⁶ Republic of South Africa Consumer Protection Act 68/2008, Sect.5.1.

¹²⁷ Helanya Fourie et al., 'Regulatory Ambiguity and Policy Uncertainty in South Africa's Telecommunications Sector', (January 2018) Economic Research Southern Africa working paper 729.

¹²⁸ Republic of South Africa Electronic Communications Act (n 116) Sub-Sect 69 (5)(e) and 69(6) and Republic of South Africa Consumer Protection Act (n 126) Sub-Sect. 5(1)(a) cum 5(3).

¹²⁹ Lisa Thornton, 'Telecommunication Laws and Regulations in South Africa', in Caroline Blad (ed), *The International Comparative Legal Guide to Telecommunication Laws and Regulations 2010*, (Global Legal Group Ltd, 2010) 243.

¹³⁰ End User and Subscriber Service Charter Regulations (n118), Art. 4(1).

termination and the notice period and manner in which notice must be given for termination of the agreement. Operators are obliged to get confirmation from consumers for acceptance prior to billing for subscription to third-party services. This will help consumers to have information for their decision.

Consumers also have access to redress mechanisms, which are at the heart of consumer protection legislation. In principle complaints shall lodge a complaint to the relevant licensee or agent unless a licensee has failed to respond, or has not adequately responded to the complaint within the prescribed period.¹³¹ Complaint may be referred to the Authority's ADR where a licensee was not able to resolve the complaint.¹³² Outcome of an ADR session is the final step in the complaints resolution process facilitated by the Authority, unless non-compliance has been recognized. The non-monetary penalty imposed to operators seems lenient and hardly protect the interest of consumers since it does not include harsh measures such as Suspension, revocation/cancellation of license. It only imposes the publication of non-compliance on the licensee and the Authority's websites, awareness campaigns in national newspapers, radio and /or television and additional platforms as determined by the Authority.¹³³

Consumer protection law, civil procedure, and other sectorial regulatory standards do not cover all redress issues. Consumers may also file complaints with the Complaints and Enforcement Committee about licensees.¹³⁴ Complaints about the provision of ECA-licensed services can be lodged with either ICASA or the National Consumer Commission in RSA. There is a code of conduct that must be posted at the licensee's business premises and on its website that contains the core obligations enumerated in the legislation to protect and promote customers' interests.¹³⁵ The criteria specified in ICASA's regulation are used to assess the service provider's efficiency and availability of services.¹³⁶

In regard to quality of service the country declares a code of conduct regulation intending to set acceptable standards of conduct for licensees. This regulation safeguards the interests of

¹³¹ Ibid, Art.12(1) Cum Art.12(2).

¹³² Ibid, Art.13 (1).

¹³³ Ibid, Art 18(3).

¹³⁴ The ICASA Act No. 13 of 2000, Art. 17A.

¹³⁵ The ICASA Reg. in Respect of the Code of Conduct for Electronic Communications and Electronic Communications Network Services Licensees, 2007.

¹³⁶ The ICASA End User and Subscriber Service Charter Regulations (n 118), Art. 9.

consumers in the electronic communications business. The End User and Subscriber Service Charter Regulations of 2016 impose a wide range of licensee obligations to protect consumer rights.¹³⁷ Operators are duty bound to comply measurable parameters proclaimed by ICASA with prescribed targets listed for service availability¹³⁸, activation of services to qualifying service applicants¹³⁹, and parameters for fault clearance.¹⁴⁰ The parameters are fixed services, fixed wireless services, and mobile services. The prescribed targets are in percentile form with fixed period of time. Consumers are legally entitled to a refund if they have not received services in terms of a contract entered into with a licensee to which payment has already been effected for the services. The service must be provided at no additional cost to an end -user.

Concerning disabilities, the state has incorporated the RSAECA's general requirements in section 71 and explicitly codified the Code for PWD Regulations No.37486/2014. The code regulates nondiscrimination on the basis of disability and describes disability as " long-term or recurrent physical, voice, hearing, or visual impairment" that does not include mental impairment. The rules cover a wide range of topics, including access to commonly designed goods and services, access to information, access to facilities, raising awareness, and dealing with disabled complaints.

Basic standards for electronic communications services are prescribed which support to translates voice to text and vice versa on calls made by people who are deaf or have a hearing or speech impairment.¹⁴¹ For PWD, operators are required to give access to information, access to special numbers for emergencies services, prioritizing an urgent need for repair, provide customer service with trained employees who can communicate with PWD, access to facilities, compliant process for all category of disabilities.

The country also designed rules on Privacy and Data protection of consumers. Section 2 of the RSA Constitution (1996) provides that the entire information, communications, and technology industry is subject to the Constitution regarding consumer privacy and data protection. Personal information about customers must be gathered and retained by service providers. Interception of Communications and Provision of Communication-Related Information Act is a data security

¹³⁷ Ibid, Art.9.

¹³⁸ Ibid, Art.9(1-2).

¹³⁹ Ibid, Art. 9(4-7).

¹⁴⁰ Ibid, Art.9(8-15).

¹⁴¹ The ICASA Code for PWD Regulations No.37486/2014, Art.5(1).

law in general terms. It forbids interception and tracking unless certain conditions are met. Interception or provision of communications-related information without authorization is a criminal offense punishable by fines and imprisonment.¹⁴² Telecommunications operators and/or internet service providers are not duty-bound to provide information, inform customers, disconnect customers whose rights may be infringed through file-sharing or other activities. However, to maintain the legislative restriction of liability regarding caching, hosting, and information location software, there is a duty to take down offending information upon receiving a takedown notice under the Electronic Communications and Transactions Act 25 of 2002. In RSA, VOIP services are treated the same as other voice services. The country also establishes rules for internet or email communications, especially for marketing and advertising. Consumers have the right not to be bound by unsolicited commercial communications. Unfortunately, there is no definition of "unsolicited commercial communications" under the Electronic Communications and Transactions Act. The Act does not protect unsolicited non-commercial correspondence since it only includes unsolicited commercial communications.¹⁴³ Additional shortcomings are to be found because protection is only afforded to consumers who are defined as natural persons, leaving a gap for cases where companies and close corporations are involved.

2.5. General

2.5.1. Protection of telecom Consumers in the European Union

The EU regulatory structure for electronic communications networks and services serves as the foundation for all national telecommunications laws in the EU Member States. It provides general and technology-neutral rules applying to all electronic communications networks and services covering fixed and wireless telecoms, data transmission, and broadcasting. In general, EU Directives' telecom service-related consumer protection regulations comprise aspects of both principle and prescriptive laws and are eventually implemented by domestic legislation in EU member states.

Existing telecom consumer protection in the European Union can be summarized as follows: align protections, including security requirements, for end-users of Over The Top service (OTTs) with those of traditional telecoms providers, requires maximum harmonization concerning

¹⁴² ICASA (n 135), Art.2., Art.49(1) and Art.54.

¹⁴³ Juana Coetzee, 'The Electronic Communications and Transactions Act 25 of 2002: Facilitating Electronic Commerce', (2004) University of Stellenbosch STELL LR 509.

consumer protection provisions, which means that member states may not impose more, or less, stringent provisions than those set out in the European Electronic Communication Code, specify bundles of services that include an internet access service or publicly available NB-ICS must apply certain consumer protection provisions to the whole bundle, enhance user rights during the switching of internet access services and the porting of phone numbers, establish a universal service, ensuring the availability and affordability of both broadband and voice communications, strength the protection of citizens in emergencies, enhancing the security of networks and services, and cap the price for intra-EU calls.

2.5.2. Protection of Telecom Consumers in the Republic of South Africa

Consumers in the RSA are protected by both general and specific consumer legislation.¹⁴⁴ The RSAECA (2005) is the foundation for all telecom consumer protection regulations, with the primary purpose of supporting and protecting consumer interests.¹⁴⁵ An entire section of the Act is devoted to consumer issues, including requirements for a code of ethics, end-user and subscriber service charter, PWD, and the establishment of a Consumer Advisory Panel (CAP).¹⁴⁶ ICASA has issued a series of regulations aimed at promoting and protecting consumer rights. ICASA has formed a CAP to provide advice on consumer issues.¹⁴⁷ Consumers in the telecommunications industry may file a complaint with ICASA against any authorized electronic communications service providers.¹⁴⁸ Those complaints relate to the QoS and billing.

On the other hand, RSA is a signatory to the Southern African Development Community (SADC) instruments, sub-regional agreements. The communication sector is among the SADC priority services. The region's telecom objectives stipulate member states agree to develop national telecom networks to provide reliable, effective, and affordable telecom services. These ensure adequate, high quality, and efficient services responsive to the diverse needs of commerce and industry found in the region, achieve universal service and enhance service

¹⁴⁴ Republic of South Africa Consumer Protection Act 68/2008, Sub-Art. 5(1)(a); Republic of South Africa Electronic Communications Act (n 116), Art. 69-71.

¹⁴⁵ Isabelle Gross, et al., 'Consumer Best Practices in The Telecoms Sector', (University of the Witwatersrand, Johannesburg, 2005) 7.

¹⁴⁶ Republic of South Africa Electronic Communications Act (n 116), Art. 69-71.

¹⁴⁷ Ibid, Art. 71.

¹⁴⁸ For illustration Available at: < <https://www.icasa.org.za/pages/telecommunications> >.

interconnectivity.¹⁴⁹ The SADC region has a standardized regional telecommunications policy to improve customer service and meet universal service targets.¹⁵⁰ In terms of Universal Service, RSA decides to establish a shared understanding of the service's parameters.¹⁵¹ To ensure universal service provision, particular needs of PWDs, location, with an emphasis on rural needs, and other pertinent problems are all taken into account while determining the parameters' priority.¹⁵² Although Africa is divided into many regional blocs, only the countries of the SADC and the Common Market for Eastern and Southern Africa have consumer security initiatives in the telecoms market. In 2004, the SADC established policy recommendations for cross-industry consumer protection.¹⁵³ In 2011, the guidelines for the telecommunications sector were revised.¹⁵⁴ The new SADC recommendations on consumer protection are based on global best practices.¹⁵⁵ However, they lack information that represents the conditions that exist in specific regions.

2.6. Conclusion

Various international consumer laws protect consumer rights in the telecommunications sector. However, there is no universally accepted definition of the consumer. For this study, a telecommunications user is defined as a person who contractually subscribes to a telecommunications service for his or her own or another's personal use. The chapter identified the distinctive characteristics of telecom consumers and several reasons why consumer rights and interests must be protected. Telecom services have long been viewed as an essential means of communication for consumer survival and general socio-economic well-being.

¹⁴⁹ Protocol on transport, communications and metrology in the Southern African Development Community (SADC) Region (2006), Chapter 10.

¹⁵⁰ Ibid, Chapter 10, Art.10.2 a.ii(dd).

¹⁵¹ Ibid, Chapter 10, Article 10.3 b.

¹⁵² Ibid.

¹⁵³ Available at :

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiIz8Llve3vAhUMzYUKHbKaAIAQFjAAegQIAxAD&url=https%3A%2F%2Fwww.sadc.int%2Ffiles%2F2013%2F8969%2F0505%2FFinal_SADC_Industrial_Development_Policy_Framework.pdf&usg=AOvVaw2iGqZBjUShQt6_vbRfCR50 >.

¹⁵⁴ Available at:

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjmht7bw-3vAhURy4UKHRrtCscQFjAAegQIAHAD&url=https%3A%2F%2Fwww.itu.int%2FITU-D%2Fprojects%2FITU_EC_ACP%2Fhipssa%2FActivities%2FSA%2FCRASA%2FGuidelines%2520_abridged_v2.pdf&usg=AOvVaw2WZ9ocP18VoNwcFNXjuZ7u >.

¹⁵⁵ Mwaka (n 48) 55.

Different countries approach safeguarding and defending telecom consumer interests differently, and as a result, different rules are passed and enforced. Although consumer protection varies by country, the thesis identifies six common consumer protection concerns in the sector. These are consumer access, competition in the market, contractual arrangements and dispute settlement, quality of telecom service, protection of vulnerable consumers, and privacy and data protection. For each consumer concern, States prescribe protection mechanisms and safeguard the interests of consumers. The chapter demonstrated EU and RSA consumer protection in the telecom sector based on each consumer's common issue and offered explanations accordingly. In the EU, telecom consumer protection includes advanced and detailed telecom laws and general consumer legislation used for end customers. The RSA rules are adopted in the same manner. The country enacts both general and sector-specific consumer laws in the industry. RSA is also a member of the SADC, which contains regulations on consumer protection, telecommunications protocols, and recommendations.

Finally, this chapter concludes by focusing on the sector's most important consumer protection issues.

Chapter 3

3. Legal Protection of Consumers in Ethiopia's Telecom Sector

3.1. Introduction

The Ethiopian telecom sector is governed by various proclamations, regulations, and directives. A close examination of these legal instruments reveals that they are all shaped by the government's policy choices. Ethiopia used to have a public monopoly in the communications market (fixed, mobile, and Internet). Poor quality, limited service variety, unreliable Internet, and higher costs are 'flagships' of telecom services in Ethiopia.¹⁵⁶ Consumers face various challenges due to monopoly business behavior, including unfair pricing, inefficiencies, lock-in and lack of competition, and low service quality, which harms the operator's profitability and the communication service offerings to consumers.¹⁵⁷ In 2019, competition in the telecoms market had been introduced.¹⁵⁸ Currently, the Government of Ethiopia, through the ECA and the Ministry of Finance, awarded the Global Partnership for Ethiopia a nationwide full-service telecommunications service operator license.¹⁵⁹ Consumer protection law has been enacted, and a separate sector-specific Regulator has been introduced. In the light of such developments, this chapter examines how Ethiopian laws protect telecom sector consumers.

While consumers need telecom service from the operator, they require adequate contractual and pre-contractual information to make sure that they are well informed in their choice. Therefore, a bridge should be built between consumers and participants in the telecommunication sector. In addition, proper regulation is assumed to be in place to do so. The chapter considers general, and sector-specific consumer protection legal instruments and data gathered through interviews with relevant government departments. Building on the comparative study in chapter 2, this chapter seeks to consider the laws of Ethiopia in what way the interests of telecoms consumers are protected. It shows the main consumer rights in the telecom sector and the legal protection afforded to consumers in Ethiopia's telecom sector based on each of these rights. Furthermore,

¹⁵⁶ Yazachew (n 22) 61.

¹⁵⁷ Lishan (n 25) 8-9.

¹⁵⁸ Ethiopian Communications Service Proclamation (n 14), Art.19(1).
Investment Proclamation No1180/2020, Art.4(2).

¹⁵⁹ Available at: < <https://eca.et/2021/05/22/press-release-telecommunications-service-operator-license-award/> >.

the chapter argues and emphasizes significant loopholes and excesses in consumer protection in the country's telecom sector.

3.2. Protection of Telecom Consumers in Ethiopia

3.2.1. Consumer Defined: Ethiopian Context

In the telecom sector, defining the term "consumer" is critical for determining who is a "telecom consumer" and examining the scope of consumer rights. The term "consumer" is not defined in the EthCSP No. 1148/2019. However, the TCRPD No.832/2021, under Art.2(6) and Art.2(11), defines the term as a "natural or legal person who receives or has received telecommunications services from an operator through a service subscription agreement." A consumer therefore includes consumers and business users, other than other telecommunications operators.

All consumers of telecom providers might not be subscribers who receive telecom service. An 'end-user' who has legal rights, as defined in Art.2(6) and Art.2(11) of the TCRPD No.832/2021, only encompasses users who are customers of the provider, and exclude those who use a service with authority from the customer. Although a consumer such as family members or employees of a business person is someone who receives telecom network or service from the provider, they are not considered as a customer and not eligible to exercise a number of sector specific consumer-protection provisions.

The TCRPD does not state whether the services received are for personal use only or resale. Nonetheless, by the words of Art.23(1) of the Directive, one can infer that a telecom user in Ethiopia is anyone who uses or requests service for usage or trading. Thus, the resale of telecom services is permitted and a reseller of telecom service is exempted from the requirement to obtain a telecom service licence and is required only to submit a notification to ECA. This remarks a great departure from the meaning of consumer envisaged under the general consumer law, and a retailer under telecom service is now considered as a consumer and has a legal protection by the special consumer law.

A "Consumer" under Ethiopian law is a telecom user who uses or requests a service and does not include anyone who is not contractually bound to the service provider. A comparative look of EU and RSA laws suggests that telecom consumer includes both customers of the provider, whether natural or legal persons and those who use a service with authority from the customer,

known as end-users.¹⁶⁰ Thus, Ethiopian law does not recognize all end-users as consumers under telecom legislation, and end-users who are not subscribers of telecom providers (be it natural or legal person) in Ethiopia have no legal rights to exercise consumer rights against operators if they complain about telecom services.

3.2.2. Scope of Telecom Consumer Protection Under Ethiopian Law

The country's weak and backward telecom industry has made a step forward. Ethiopia's recent telecommunications reform includes the introduction of a national telecom consumer protection legislation.¹⁶¹ The sector was governed by a public monopoly and a state-owned enterprise. In the absence of strict legislation, the licensing system and general consumer protection laws were the primary safeguards of consumer rights in telecommunications. Ethiopia is one of the countries with poor mobile and fixed-line network coverage as well as internet connectivity and access, as evidenced by unmet demand for QoS and telecom services.¹⁶² The nation lags behind other African countries in terms of implementing cutting-edge services.¹⁶³

Recognizing the advantages of privatization and a competitive market for Ethiopia's economic and social development, the government has introduced competition in the telecommunications industry. Ethiopia recently opened the telecom sector to private investors, and the competition-based market system is expected to encourage and protect consumer interests. Privatization, combined with competition, will assist Ethiopia's government in attracting foreign investors capable of providing infrastructure services to improve consumer choices.¹⁶⁴

Such a market structure is expected to result in rapid network expansion, meeting customer demand, and increasing service quality. According to Art.3(1) of the EthCSP, a distinct telecom regulator is established to regulate the industry and promote healthy competition.¹⁶⁵ It also establishes consumer rights protection in the telecommunication sector for the first time and serves as the foundation for various telecom consumer laws. In line with international trends, Ethiopia's consumer laws in the telecom sector consider the particular characteristics of telecom

¹⁶⁰ The European Electronic Communications Code Directive (EU) (n 91), Art. 2(13)- 2(15). And See definitional parts of Government Gazette Republic of South Africa Electronic Communications Act No.36/2005.

¹⁶¹ Ethiopian Communications Service Proclamation (n 14), Art.50.

¹⁶² Lishan (n 25) 8-9.

¹⁶³ Ibid, 8.

¹⁶⁴ Ibid, 15.

¹⁶⁵ Ethiopian Communications Service Proclamation (n 14), Art.3(1).

consumers. They are thus designed to counter the power gap in bargaining power between consumers and operators and social injustice, knowledge asymmetry, and transaction costs.¹⁶⁶ Telecom consumers' rights and interests are protected by general and sector-specific legislation. The EthCSP and the TCRPD are the primary legal instruments of telecom consumer protection. The laws provide the minimum rights and protections that all telecom operators must include in their code of conduct.¹⁶⁷

The following sections examine consumer protection in Ethiopia's telecommunication sector.

3.2.2.1. Consumers' Access Right

The focus of consumer access right is mainly on the manner and procedure of exercising rights granted to consumers by the pertinent law. Consumer access right plays an important role in improving other telecom consumer right protection. The most important regulations of protecting consumers' access rights in Ethiopia are universal access/service obligation, access to essential services, number portability, and service unbundling.

Consumers of essential public services who do not have competitive options will require regulatory protection for both pricing and service quality.¹⁶⁸ Universal service regulation is required to capture network externality benefits that competitive markets cannot achieve and implement important economic and social policy goals.¹⁶⁹ Voice calls, data, and SMS services are considered basic communication services in Ethiopia, and operators must make such services available to all citizens.¹⁷⁰

The ECA establishes, monitors, and enforces standards for universal access. Universal access entails having access to affordable and high-quality telecoms services regardless of geographic location.¹⁷¹ Ethiopia has a fund for universal access. The Universal Access Fund Regulation (DUAFR) No.11/2020, which at the time of writing is at a draft stage, imposes "Pay-or-Play" and/or "Universal Access Levy" mechanisms.¹⁷² Telecom operators shall not discriminate and

¹⁶⁶ Ibid, Art.5 and Art.6(14).

¹⁶⁷ Telecommunications Consumer Rights Protection Directive (n 15), Art.5(2).

¹⁶⁸ W. H. Melody, 'Policy Objectives and Models of Regulation,' in W. H. Melody (ed.), *Telecom Reform, Principles, Policies and Regulatory Practices*, (Technical University of Denmark, 1997) 22.

¹⁶⁹ Id.

¹⁷⁰ Telecommunications Consumer Rights Protection Directive (n 15), Art. 7(1-2)

The Draft Universal Access Fund Regulation No. 11/2020, Art.2(10).

¹⁷¹ Ethiopian Communications Service Proclamation, (n 14), Art.2(20).

¹⁷² The Draft Universal Access Fund Regulation No.11/2020, Art.2(6) and Art.2(13).

refuse services or provisions to any consumer.¹⁷³ Ethio-Telecom aims to meet universal access and non-discrimination among consumers.¹⁷⁴ These technological services include audio, video, and data content delivered via mobile, fixed-line, and internet networks. In practice, Ethio-telecom invests heavily across the country to increase telecom connectivity, regardless of population size or economic standards. This year, the operator will extend its basic telecommunications service in rural and urban areas across the country.¹⁷⁵ Currently, the number of data and internet subscribers has only reached 23.5 million¹⁷⁶ and compared to the total population, the access to data service is still inadequate. Customers who were interviewed lacked a thorough understanding of their legal rights and responsibilities in relation to the operator. Some customers are aware of their rights to receive QoS, a fast network link, a reasonable price for services, and the ability to use phone calls, messaging, and internet services.¹⁷⁷ Others were also unaware of how the laws covered them.¹⁷⁸

Consumers demand access to VOIP services. VOIP services provide consumers with the opportunity to save money on telecom voice and SMS services. The EthCSP does not specify the net neutrality rules for the use of VOIP. On the other hand, the Ethiopian TFOP No. 761/2012 does not outright forbid VOIP services. Instead, it prohibits the provision of unauthorized telephone call services and the acquisition of such services from illegal providers.¹⁷⁹ As telecom subscribers, internet users shall access VOIP services from operators and retailers for personal use. VOIP services in RSA are not regulated differently than other voice services, whereas, in the EU, they are because VOIP technology differs from that used by the Public Switched Telephone Network (PSTN).¹⁸⁰ It will be appropriate to rewrite Ethiopian law in plain language to ensure that VOIP regulation does not prevent consumers from accessing cost-saving services. Compared

¹⁷³ Telecommunication Consumer Rights Protection Directive, (n 15), Art. 8.

¹⁷⁴ Ethio-Telecom Establishment (amendment) Council of Ministers Regulation No. 480/2021, Art.5(1).

¹⁷⁵ Interview with Mohammed Haji, Ethio-Telecom Chief Sales Division, (Addis Ababa, Ethiopia, 8 April 2021).

¹⁷⁶ Available at : < <https://www.ethiotelecom.et/> >.

¹⁷⁷ Interview with Simret Tefera, Assistance Manager in Desalegn Seid Import Export PLC, (Addis Ababa, Ethiopia, 16 April 2021).

Interview with Dawit Hiwot, Manager of Dawit and Biniyam Building Construction Partnership, (Addis Ababa, Ethiopia, 19 April 2021).

¹⁷⁸ Interview with Tibebe Bekele, personal mobile user, (Addis Ababa, Ethiopia, 19 April 2021).

Interview with Adnan, Manager of Soft-Valley PLC. (Addis Ababa, Ethiopia, 16 April 2021).

¹⁷⁹ Telecom Fraud Offense Proclamation No. 761/2012, Art.10(3) cum Art.10(4).

¹⁸⁰ Phillippa Biggs of the Strategy and Policy Unit of the International Telecommunication Union (ITU), ‘The Status of Voice Over Internet Protocol (VOIP) Worldwide, 2006’ (ITU workshop on “The Future of Voice”, 15-16 January 2007) 17.

Available at : < www.itu.int/osg/spu/ni/voice/papers/FoV-VoIP-Biggs-Draft.pdf >.

to the EU and the RSA laws, regardless of whether end-users connect through traditional (calls, SMS) or web-based services, the EthCSP fails to support and protect consumers (Skype, WhatsApp, etc.). Operators are not complying with net neutrality obligations.

The EthCSP also prescribes access rights to SNP under Art.28(2) but does not envisage procedural details. Aside from introducing such rights, a minimum standard should be established to ensure that subscribers' contracts can be easily terminated without burdensome procedures or unjustified costs. Only mobile number subscribers have clear procedural rules that protect their right to switch and port their number under Art.16 of Mobile Number Portability Directive (MNPD) No. 831/2021. In the EU, switching and SNP rights include contract terms that can be easily terminated without burdensome procedures and unjustified costs.¹⁸¹

Though interconnection matters are primarily regarded as business issues over which operators bargain to set interconnection agreements,¹⁸² it is also a consumer telecom access issue. Subscribers of different telecom operators simply cannot communicate with each other or connect to services they require without adequate interconnection arrangements between telecom operators.¹⁸³ Ethiopia enacts interconnection rules to allow each end-user of telecom networks to communicate with another telecoms network or service provider.¹⁸⁴ Telecom operators are obligated to facilitate technical interoperability and interconnection availability requirements adequately.¹⁸⁵

3.2.2.2. Consumer Protection in Telecom Market Regulation

Ethiopia's new legal and regulatory framework for the telecom sector establishes a new regulatory authority and introduces market competition rules.

The EthCSP establishes a competition framework that regulates anti-competitive market practices. A good regulatory body must have independence, enforcement powers, neutrality, and conflict resolution mechanisms.¹⁸⁶

¹⁸¹ European Electronic Communications Code (n 91), Art.106.

¹⁸² Peter L. Smith and Bjorn Wellenius, 'Mitigating Regulatory Risks in Telecommunications,' Public Policy for the Private Sector, Note No.189, (World Bank, Group, July 1999).

¹⁸³ Yazachew (n 22) 82.

¹⁸⁴ Telecommunications Interconnection Directive No. 791/2021, Art.3(4).

¹⁸⁵ Ibid., Art.9 Cum Art.21 (1.e).

¹⁸⁶ L. H. Gutierrez and S. Berg, 'Telecommunications Liberalization and Regulatory Governance: Lessons from Latin America Telecommunications Policy, Vol. 24(2000), 885.

The EthCSP institutional framework prescribes three different but related activities: policymaking, service provision, and regulation. This proclamation, however, falls short of establishing an institutional structure that clearly defines separate and distinct roles for policymaking, regulation, and operational management. The regulator must be independent of the government in its day-to-day operations and acts as a buffer between telecom operators and the government, thereby ensuring the separation of functions.¹⁸⁷ However, the ECA's degree of independence from political influence and control appears to be very low. The regulator's top leaders and sector policymakers are both appointed by the country's Prime Minister (the executive branch of the government).¹⁸⁸ Political appointees serve on the operations management, which reports to the Board. The situation demonstrates that no legal safeguards are in place to protect the regulator from political influence. Furthermore, because the regulator may be politically influenced, the operational independence of its activities toward the government-owned telecom service provider (Ethio-telecom) can be called into question. Some academics argue that the country's regulatory structure has failed to address investors' concerns about the independence of regulatory decisions and the fair treatment of all market participants.¹⁸⁹

The EthCSP may not be free from any doubt in creating a regulatory institution free of political influence in structure, finance, and decision-making. The arrangement implies that it may impact the competition market, which indirectly affects consumer interests. This is because one can raise the operational independence of the ECA's activities toward the government-owned telecom service provider (Ethio-telecom) become doubtful. ECA's financial independence is questionable because the government allocates the institution's budget, and employees are hired as civil servants.¹⁹⁰ The financial matter results in inadequate resources for its proper function and opens the door to corrupt practices. The degree of independence, enforcement powers, neutrality, and mechanisms for resolving disputes among operators/between operators and consumers remains in doubt.¹⁹¹ In comparison, the EU establishes a distinct regulator located within the ministry in charge of communications but is separated from it.¹⁹²

¹⁸⁷ Melody (n 168) 18-19.

¹⁸⁸ Ethiopian Communications Service Proclamation (n 14), Art. 7(2) and Art.16.

¹⁸⁹ Yazachew (n 22) 74.

¹⁹⁰ Ethiopian Communications Service Proclamation (n 14), Art.17 (1-2).

¹⁹¹ Gutierrez and Berg (n 186) 885.

¹⁹² The European Electronic Communications Code Directive (EU) (n 91), Art.6.

Few telecom operators may abuse their dominant position, leaving consumers vulnerable to exorbitant costs. When anticompetitive practices are prevalent in the market, market participants will not tune to the interests of consumers.¹⁹³ Consumers would not have access to a broader range of goods of higher quality at competitive prices. Because competition law aims to prevent market actors from engaging in anticompetitive behavior, it would improve consumer protection.¹⁹⁴ The ECA ratifies laws to limit abuses of power, mergers, and other anticompetitive activities, all of which are relevant to consumer protection.¹⁹⁵ In Ethiopia, applying the competition rule among operators presupposes better quality, lower prices, and more quantity. These regulatory steps are also intended to boost firm competition.¹⁹⁶ Consumer protection law aims to protect and promote customers' well-being by regulating the conduct of businesses, especially in their dealings with them.¹⁹⁷ Consumer protection laws, such as the information disclosure rule and the prohibition of misleading or deceptive ads, may also help to boost competition.¹⁹⁸ Well-informed consumers have a greater impact on the competitive process than consumers who are not well-informed. In terms of regulation, The ECA provides requirements such as that all licensees create a code of conduct that spells out consumers' rights.¹⁹⁹ Imperfect information about product characteristics, imperfect information about market values, consumer costs of accessing market information, and consumers with imperfect information about their needs are addressed in the newly endorsed Directive.²⁰⁰

Unlike the EU and the RSA, telecoms consumer protection in Ethiopia is mandated by sector-specific regulator. The telecom industry competition and consumer issues institutional structures are intertwined, and the regulator is the sole Authority.²⁰¹ In effect, the Trade Competition and Consumer Protection Authority, which regulates market competition and consumer protection in general, is specifically exempt from this sector and is not permitted to hear any relevant cases.²⁰²

Available at: < <http://data.europa.eu/eli/dir/2018/1972/oj> >.

¹⁹³ W.Averit and Robert H.Lande, 'Consumer Choice: The Practical Reason for Both Antitrust and Consumer Protection Law' (1998) 1 Loyala Consumer Review 47.

¹⁹⁴ Ibid.

¹⁹⁵ The Competition Directive No. 798/2021, Art.13 and 17.

¹⁹⁶ Ethiopian Communications Service Proclamation (n 14), Art.47.

¹⁹⁷ Fikremarkos Merso et al. (n 59).

¹⁹⁸ Advertisement Proclamation No.759/2012, Art.8.

¹⁹⁹ Telecommunications Consumer Rights and Protection Directive (n 15), Art.5 (1) and Art.6(1).

²⁰⁰ Ibid, Art 9 - Art.11.

²⁰¹ Ethiopian Communications Service Proclamation (n 14), Art.47.

²⁰² Trade Competition and Consumer Protection Proclamation (n 12), Art.30.

Consumer rights, both ex-ante and ex-post stages, are protected by the ECA. Decisions passed on certain consumer cases by ECA are appealable only for legal matters to the Appeal tribunal.²⁰³ The Appellate tribunal's decision is the last resort unless consumers may take their case for review on the grounds of the fundamental error of law in the country's High Court.²⁰⁴ This decision shows that consumers have no other chance on the merit of fact right after the decision of the ECA, which narrows down the rights of aggrieved consumers against the Authority.

The ECA's exclusive control over telecom consumer issues might stem from the fact that the telecoms service market necessitates interference in price, efficiency which the general competition Authority would find difficult to regulate.²⁰⁵ The country is still in the process of developing market competition, and telecom consumer issues require special regulation in the sector at this time, so telecom providers are subject to more stringent regulations.

3.2.2.3. Consumer Protection in Telecoms Service Contractual Arrangements and Dispute Settlement

A telecom service contract is covered by general contract law, which necessitates the basic conditions outlined in the Civil Code of Ethiopia. Once a contract is made between operator and consumer, the relevant provisions of the Civil Code are applied among themselves as if parties are freely agreed and bound on their agreement.²⁰⁶ Consumers are bound by the operator's terms and conditions of service upon receipt of a signed service agreement or explicit acceptance of the service terms and conditions by any means of communication.²⁰⁷ As contracting parties, this prevents consumers from being bound by a transaction to which they have not agreed. The Ethiopian general contract law also protects negotiating consumers from coercion, abuse, and misrepresentation.²⁰⁸ In addition, the Ethiopian Civil Code contains laws that ensure the goods and services purchased by consumers are durable, of good quality, and that the contract terms are fair.²⁰⁹ The warranty to which a buyer is entitled concerns the consistency, design, quantity, or specific use of the transaction's subject matter. Consumers have the right to these warranty-based

²⁰³ Ethiopian Communications Service Proclamation (n 14), Art. 40(3).

²⁰⁴ Ibid, Art.40(8).

²⁰⁵ See The Explanatory Note of the Ethiopian Communications Service Proclamation No.1148/11.

²⁰⁶ The Civil Code of the Empire of Ethiopia (n 8), Art.1678.

²⁰⁷ Telecommunications Consumer Rights and Protection Directive (n 15), Art.21.

²⁰⁸ The Civil Code of the Empire of Ethiopia (n 8), Art.1704-1706.

²⁰⁹ The Civil Code of the Empire of Ethiopia (n 8), Art.1675, and Title XV, Chapter One, Contracts Relating to Assignment of Rights, Sale.

protections as buyers.²¹⁰ According to the law, damages resulting from non-performance can be sought in addition to the enforcement or revocation of a contract.²¹¹ If the operator fails to fulfill the contract, consumers have the right to these remedies as contracting parties. Consumers must obtain a permit from the operator and the ECA to resell any service provided by the operator.²¹²

It is essential to discipline the operators so that they behave freely and openly, making all necessary disclosures and warnings as a material fact for the transaction.²¹³ The developed regulatory mechanisms assist consumers in being informed adequately through disclosure laws, allowing them to comprehend pre-contractual and contractual details about telecom services that are provided to them.²¹⁴ The TCRPD prescribes the minimum contract requirements to ensure the legal protection of customers at the time of contract.²¹⁵ These mandatory terms are included in the operator's code of conduct and the customer's contract document.

In practice, Ethio-Telecom has a code of conduct, internal rules, and procedures in place to ensure that customers' needs are met and their legal rights respected.²¹⁶ Advertising, sales, information transparency, minimum contractual conditions, billing, internal grievance procedures, customer disconnection, customer transfers, access to emergency services, access to directory services, privacy rights, and access to customer premises are all covered by these internal rules and procedures.²¹⁷ However, among the minimum legal requirements, the operator's Customer Service Charter and service agreement fail to include information on bundled services such as third-party services.²¹⁸ In particular, there is no provision in the contract that allows customers to choose the telecom ads they want and do not want in advance on their mobile or data numbers in the case of telecom markets.²¹⁹ Operator's Customer Service Charter

²¹⁰ Telecommunications Consumer Rights and Protection Directive (n 15), Art. 9(2)(d).

²¹¹ The Civil Code of the Empire of Ethiopia (n 8), Arts. 1790, and Art. 2360-2361.

²¹² Telecommunications Consumer Rights and Protection Directive (n 15), Art.24.

²¹³ David Boies and Paul R.Verkuil, 'Public Control of Business: Cases, Notes and Questions', (Little Brown and Company, Toronto 1997) 96.

²¹⁴ Telecommunications Consumer Rights and Protection Directive (n 15), Art.9(2) and Art.10.

²¹⁵ Ibid, Art.10(1).

²¹⁶ Ethio-Telecom Customer Service Charter (Jan. 2021).

²¹⁷ Interview with Mohammed Haji (n 175).

²¹⁸ Telecommunications Consumer Rights Protection Directive (n 15), Art. 10(1)(b).

²¹⁹ Ethio-telecom Standardized Customer Service Contract Form.

and the customer agreement form fails to include information relating to the customers' right to lodge a complaint against the operator with the Communications Authority.²²⁰

Customers interviewed agree that the operator provides telecom services following their requests.²²¹ However, the contract is an adhesive contract that does not clearly state any prospective consumer rights, particularly the consumer's data privacy clause.²²² Customer care, on the other hand, is determined by the salesperson's personal actions.²²³ Customers interviewed comments that customers' service delivery should have a cross-check process. Details about pre-contractual information should be made public.²²⁴

The emergence of consumer dispute resolution is another new development in Ethiopia's telecom consumer protection. Before 2019, consumer complaints in the telecommunications sector were initially directed to the Ethiopian Telecommunication Agency.²²⁵ Since 1996, the Ethiopian Telecommunication Agency served as a sector regulator until it was absorbed by establishing the Ministry of Communications and Information Technology in 2010.²²⁶ The Agency used to mediate between customers and operators to resolve complaints, but it did not always have good legal decisions.²²⁷ This was due to Ethiopia's lack of clearly defined telecom consumer regulations stating complaint handling procedures. After 2019, sector-specific consumer dispute settlement regulation is formed.²²⁸ The ECA has a consumer department.²²⁹ The practice

²²⁰ Ethiopian Communications Service Proclamation (n 14), Art.50 (3).

Telecommunications Consumer Rights and Protection Directive (n 15), Art.10(1) e.

²²¹ Interview with Adnan, Manager of Soft-Valley PLC, (Addis Ababa, Ethiopia, 16 April 2021).

Interview with Tibebe Bekele, personal mobile user, (Addis Ababa, Ethiopia, 19 April 2021).

Interview with Simret Tefera, Assistance Manager in Desalegn Seid Import Export PLC, (Addis Ababa, Ethiopia, 16 April 2021).

Interview with Dawit Hiwot, Manager of Dawit and Biniyam building construction partnership, (Addis Ababa, Ethiopia, 19 April 2021).

Interview with Biruk Shiferaw, personal telecoms service user, (Addis Ababa, Ethiopia, 19 April 2021).

²²² Ibid.

²²³ Interview with Adnan, Manager of Soft-Valley PLC, (Addis Ababa, Ethiopia, 16 April 2021).

²²⁴ Interview with Adnan (n 221).

Interview with Tibebe Bekele (n 221).

Interview with Simret Tefera (n 221).

Interview with Dawit Hiwot (n 221).

Interview with Biruk Shiferaw (n 221).

²²⁵ Lishan (n 25) 17.

²²⁶ Yazachew (n 22) 62.

²²⁷ Interview with Engineer Balcha Reba, Director General, Ethiopian Communications Authority, (Addis Ababa, Ethiopia, 15 April 2021)

²²⁸ Ethiopian Communications Service Proclamation (n 14), Art. 6(15), Art.37, 40(1), Art.40(8), and Art. 52(3).

²²⁹ Interview with Engineer Balcha Reba (n 227).

demonstrates that the ECA is not dealing with consumer issues because it is still in the process of being established, and the relevant draft Directives have been recently passed. According to the ECA, only Ethio-Telecom is still providing telecommunication services in the country. The operator is currently obtaining a business license and codifying a code of conduct.

Consumers have the right to file complaints with the ECA, the appeals tribunal for appeal cases, and the Federal High Court for legal errors.²³⁰ The ECA has the authority to adjudicate all consumer complaints against any operator and to determine appropriate remedies for any violation of laws.²³¹ To exercise its authority, the ECA legislates the TCRPD and the Dispute Resolution Directive.²³² It is permissible to take collective action because the new dispute resolution directive does not prohibit consumers from doing so.²³³ Consumers may file complaints about the quality of service, delays in service provision, delays in service restoration, billing, and privacy breaches that operators offer.²³⁴ A toll-free number and an e-mail address are needed as part of the consumer's lodging process.²³⁵ The Dispute Resolution Directive No.796/2021 sets the mechanism through which adjudication is made, and remedies are given. There is also a process in place whereby the formal court can check whether all rulings are logical or not, as many other courts have done to serve justice in the end.

However, both the ECA and the appellate tribunal tasked with resolving conflicts do not seem to be separate from government control, as the Prime Minister would choose the board members.²³⁶ Also, there is no mandatory provision that requires the representation of stakeholders, especially consumers and the business community in the ECA. The EthCSP fails to establish an independent consumer protection institution for its enforcement.

²³⁰ Ethiopian Communications Service Proclamation (n 14), Art.37(2) cum Art.40(1) and 40(8).

²³¹ *Ibid.*, Art.50(3). And

Telecommunications Consumer Rights and Protection Directive (n 15), Art.19.

²³² Telecommunications Consumer Rights Protection Directive (n 15), Art.5(1). And
The Dispute Resolution Directive No. 796/2021.

²³³ *Id.*, Art.6.

²³⁴ Ethiopian Communications Service Proclamation (n 14), Art.50(3).

Telecommunications Consumer Rights Protection Directive (n 15), Art.17(2).

²³⁵ Telecommunications Consumer Rights Protection Directive (n15), Art. 17(4)(b).

²³⁶ Ethiopian Communications Service Proclamation (14), Art.10(2).

Out of all five customers who were interviewed for this study, three of them responds their complaint was partly addressed but not entirely. In response, the customer does nothing due to a lack of details and time to file a formal complaint.²³⁷

Two out of Five interviewed customers are aware that the newly formed ECA has the power to view consumer complaints.²³⁸ Still, unless the case involves large sums of money, the customer cannot go through the trouble of making a complaint to the Authority because they believe it would take a long time to receive a final decision²³⁹

Even if the operator claims to have a customer complaint handling section that responds to customer complaints as quickly as possible, three out five interviewed customers experience network interruptions, low quality, and unavailability when using the operator's mobile service.²⁴⁰ And if the customer contacts the operator's call center (994) to resolve the issue, the issue persists. If a failure occurs on the distribution network, there is no immediate assistance. Also, a customer out of five interviewed customers states that the service billing fee is not reduced for services that were not used during the fault time.²⁴¹

The EthCSP does not mention consumers' associations, which vigorously promote consumer rights in other jurisdictions, as we can see in EU's and RSA's laws on the sector. If the Consumer Protection Association within the sector is legally given the ability to engage consumer affairs, including bringing joint action on consumers' behalf, it would improve consumer protection and awareness of their rights.

²³⁷ Interview with Adnan, Manager of Soft-Valley PLC, (Addis Ababa, Ethiopia, 16 April 2021).

Interview with Simret Tefera, Assistance Manager in Desalegn Seid Import Export PLC, (Addis Ababa, Ethiopia, 16 April 2021).

Interview with Dawit Hiwot, Manager of Dawit and Biniyam building construction partnership, (Addis Ababa, Ethiopia, 19 April 2021).

²³⁸ Interview with Adnan, Manager of Soft-Valley PLC, (Addis Ababa, Ethiopia, 16 April 2021).

Interview with Dawit Hiwot, Manager of Dawit and Biniyam building construction partnership, (Addis Ababa, Ethiopia, 19 April 2021).

²³⁹ Ibid.

²⁴⁰ Interview with Adnan (n 237).

Interview with Simret Tefera (n 237).

Interview with Dawit Hiwot (n 237).

²⁴¹ Interview with Adnan (n 223).

3.2.2.4. Telecom Service Quality and Reliability

In a competitive market, operators must have published, comparable quality of service indicators that will allow customers to make informed decisions.²⁴² The publication of quality-of-service indicators provides operators with a strong incentive to improve the relevant quality dimensions, regardless of any explicit targets or penalties that may be set.²⁴³ In Europe, quality of service is regulated through an encouragement approach that relies on the power of publicity, ultimately, and competition.²⁴⁴ Operators are simply required to measure and publish specific aspects of their performance regularly.

The Ethiopian government has issued EthCSP governing telecom service standards, ensuring that consumers have the right to access communications services that meet the regulator's quality standards.²⁴⁵ The QoS rule specifies an aspect of QoS that needs regulation under Art.9(2)(b) of the TCRPD No.832/2021. Operators must provide consumers with details about the service quality levels offered, the initial waiting period for the initial link, service areas, and coverage maps.²⁴⁶ QoS rule also includes the consumer's right to submit complaint about the services when an operator fails to meet the specified quality standards.²⁴⁷ Regarding the QoS, ECA has set service delivery standards and the required percentage.²⁴⁸ The service delivery standards include network availability, call set-up success rate, data transmission rate (internet speed), SMS delivery success rate, Interactive Voice Response (IVR), call center operator response, fault report submission rate, bill complaint rate, bill accuracy.²⁴⁹ Ethiopia also adopts regulation to protect consumers' lives and health by deterring any substandard in telecommunications equipment, customer premises equipment, and monitoring proper usage of telecom equipment in the telecoms network.²⁵⁰

²⁴² Claire Milne, 'Regulating Quality of Service,' in W. H. Melody (ed.), *Telecom Reform, Principles, Policies and Regulatory Practices*, (1997), 179.

²⁴³ *Ibid*, 187.

²⁴⁴ *Ibid*, 181.

²⁴⁵ Ethiopian Communications Service Proclamation (n 14), Art.6(5).

²⁴⁶ Telecommunications Consumer Rights Protection Directive (n 15), Art.9(2)(b).

²⁴⁷ *Ibid*, Art.17(2).

²⁴⁸ Telecommunications Quality of Service Directive No.794/2021, Art.12 and Annex I.

²⁴⁹ Ethio-telecom Customer Service Charter (n 216), Part III Clause 5.3.

²⁵⁰ Ethiopian Communications Service Proclamation (n 14), Art.23(3).

In practice, the three out of five interviewed customers reveal that Ethio-Telecom has a substandard connection speed on the service level agreement.²⁵¹ The operator's tariff has been criticized in voice, SMS, and data services, and it has been proposed that it should be reduced.²⁵² Dissatisfaction with the service was caused by a poor network link and a high tariff for the services. In terms of QoS, the operator establishes criteria to assess the level of service quality.²⁵³ The operator has a code of conduct that outlines the procedures for handling complaints as well as a toll-free number for reporting complaints and responding to requests to improve service quality.²⁵⁴ The code discloses the Authority's service delivery criteria to its customers. Still, it does not provide information on the opportunity to file a complaint with the ECA if they are not met. Ethio-telecom is obliged to provide services to customers in accordance with the Authority's standards.²⁵⁵ Failure to comply with this obligation, the Communications Authority may impose fines or compensation on the operator.²⁵⁶

3.2.2.5. Protection of Vulnerable Consumers

The ECA has created a separate consumer department which is called the Gender and Social Affairs Section.²⁵⁷ This section focuses on how the elderly and people with disabilities can use telecoms services, especially in terms of accessibility, convenience, and compatibility.²⁵⁸ However, EthCSP does not require operators to provide special telecom services for PWD or disadvantaged groups in general. PWD are only permitted to seek assistance from operators if they are concerned about the services they are using.²⁵⁹ The law's sole purpose is to promote research into the production and application of new communication methods and technologies.²⁶⁰ If this is the case, it leads to disability discrimination against those who cannot pursue their legitimate interests and rights. The Authority's responsibility is to oversee the execution of

²⁵¹ Interview with Adnan (n 237).

Interview with Simret Tefera (n 237).

Interview with Dawit Hiwot (n 237).

²⁵² Interview with Simret Tefera, Assistance Manager in Desalegn Seid Import Export PLC, (Addis Ababa, Ethiopia 18 April 2021).

²⁵³ Ethio-telecom Customer Service Charter (n 216), Part III Clause 5.4.1.

²⁵⁴ Ibid.

²⁵⁵ Ibid, Part III.

Available at: < <https://onlineservices.ethiotelecom.et/billcomplaint/>>.

²⁵⁶ Ethiopian Communications Service Proclamation (n 14), Art. 52 (4).

²⁵⁷ Interview with Balcha Reba (n 227).

²⁵⁸ Ibid.

²⁵⁹ Telecommunications Consumer Rights and Protection Directive (n 15), Art. 18(1)(d).

²⁶⁰ Ethiopian Communications Service Proclamation (n 14), Art.6(16).

treaties about communications services to which Ethiopia is a signatory.²⁶¹ One treaty in this regard is the Convention on the Rights of PWD.²⁶² Ethiopia should take reasonable steps to ensure that PWDs have equal access to information and communication technology and systems as everyone else. The definition of "communication" includes written, audio, plain-language, human-reader, augmentative and alternative forms, means, and formats of communication, as well as access to information and communication technology.²⁶³ The telecom legislation provides for special number systems for disabled consumers to improve service accessibility.²⁶⁴ However, the operator's duty to ensure that there is no discrimination against all consumers in any manner of denial of access to facilities or provisions is a long way off.²⁶⁵

The Ministry of Labor and Social Affairs, on the other hand, is empowered to carry out all acts required for the implementation of the Convention, which stipulates access to information and communications, as well as information and communications technologies and systems.²⁶⁶ The Ministry, in particular, should have the authority and responsibility to ensure that PWDs have equal opportunity and full participation.²⁶⁷ Although the telecom laws disregard special rules for PWD, Ethiopia is bound by an international treaty to adhere to rules governing communication service accessibility for this group.²⁶⁸ Ethio-Telecom has no special facilities for PWD when the latter wants to receive specific telecom service from the operator.²⁶⁹ Generally, it is unavoidable for operators to follow general and sector-specific laws and integrate them into their service delivery systems.

²⁶¹ *Ibid.*, Art.6(18).

²⁶² Convention on the Rights of Persons with Disability Ratification Proclamation No.676/2010.

²⁶³ The United Nations Convention on the Rights of Persons with Disabilities 6 December 2006, Art.2.

²⁶⁴ Ethiopian Communications Service Proclamation (n 14), Art. 30(1)(d).

²⁶⁵ Telecommunications Consumer Rights and Protection Directive (n 15), Art. 8.

²⁶⁶ See Convention on the Rights of Persons with Disability Ratification Proclamation (n 262), Art.3.

²⁶⁷ Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 1097/2018, Art.29(11)(a).

²⁶⁸ The United Nations Convention on the Rights of Persons with Disabilities (n 263), Art.9.

²⁶⁹ We can refer: Ethio-telecom Customer Service Charter (Jan, 2021). And Ethio-telecom Standardized Customer Service Contract Form.

3.2.2.6. Telecom Consumer’s Right to Privacy and Protection of Personal Information

The right to privacy in oneself, home, and communications is guaranteed in the FDRE Constitution.²⁷⁰ This privacy right is analogous to international human rights instruments such as the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights.²⁷¹ Everyone has the right to the inviolability of his notes and correspondence, including communications made by telephone, telecommunications, and electronic devices, as mentioned in Art.26(2) of the 1995 FDRE Constitution.

The EthCSP, establishes general standards to ensure the confidentiality of customer telecommunications. As stated in Art.51(1), EthCSP ratifies telecom operators required to safeguard their customers' telecommunications confidentiality. The protection of this proviso sets ambiguous requirements, and the scope of the customer information that needs to be protected is not stipulated. Furthermore, the expression “taking all reasonable steps” creates uncertainty in the operators' responsibilities since it does not specify how they can fulfill their obligations. However, the TCRPD No.832/2021 specifies consumer privacy laws that telecom operators are obliged to observe the mandatory rules for their customers.²⁷² Consumer confidentiality is defined in Art.2(4) of TCRPD No.832/2021 as preserving the privacy of information and transactions to avoid unauthorized disclosure of information. The type of personal data is specified in Art.2(12) of the TCRPD No.832/2021, and according to Art.5(3) of the same Directive, operators are required to provide a code of conduct outlining the terms and conditions under which consumers' personal data will be managed.

The data breach notification requirement prescribed under Art.15(4) of the TCRPD No.832/2021 does not show what kind of breaches require notification. In the EU, when the personal data breach is likely to adversely affect a subscriber or individual's personal data or privacy, the provider shall also notify the subscriber or individual of the breach.²⁷³ Telecom providers are required to notify affected individuals or subscribers when the breach is likely to affect their

²⁷⁰ The FDRE Constitution Proclamation (n 10), Art. 26(2).

²⁷¹ The United Nations International Covenant on Civil and Political Rights, Art.17.

²⁷² Telecommunications Consumer Rights and Protection Directive (n 15), Art.15 and 16.

²⁷³ See The Commission Regulation 611/2013, art. 2-3, of 24 June 2013 on the Measures Applicable to the Notification of Personal Data Breaches under Directive 2002/58/EC of the European Parliament and of the Council on Privacy and Electronic Communications, 2013 O.J. (L 173) 2 (EU).

personal data or their privacy rights adversely.²⁷⁴ Article 3(2) of the European Regulation 611/2013 lists factors that should be used to determine whether a breach is likely to affect the privacy rights of the individuals adversely.²⁷⁵

Under Art.16(5) of the TCRPD No.832/2021, consumer information may only be transferred to any party with their consent or by court order, which may help to avoid unsolicited communications. The TCRPD prevents unsolicited communications of telemarketing and non-commercial advertisements sent to subscribers' telephones.²⁷⁶ According to advertisements law, unsolicited advertisements sent to subscribers' telephones shall be made only in advance of the subscriber's consent.²⁷⁷ In effect, the Ads law adopts an 'opt-in' approach of communications by which electronic communications have to be sent to individuals only after consent is secured.²⁷⁸ However, the Ads Proclamation lifts this duty for telecom service providers both for commercial or non-commercial purposes and for public advertisements.²⁷⁹ While the inclusion of an opt-in approach is relevant in protecting subscribers' privacy, the broader exception of Ads Proclamation to the service providers may create contradiction with the special consumer law. The new communications service law shall prevail the ads law advertisements to the relevant and may be mandated service advertisements.

Consumers' privacy is not legally guaranteed in an absolute sense. The 1995 FDRE Constitution places a restriction clause on the right to privacy in Article 26(3). Subject to this constitutional limitation, there are general and special laws that scrutinize consumer privacy.

The TFOP No.761/2012 in Art.14 allows the police to conduct covert surveillance if they suspect a telecom fraud crime has been or will be committed. Similarly, digital or electronic data and evidence obtained by interception or surveillance are presumed to be admissible under Art.15 of this proclamation.

The EthCSP also establishes standards set to limit confidentiality of consumer's information relates to in compliance with court lawful order as pursuant to the laws of Ethiopia.²⁸⁰ In this

²⁷⁴ Ibid, Art. 3(2), at 5.

²⁷⁵ Ibid.

²⁷⁶ Telecommunications Consumer Rights and Protection Directive (n 15), Art.10(1)(b) and Art.15(2) and (3).

²⁷⁷ Advertisement Proclamation (n 198), Art 22(2).

²⁷⁸ Ibid.

²⁷⁹ Ibid.

²⁸⁰ Ibid, Art 51(2).

case, the exceptional ground fall may be related to court orders for any court pending cases, telecom fraud offense, and lawful surveillance of telecommunications in the conduct of a criminal investigation or national security investigation.²⁸¹ The privileged actors are approved agents of government bodies, competent court lawful orders, and the ECA's request. In all cases, the court permission must be obtained ahead of time and in compliance with the relevant law's terms. Agents of government bodies include the Ethics and Anti-Corruption Commission, the Federal Police Commission, the Information and National Security Agency, and the Federal Attorney-General are all authorized to access the telecoms network of operators, according to Art.51(3) of this proclamation.

Surveillance of Internet and phone correspondence is permitted under a number of broad statutes that have only simple protections for the right to privacy. There are no clear laws that the courts must follow to determine whether the request is reasonable or not. In general, the Criminal Procedure Code allows a court to decide that the ends of justice or any investigation, prosecution, or other proceedings under this code will be served to issue a search warrant, which is a broad and ambiguous requirement that gives courts a lot of leeway.²⁸² Critics point to Ethio-Telecom's use of Deep Packet Inspection (DPI) as an example of how the company is violating Article 26(3) of the FDRE Constitution and Art. 51(3) of EthCSP, which forbids the company from using such technologies.²⁸³ The TCRPD may regulate unauthorized access by Ethio-Telecom.²⁸⁴ Under Article 15 (4) of the TCRPD, the operator must take the necessary network precautions and corrections to prevent network breaches during service delivery and notify the customer and the Communication Authority immediately within three days of the breach.

In practice, as an operator, Ethio-Telecom implements an internal customer data procedure that explicitly defines the details that may be lawfully revealed to whom.²⁸⁵ As per this procedure, request to customer information and data is strictly limited to court orders and designated law

²⁸¹ Telecom Fraud Offense (TFO) (n 179).

Computer Crime Proclamation No.958/2016, Art.32.

Revised Anti-Corruption and Special Procedure and Rules of Evidence Proclamation No.434/2005, Art.42.

Prevention and Suppression of Terrorism Crimes Proclamation No.1176/2020, Art.34 and Art.42(5).

The Ethiopian Communications Service Proclamation (n 14), Art. 51.

²⁸² The Criminal Procedure Code of the Empire of Ethiopia, Proclamation No. 185/1961, Art.33.

²⁸³ Kinfe Micheal Yilma and Alebachew Birhanu, 'Safeguards of the Right to Privacy in Ethiopia: A Critique of Laws and Practices' (2013) 26 J Ethiopian L 131.

²⁸⁴ Telecommunications Consumer Rights and Protection Directive (n 15), Art.24(3).

²⁸⁵ Ethio-telecom Internal Procedure on Customer Data/ Information Provisioning Procedure (May 2019).

enforcement bodies.²⁸⁶ In practice, consumer data is only legally shared with third parties for criminal investigations and other legal matters.²⁸⁷ The type of information/data includes customer profile (Identification card and CAF copy), Call Detail Records (CDR), SMS contents, location (Base Transceiver Station (BTS) level).²⁸⁸ Courts are eligible to request all types of customer information/data, whereas only customer profile information will be provided to the Adisababa/Diredawa Police Commission, the Federal and Regional Police (Wereda, Zone, and Sub-city levels), the Federal Attorney General, the Federal Information Network Security Agency, the Federal/Regional/Ethics and Anti-corruption Office, and other eligible entities allowed by law.²⁸⁹ In light of the EthCSP and TCRPD, the operator infringes consumer's legal rights because transferring customer profiles to the aforementioned entities including the law enforcement bodies primarily requires court approval.²⁹⁰ However, the laws' stipulation on data transfer doesn't seem feasible so long as the law enforcement bodies cannot request court approval for every criminal investigation matters. At least there should be a mechanism in which law enforcement bodies can request customer profile information based on the duly provided laws.²⁹¹ Since customer profile information or evidence gathered has a content of confidentiality, police must keep the information and evidence secret and only use it for the intended purposes. This will reduce the burden on the courts while also balancing the public interest and individual rights.

Interviewed customers have no information on whether the operator breaches their privacy or protects confidential information.²⁹² The operator's service subscription contract does not provide a provision stating that customers have the right not to have their personal details revealed and the condition that their data is protected.²⁹³ Furthermore, let alone the operator, commercial advertisements send SMS and deduct service charges without their permission,

²⁸⁶ Ibid.

²⁸⁷ Interview with Gemechu Merera, Ethio-Telecom Legal Supervisor in Criminal Follow-up and Justice Support Section, (Addis Ababa, Ethiopia, 8 April 2021).

²⁸⁸ Ibid.

²⁸⁹ Ibid.

²⁹⁰ Ethiopian Communication Services Proclamation (n 14), Art.51(1) and 51(3).
Telecommunications Consumer Rights Protection Directive (n15), Art.16(5).

²⁹¹ Ethiopian Federal Police Commission Establishment Proclamation No. 720/2011, Art.6(1) and 6(19).
Prevention and Suppression of Terrorism Crimes Proclamation No.1176/2020, Art.34(2).

²⁹² Interview with Adnan (n 223).

²⁹³ Ethio telecom Standardized Customer Service Subscription Contract Form.

causing them to be constantly disturbed.²⁹⁴ Customers did not complain about the unsolicited messages because they did not have enough time.²⁹⁵ The operator does not have a data breach notification clause to notify customers and the Communication Authority.²⁹⁶

3.3. Gaps and Excesses of Consumer Protection in Ethiopia's Telecommunications Sector

1. In the EU, the European Consumer Organization is formed as an independent consumer organization that aims to represent countries' consumer organizations to the EU institutions and defend the interests of European consumers.²⁹⁷ This organization gives people access to impartial information, allowing them to have enforceable rights, being aware of these rights, and providing redress options they can use when something goes wrong.²⁹⁸ The RSA also establish CAP to advise ICASA on all consumer-related issues within telecommunications.²⁹⁹ The panel is tasked with, among others, reaching out to consumers to understand their concerns, recommend what consumer protection research to be undertaken, and promote consumer interests.³⁰⁰ Unlike the EU and RSA, the EthCSP does not mention about consumer associations that could actively support consumer rights in the industry.
2. The EUECC ensures that end-users with disabilities have equal access to communications, and as a result, operators are improving accessibility for disabled customers.³⁰¹ The RSA incorporates the RSAECA's general requirements in section 71 and explicitly codified the Code for People with Disabilities Regulations No.37486/2014. Unlike EU's and RSA's vulnerable consumer protection, the EthCSP lacks special rules for disadvantaged consumers, leaving a gap in consumer protections for these classes.
3. Since the board members are elected by the Prime Minister, the ECA and the appeals tribunal charged with resolving disputes do not seem to be independent of government control. There is skepticism about institutional independence, and there is no civil society representative. In RSA, such criticism is reflected because ICASA lacks independence in

²⁹⁴ Ibid.

²⁹⁵ Ibid.

²⁹⁶ We can refer Ethio telecom Customer Service Charter (Jan. 2021).

Ethiotelecom's Standardized Customer Service Subscription Contract Form.

²⁹⁷ Available at: < <https://www.beuc.eu/about-beuc/who-we-are>>.

²⁹⁸ Ibid.

²⁹⁹ Government Gazette Republic of South Africa Electronic Communications (n 116), Art. 71.

³⁰⁰ Ibid.

³⁰¹ Ibid, Art.111.

both the appointment procedure (the Minister appoints the ICASA Council) and the funding mechanism (ICASA's budget is submitted to Parliament through the Minister).³⁰²

In the developing world, international regulatory best practice establishes a regulatory authority that is free from political influence. The separation ensures that regulators can perform their functions without interference and hold regulators accountable for results based on specified performance criteria.³⁰³

4. No clear rules govern how the ECA determines whether the operator has violated the customer's rights, particularly those relating to consumer privacy. Because there is no independent investigative team made up of system managers other than the operators, the regulator is forced to rely solely on the evidence provided by the operators.
5. In the era of converged technology, there is no precise regulation of telecom consumer issues overseeing the competitive environment made between the telecommunications sector and Over the Top Service (Skype, Telegram, Google Talk). A separate set of rules governs VOIP providers in the EU. In RSA, there are no restrictions placed on the use of VOIP technology services, and VOIP services are not regulated differently than other voice services.³⁰⁴
6. The EthCSP prescribes access rights to SNP under Art.28(2) but does not mention how the procedures should be carried out. Aside from introducing such rights, a minimum standard shall be established to ensure that subscribers' contracts can be easily terminated without burdensome procedures or unjustified costs.
7. Ethiopia's data breach notification requirement in the telecom sector does not specify what types of breaches must be reported. The Protection of Personal Information Act 4 of 2013 in RSA requires the responsible party to notify the Information Regulator and affected parties within a reasonable time after the data breach is discovered. In contrast to the two, EU countries' providers must notify affected individuals or subscribers when a breach is likely to harm their personal data or privacy rights under the conditions specified by law.³⁰⁵

³⁰² Thornton (n 129) 240.

³⁰³ Buckingham, et al. (n 85) 912.

³⁰⁴ Republic of South Africa Electronic Communications (n 116), Art 5(3)(a).

³⁰⁵ Commission Regulation 611/2013 (n 273), Art. 3(2), at 5.

8. Surveillance of Internet and phone communications is permitted under several broad statutes that provide only rudimentary privacy protections.
9. The Ethiopian General Ads Proclamation broadly regulates telecom service providers' unsolicited commercial and non-commercial advertisements. The TCRPD should abandon the Ads proclamation's broader exception for advertising by content providers.

3.4. Conclusion

Since 2019, telecom consumers in Ethiopia are treated in special regulations. The EthCSP introduces special consumer rights and legal protection, serving as a foundation for the newly approved special telecom consumer law. This chapter examined consumer protection in Ethiopia's telecom sector. It examined the scope of consumer protection in the telecom sector. Aside from the special laws, telecom consumers are potentially protected by the general laws. This chapter examined six common issues of consumer protection in Ethiopia's telecommunication sector. The main rights of telecom consumers include access rights, consumer protection in market regulation, rights over contract terms and dispute settlement, obtaining reliable and quality services, special protection of vulnerable consumers, and consumer's right to privacy and protection of personal information. With a comparative look, each consumer right was examined under Ethiopian laws.

The Ethiopian legislation on consumer access rights in the sector is not a luxury but a need. Ethiopia's new legal and regulatory framework for the telecom sector establishes a new regulatory Authority and introducing market competition regulations. In addition to the fundamental contract law found in Ethiopia's civil code, the Ethiopian telecom laws include consumer rights and obligations. The EthCSP regulates telecom service standards, ensuring that consumers have access to communications services that satisfy the quality criteria set by the regulator. It also oversees the correct use of telecom equipment in the telecoms network to safeguard the safety and health of consumers. The general and special pieces of legislation of the country protect the privacy of consumer telecommunications, including contact information, traffic data, and subscriber information. However, the chapter argued and indicated the consumer protection gaps and excesses in Ethiopia's telecommunication sector.

The modest practice in each of consumer rights showed no active involvement made by the regulator in protecting and enforcing consumer rights. Consumers are not adequately aware of their own legal rights. Based on operator practice, Ethio-Telecom codifies “Telecom Users’ Service Charter”, which discloses information about how customers receive service, inquired about pre-contractual and after-sales information, and outlines the procedure for submitting and resolving any complaints. Furthermore, the modest practice revealed that unmet customer demand primarily includes poor quality of services in network coverage, voucher card material, slow data speed, unsolicited messages from Ethio-Telecom and commercial ads sent over, and unaffordable service tariff. The operator takes no special care to ensure that the needs of vulnerable consumers are met in both the office layout and the working process. The operator also transfers customer profiles to the law enforcement agencies without the appropriate judicial authorization.

Chapter 4

4. Conclusion and Recommendations

Consumer protection measures are being introduced in the telecommunication sector around the world, albeit in varied ways. The fact that the industry is regulated differently in different nations does not negate consumer protection. Under telecom legislation, consumers have a variety of rights. The first chapter of this thesis raised the research topic of whether and to what extent Ethiopian legislation protects the rights and interests of consumers in the telecommunication sector. The subsequent chapters and sections of the preceding discussion attempted to provide answers.

To answer the research question, the thesis first defines the distinct characteristics of telecom consumers. It then investigates the primary rationale for adopting sector-specific consumer protection in the telecom industry. Ethiopia is reforming its telecommunications sector, and special consumer regulations are being incorporated. The reform involves a new strategy for telecom customers. This thesis considered six common issues of consumer protection in the telecommunication sector. These are access to telecommunications service, consumer protection in a competitive market, contractual arrangements and dispute settlement, quality of service, vulnerable consumer groups, and privacy and data protection. Informed by comparative analyses of EU and RSA regulations, the thesis analyzed these consumer protection issues in the Ethiopian telecommunication sector.

Ethiopia's new legal and regulatory framework for the telecom sector is often in the form of legislation establishing a new regulatory Authority and establishing market competition regulations. Consumer access rights such as universal access/service requirement, access to essential services, number portability, interconnection, and service unbundling have been enshrined in Ethiopia's existing telecom law. Telecom consumers and operators will not have equal negotiating and market information power. Ethiopia's general and special legislation considers this and protects the privacy of consumer telecommunications.

The thesis found gaps and excesses in consumer protection in Ethiopia's telecommunication sector. Ethiopia's consumer protection legal framework on the sector lacks adequate laws to protect vulnerable consumer rights, fails to form a structurally independent regulator. In the

regulator's structure, consumers are not represented by any Civil Association. There are no clear rules and an independent investigative team made up of system managers to enable the ECA to determine whether the operator has violated the customer's rights, particularly those relating to consumer privacy. The thesis also reveals the Ethiopian General Ads Proclamation broadly regulates telecom service providers' unsolicited commercial and non-commercial advertisements. The data breach notification requirement imposed on telecom operators doesn't show what kind of breaches require notification. The country lacks sector laws governing VOIP services. Furthermore, the EthCSP specifies SNP access rights but does not specify how the procedures are carried out. Surveillance of Internet and phone communications has been permitted under a number of broad statutes with low burdens of proof and only rudimentary privacy protections.

Besides knowing the modest practice, the thesis designed interview questions on each common issue of consumer protection and interviewed ECA official, Ethio-Telecom officials, and telecom consumers. The modest practice of consumers in exercising their legal rights demonstrated that they have knowledge gaps, and the ECA failed to educate and inform telecom consumers. In the absence of solid consumer associations, the regulator had a substantial obligation to serve customers by providing them with the resources needed to confront the operator. Because the ECA was still in the process of being established, the new telecom consumer regulation had not yet been tested in practice. As a result, the thesis does not thoroughly investigate whether communication laws were appropriately and cautiously enforced. Ethio-telecom, the only state-owned operator, has a "Customers' Service Charter" that discloses information on how consumers receive service and outlines any complaints that the operator must address and remedy. However, the operator lacks a consumer code of conduct as required by the TCRPD and disclosure terms on subscriber privacy and data protection when customers enter into service agreements. Furthermore, the thesis discovers that the operator's (Ethio-Telecom) contract is adhesive and does not include consumer rights in a clear manner, which requires modification. Customers' unmet need mainly consists of poor-quality network coverage, voucher card material, slow data speed, unsolicited messages from Ethio-telecom and commercial adverts sent over, and unaffordable service pricing. Special consideration for vulnerable consumers is not rigorously adhered to in the office design and service delivery process. Moreover, Ethio-telecom transfers customer profiles to the eligible entities including the law enforcement agencies without the appropriate judicial authorization. However, in the case of law enforcement authorities, at least

in the narrow sense, the special legislation fails to strike a balance between the consumer privacy and the institutional missions as mandated by law.

In general, Ethiopia's consumer protection in the telecommunications sector has normative gaps that make it difficult to ensure consumer rights. The lack of such laws and loopholes in implementation has a substantial influence on and undermines consumer protection.

The thesis closes with the following recommendations.

1. The industry regulator's legal and institutional design appears to be influenced by executive bodies. Thus, the sector regulator might be better to be established free from the executive bodies. This could be made by making the regulator a distinct Federal Authority accountable to the Parliament. Ethiopia shall make a regulatory design that requires careful and precise regulation of the relationship between the Director-General, operation management, and the minister to avoid political interference of the minister regarding decisions of the regulator. Furthermore, rules for the composition and appointment of the regulator(s) must be established.
2. Consumer associations representing telecom consumers in education and awareness campaigns and the sector's enforcement frameworks must be established. The sole mandate to ECA to defend the interest and rights of consumers is inadequate.
3. Special legislation must be drafted to protect the basic rights of vulnerable consumers while also adhering to the country's sector-specific international treaties. In particular, PWD needs to get equal access to information and communication technology and systems.
4. Similar to the Mobile Number Portability Directive, it is preferable to have a minimum standard for all other types of telecom services to ensure that subscribers' contracts can be easily terminated without burdensome procedures or unjustified costs.
5. There must be clear rules and an independent investigative team made up of system managers to enable how the ECA determines whether the operator has violated the customer's rights, particularly those relating to consumer privacy.

6. Mandatory data breach notification that would result in serious harm to subscribers shall be further specified under the Ethiopian TCRPD.
7. At least in general terms, there shall be a clear standard that government bodies shall bear the burden of proof to demonstrate that surveillance of internet and phone correspondence request is reasonable. And courts must follow specific procedural rules to grant permission to intercept confidential consumer communications.
8. The ECA must enhance its consumer protection efforts through consumer education that increased contact with customers and the availability of information to consumers.
9. Even if Ethio-Telecom uses a standardized service contract, the minimum consumer rights reserved by the law shall be aligned by the incumbent operator. The ECA must monitor the amendment.
10. Law Enforcement Authorities should be able to obtain customer profile information without judicial approval, at least in the narrow sense. This could strike a balance between the special consumer legislation and the institutional missions of these Law Enforcement Authorities as established by law.

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Appendixes

Interview Guide Questions to Officers in the Ethio-Telecom, Telecom Consumers and Ethiopian Communications Service Authority.

I, Mekdes Bekele, an LL.M Student in Addis Ababa University, kindly requeststo prepare or inscribe your answer for the following interview questions.

This interview guide is prepared for the purpose of gathering information for my Master's thesis that I am pursuing in AAU Law School. I am grateful for your kind cooperation investing your precious time to respond for my interview.

Guide 1. Interview Questions for Officers of Ethio-telecom

1. How are telecom customers treated when they complain about service delivery? What types of complaints are most commonly filed?
2. What steps are followed if the customer and the operator cannot reach an agreement?
3. What kind of activity does the operator perform in terms of consumer access rights in telecom services?
4. When delivering telecom services, what steps does the operator take to assure service quality?
5. How did the consumer agree to sign into a contract for telecom services with the operator?
6. How does the operator provide telecommunications services to vulnerable consumers, notably persons with disabilities?
7. How does the operator protect and respect the privacy of its customers? Is there any way for the operator to access and transfer the customer's privacy to a third party?

Guide 2. Interview Questions for Telecom Consumers

1. When you require telecom services from the operator, how are you treated?
2. Have you ever had an issue with a telecommunications service? What kind of complaint are they, and have you filed it to the operator so that it can be resolved?

3. What was the operator's response to your complaints? Is your issue completely resolved? If not, what did you do?
4. Because you disagreed with the operator, did you take your matter to court or any other government organization? If not, where did you file your complaint?
5. What legal rights do you have as a telecom consumer?
6. Is there any commercial message that has been sent to you without your consent using your mobile phone? What efforts did you take to avoid this?
7. How can you be certain that the operator will keep your communications data safe and private and will not share it with a third party?
8. What suggestions do you have for the operator to improve its service?

Guide 3: Interview Questions for Officers of Ethiopian Communications Authority

1. Is your office receiving any complaints from telecom customers?
If so,
 - What are their grievances? and how do you handle it?
 - Is there an appeals tribunal complaint filed against your decision?
 - If yes, has the matter of the complainant been reopened in your office?
2. What is your office doing to educate and increase awareness about telecom consumers' rights in light of the newly adopted Communications Service Proclamation No 1148/2019?
3. Is the Ethiopian Communications Authority accepting collective complaints?
Is the Consumer Dispute Resolution Mechanism of the Authority confined to individual complainants, or does it apply to groups as well?
4. Dose the Ethiopian Communication Service Authority control Ethio-telecom's improper access to telecom consumers' privacy?