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College of Law and Governance Studies

School of Law

**Financial Consumer Protection in the Ethiopian Banking Sector: Analysis of
the Legal and Institutional Framework**

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Approval Sheet by the Board of Examiners

Financial Consumer Protection in the Ethiopian Banking Sector: Analysis of the Legal and Institutional Framework

I hereby declare that this thesis is my original work and all source materials used in this work have been duly acknowledged

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Table of Content

| | |
|--|----|
| Acknowledgment | I |
| Table of Content | II |
| Abstract | IV |
| Acronyms | V |
| Chapter One | 1 |
| Introduction..... | 1 |
| 1.1. Background of the Study..... | 1 |
| 1.2. Statement of the Problem | 3 |
| 1.3. Research Question..... | 4 |
| 1.4. Objective of the Study..... | 4 |
| 1.5. Significance of the study | 4 |
| 1.6. Methodology | 4 |
| 1.7. Literature Review | 5 |
| 1.8. Limitation of the study | 7 |
| 1.9. The Thesis Organization | 7 |
| 1.10. Citation Rule..... | 8 |
| Chapter Two..... | 9 |
| The Ethiopian FCP legal framework and problems associated with | 9 |
| 2.1. Introduction | 9 |
| 2.2. Definition of Financial Consumer..... | 10 |
| 2.3. <i>Ex ante</i> FCP in Ethiopian legislations..... | 12 |
| 2.3.1. Equitable and fair treatment of consumers | 12 |
| 2.3.2. Disclosure and Transparency | 15 |
| 2.3.3. Responsible business conduct..... | 19 |
| 2.4. Ex post Protection | 22 |
| 2.4.1. Protection of Consumer Assets against Fraud and Misuse..... | 22 |
| 2.4.2. Protection of Consumer Data and Privacy..... | 25 |
| 2.4.3. Dispute Resolution..... | 29 |
| 2.4.3.1. Internal mechanisms | 30 |

| | |
|--|----|
| 2.4.3.2. External Mechanisms | 33 |
| 2.5. Other protections | 35 |
| 2.5.1. Deposit Insurance Fund | 35 |
| 2.5.2. Financial Education and Awareness | 36 |
| 2.5.3. Competition..... | 37 |
| 2.6. Problems associated with FCP legal framework..... | 38 |
| Chapter Three..... | 42 |
| The Ethiopian FCP Institutional Framework and Problems associated with | 42 |
| 3.1. Introduction | 42 |
| 3.2. Institutional Framework | 43 |
| 3.2.1. Integrated Approach..... | 43 |
| 3.2.2. Twin Peaks Approach..... | 43 |
| 3.2.3. Institutional Approach | 44 |
| 3.2.4. Hybrid Twin Peaks | 44 |
| 3.3. Ethiopian FCP Institutional framework | 45 |
| 3.3.1. National Bank of Ethiopia | 45 |
| 3.3.1.1. Organizational Structure of the NBE..... | 45 |
| 3.3.1.2. Powers and Duties of the Bank..... | 46 |
| 3.3.1.3. Regulatory and supervisory mandate | 47 |
| 3.3.1.4. Enforcement mechanisms..... | 49 |
| 3.3.2. TCCPA..... | 50 |
| 3.3.3. Other stakeholders | 50 |
| 3.4. Problems Associated with the Ethiopian FCP Institutional framework..... | 51 |
| Chapter Four | 52 |
| Conclusion and Recommendations..... | 52 |
| 4.1. Conclusion..... | 52 |
| 4.2. Recommendation..... | 55 |
| Bibliography | 58 |

Abstract

The Banking sector is strategic and vital for economic development. The 1929 economic crisis evidenced how important it is and how the regulatory framework is needed to protect the sector and the overall economic sphere of society. The banking regulatory framework may generally be bifurcated into prudential and market conduct regulation. Prudential regulation was majorly used and implemented until the 2008 Global Financial Crisis. Afterward, however, market conduct regulation got emphasizes and started to be implemented in the financial sector. Market conduct regulation is about protecting consumers and ensuring that they are treated fairly by financial institutions.

Ethiopia has also recognized financial consumer protection under the national financial inclusion strategy in 2017. Before this year, however, there were fragmented and scattered provisions that were used for financial consumer protection in different legislations besides the general consumer protection laws. Recently, a new banking law has specifically alienated the subject matter to be regulated by the National Bank of Ethiopia. Following this mandate, the National Bank came up with a tailored financial consumer protection directive that applies only to financial service providers, including banks.

This thesis, hence, particularly interests itself to evaluate the adequacy of the financial protection law of Ethiopia against the G20-High Level Principles on financial consumer protection and relevant countries' experience. The thesis argues that Ethiopia has endeavored to craft a comprehensive legal framework as well as institutional arrangements. However, there are gaps such as the issue of juridical person coverage in financial consumer definition, external dispute resolution mandate of the National Bank, non-existence of standard for sales practices including tying of product as well as pyramid selling, incomprehensiveness of fraud monitoring and prohibition, non-existence of national document for education & awareness creation on the subject matter, under-resourced of institutional framework or unit, the gap in coordination and cooperation among stakeholders are inter-alia. Hence the thesis call for due consideration of incorporating these gaps and a better framework be deliberated.

Acronyms

AA/AAs- Authorized Agent/s

ADR- Alternative Dispute Resolution

ASIC- Australian Securities and Investments Commission

ASICA- Australian Securities and Investments Commission Act

BA – Broadcasting Authority

BBP- Banking Business Proclamation

BoD – Board of Director

CDD- Customer Due Diligence

DIF- Deposit Insurance Fund

FC/FCs – Financial Consumer/s

FCP – Financial Consumer Protection

FCPD – Financial Consumer Protection Directive

FI/FIs- Financial Institution/s

FMD- Fraud Monitoring Directive

FSP – Financial Service Provider

G20- Group of Twenty

GFC- Global Financial Crisis

HPR- House of Peoples Representative

ITU- International Telecommunication Union

KFS- Key Facts Statement

KYC- Know Your Customer

LAPIID- Licensing and Authorization of Payment Instrument Issuers Directive

LAPSOD- Licensing and Authorization of Payment System Operators Directive

MFI- Micro-Finance Institution

MoIT – Ministry of Innovation and Technology

NBE – National Bank of Ethiopia

NFIS – National Financial Inclusion Strategy

NPS- National Payment System

NPSP - National Payment System Proclamation

OECD – Organization for Economic Co-operation and Development

PI- Payment Instrument

PII/PIIs- Payment Instrument Issuer/s

SME – Small and Medium Enterprises

TCCPA – Trade Competition and Consumer Protection Authority

TCCPP - Trade Competition and Consumer Protection Proclamation

UAD- Use of Agents Directive

WB- World Bank

WTO- World Trade Organization

Chapter One

Introduction

1.1. Background of the Study

Most countries started banking regulation after the 1929 economic crisis.¹ The need for such regulation is reasoned out by many experts in the field. Alexander Wellerdt argues that banks² need to be regulated for public interest purposes to protect from exploitation and welfare loss.³ Banking regulation serves for the protection of the financial service sector as a whole and securing the market functions in addition to preventing systematic risk.⁴ Systemic risks are a danger for the business activities of banks, which are not confined to a single institution but have negative repercussions on the overall economy through so-called domino effects.⁵ Banking regulation could be bifurcated into prudential and market conduct regulations.⁶ Prudential regulation is a regulation as well as supervisory enforcement, which obliges banks to consider their risk-taking and to have sufficient capital on top of liquidity reserve requirement with an objective of ensuring the resilience of individual institutions and the stability of the financial system.⁷ Market conduct regulation is about protecting consumers and ensuring that they are

¹ Alexander Wellerdt, *Organization of Banking Regulation*, Switzerland, Springer International Publishing, 2015, P.28

² The term Bank is defined by the Dictionary of Banking and Finance as “a business which holds money for its clients, lends money at interest, and trades generally in money.” The Ethiopian Banking Business Proclamation No. 592/2008 defined the term as “a company licensed by the NBE to undertake banking business or a bank owned by the Government.” The Banking business is also defined by the proclamation as a business that consists of activities such as receiving funds & using the funds collected from the public, transfer of funds to others, the buying & selling of gold & silver bullion & foreign exchange, the discounting & negotiation of promissory notes, drafts, bills of exchange & other evidence of debt, and any other activity recognized as customary banking business.

³ Ibid P.29

⁴ Ibid P.30

⁵ Ibid

⁶ Market Conduct Regulation, *Center for Law Markets and Regulation* [website], 2015, <https://clmr.unsw.edu.au/category/market-conduct-regulation>, accessed March 6, 2020.

⁷ A. Maddaloni and A. Scopelliti, “Prudential regulation, national differences and banking stability,” *European Central Bank*, [website], 2019, www.ecb.europa.eu/pub/economic-research/resbull/2019/html/ecb.rb190523~65756630c3.en.html), accessed March 18, 2020

treated fairly by FIs. It aims to prevent, and otherwise manage, the dangers that arise from a FI conducting its business in ways that are unfair to customers or that undermine the integrity of financial markets and confidence in the financial system.⁸ An improved market conduct regulation will benefit the overall financial system resulting in financial consumers' confidence to take part in the financial system.⁹ Hence, FCP should be an integral part of banking regulation. However, FCP is relatively a recent development as its emancipation traces back to the 2008 GFC.¹⁰ Canada nonetheless, was early, which is in 2001, in establishing sector specific consumer protection office that protects consumers' interest.¹¹ That is why Canadian banks were not in need of rescue at the time of the 2008 GFC. Following the crisis in 2008, the G20 Finance Ministers and Central Bank Governors called on the OECD, to develop common principles of consumer protection frameworks in the field of financial services. On behalf of the G-20, in early 2011 the OECD issued a document entitled "G20 High-Level-Principles on Financial Consumer Protection".¹² The document has no binding effect on countries but serves as a guideline when they craft their FCP legal and institutional framework.¹³

Ethiopia has also recognized the need for a stronger FCP framework under the NFIS that was published in 2017 in its strategy 3.¹⁴ Before 2017 however, TCCPP No. 813/2013 which replaced Trade Practice and Consumer Protection Proclamation No.685/2010 has attempted to cover consumers' issues under its ambit. A specific and tailor-made FCP legislative framework is recently introduced by Banking (Amendment) Proclamation No. 1159/2019. The mandate to issue FCP minimum requirements is also given to NBE and the Bank has recently issued a directive that deals with the issue.

⁸ N.C.Kongwa, *Consumer Protection in the Banking Industry in the Age of Twin Peaks*, LLM diss., South Africa, University of Pretoria,2017, p.23

⁹ Ibid

¹⁰ T. Chen, *An International Comparison of Financial Consumer Protection*, Singapore, Springer, 2018, p.1

¹¹ Ibid p.85

¹² International Financial Corporation, *Promoting Financial Consumer Protection in Cambodia*, (July 2015) P.17

¹³ OECD, *G20 High-Level-Principles on Financial Consumer Protection*, (October 2011) P.4 (High-Level-Principles)

¹⁴ National Bank of Ethiopia, 'National Financial Inclusion Strategy', (2017), p.14

1.2. Statement of the Problem

The ever-increasing complexity and diversity of the range of products and services offered by FIs through traditional and electronic channels, and the increasing transfer of opportunities, pricing, and transactional risks to consumers call for enhanced protection of consumers of financial services. Moreover, the ever-increasing fraud in the financial sector is largely hitting consumers with an increasing rate that due attention needs to be given more than ever¹⁵. In addition, the illiteracy rate of the country along with the poor culture of transparency exacerbates the need for FCP. Also, consumers are not provided with copies of contracts when they are inquiring about financial services, or even applying for, a credit product uniformly.¹⁶ This along with the lack of rules requiring clear upfront disclosure of all costs/fees and charges may make consumers vulnerable to unfair treatments. Besides, financial products and services¹⁷ may be susceptible to technical unfair business conducts such as bundling and tying of products that harm FCs. Furthermore, disputes between FC and FSP are mostly resolved by the formal court structure which consumers try to avoid because of the legal hurdles associated with on top of financial weakness.

Ethiopia has adopted consumer protection legal and institutional frameworks through promulgating TCCP Proclamation 813/2013 and recently a FCPD. Before the promulgation of FCPD, the financial inclusion strategy envisioned to come up with a FCP legal & institutional framework and a national financial capability strategy document to tackle consumer-related problems. These legal and institutional frameworks, however, should be questioned as to whether they adequately address the aforementioned issues to protect FCs. As the newly enacted law specifically regulates FIs including Banks, it might be wise to see the law against OECD's and World Bank's best experiences guidelines/document on FCP.

¹⁵ Dated on Nov. 18th of 2019, Ethiopian Broadcasting Corporation reported that the Federal Police Commission is concerned with ever-increasing fraud schemes on financial institutions.

¹⁶ World Bank, *Diagnostic Review of Financial Consumer Protection of Ethiopia: Key Findings and Recommendation*, [2017], p.41

¹⁷ Though G20/OECD high-level principles on FCP and the WB best practices guideline don't define the term financial products and services, FCPD gives meaning to the term as any product or service of a financial nature marketed, offered, or provided to financial consumers by a financial service provider.

The researcher, will thus, try to decipher the concept and the legal as well as institutional regime of Ethiopian FCP. Especially the adequacy of legal and institutional framework in Financial Consumer Protection in the country will be evaluated against OECD and World Bank's best experiences guidelines/document. Moreover, the research will see countries' experience in employing FCP under their jurisdiction and how Ethiopia could take important lessons from such countries.

1.3. Research Question

The central issue that this thesis tries to scrutinize is the FCP in the banking sector of Ethiopia. The research question below helps to analyze the legal and institutional framework of FCP through an evaluative approach.

- ❖ Is the Ethiopian legal regime for Financial Consumer Protection in the banking sector sufficient?

1.4. Objective of the Study

Consumer protection couldn't be realized without a comprehensive legal regime that tends to address the classical as well as modern challenges that consumers face. Parallel with this notion the GFC of 2008 has evidenced the need for a tailor-made FCP regime. This research is initiated with the objective of evaluating the adequacy of the FCP regime under the Ethiopian banking sector and shows the gap that exists in the legislation. It also is designed to answer how and what issue in FCP could be employed by Ethiopia under the legal and institutional framework for a stronger FCP. With these objectives, the research calls for an amendment and incorporation of sound FCP that protect FCs.

1.5. Significance of the study

The research is significant as it creates acquaintance with the Ethiopian legal as well as the institutional framework on FCP in the banking sector with associated problems that should be addressed. It could further be a stepping stone for other researchers.

1.6. Methodology

The research incorporated a doctrinal methodology majorly and has used a non-doctrinal research method where needed. Relevant legislation, literature, interviews, and guidelines are

attempted to be referred properly. Though Ethiopia isn't a member of G20 or OECD, the principle laid down by the group is very relevant and even incorporates World Bank's best experiences guidelines/document on FCP. Moreover, as the country is acceding to WTO and signed & ratified African Continental Free Trade Area Agreement, the financial sector will be opened up to the international community.¹⁸ This will create a positive as well as a negative impact on the country and comparing Ethiopia's law against OECD's principles might mitigate the negative impact as it is possible to learn vital lessons from their experience. Hence, it is strategic and relevant to discuss the legal framework of Ethiopian FCP against the ten principles of the G20 High-level-principles for effective FCP. The research has incorporated majorly three countries' experience for a better understanding and comparison majorly for the legal framework. The countries are selected through a mixture of criteria. The initial criterion is the state of exemplariness in the field of FCP. Also, their legal systems, from common law and civil legal system, as well as their resemblance to Ethiopia's legal framework approach are used as another criterion.

1.7. Literature Review

The research is cognizant that there are researches written on consumer protection legal and institutional framework on the current as well as the previous regime of Ethiopia but as they focused on the general consumer protection frameworks, they are completely different from this research which its sole focus is on FCP in the banking sector.

Research done by Mulugeta Bekele in partial fulfillment of the requirements for the award of the Degree of Master of Business Administration that was presented to St. Mary's University, School of Graduate Study is worth mentioning here. The title of the research is "Practices of Customer Protection in Financial Institution: The Case of Selected Private Commercial Banks". The researcher's main objective was to analyze the practices of customer protection in the selected private banks in connection with Trade Competition and Customers Protection Proclamation No. 813/2013 and the general principles on customer protection.

¹⁸ Melaku Meseret, *The Legal and Regulatory Framework on Merger of Banks in Ethiopia: the Reality on The Ground and the Prospects in the Future*, LLM diss., Ethiopia, Addis Ababa University, 2019, P.2

The research undertaken by Mulugeta Bekele is different from this research on certain points. First, this research is about the overarching legislation on FCP banking business. It doesn't try to see how the law is applied rather evaluates the law itself in the first place. Whatever the practices might be, this research predominantly scrutinizes the legal part. Second, the data used in this research is quite different from Mulugeta's research. Mostly, Mulugeta relied on primary sources to see the practice of customer protection in commercial banks. This research, however, predominantly relied on secondary sources except for legislations and interviews. Third, the perspectives of the researches are completely different as Mulugeta undertook the research from economic and/or business administration perspective while this research is done from a legal perspective, ergo, evaluated relevant legislations. In addition, this research focuses on the newly legislated banking laws and FCP directive. Overall, Mulugeta's research used relevant legislation as a means to evaluate the practice of the commercial banking sector from a business administration perspective. This research on the contrary devoted itself to evaluate the law from a legal perspective rather than using it as a means to evaluate the practice.

Literatures wrote by OECD and WB has been majorly helpful for this research as both literatures, beyond laying principles for FCP, have explained what all the principles mean in a relatively detailed manner. Both pieces of literatures discuss what issues should be incorporated in FCP in the legal as well as institutional frameworks. It is completely important that FCs be informed of their rights as well as the use of financial products and services as it enables them to make a well-informed decision on top of the healthy development of the financial sector, financial inclusion, and broader economic growth.¹⁹ OECD's literature is cognizant that it is essential to protect consumers' rights while recognizing the fact that these rights do come with consumer responsibilities. It specifically calls for legal recognition of FCP, oversight bodies with necessary authority and resources to carry out their mission, fair treatment, proper disclosure, improved financial education, responsible business conduct by FSP and AA²⁰, objective and

¹⁹ World Bank Group, *Good Practices for Financial Consumer Protection*, (2017 edn.), P. ix

²⁰ G20/OECD high-level principles on FCP defined Authorized agents to mean "third parties acting for the financial services provider or in an independent capacity. They include any agents (tied and independent agents) brokers, advisors and intermediaries, etc." On the other hand, FCPD defined the term Agent to mean a person appointed and contracted by the financial service provider to act on behalf of a financial service provider and for commission in a manner specified by the relevant directives of the National Bank.

adequate advice, protection of assets and data including from fraud and abuse, competitive frameworks, adequate complaints handling and redress mechanisms and policies which address, when relevant, sectorial and international specificities, technological developments and special needs of vulnerable groups.²¹

These pieces of literatures as well as other important resources have been used in this research for references and explanations to approach the concept systematically.

1.8. Limitation of the study

During the process of this research, unavailability of adequate literature, practical cases that are relevant for the study, unavailability, and unwillingness of interviewees due to the Coronavirus have affected the study. Moreover, after the study was almost done, the NBE issued a new directive in relation to FCP on August 25th, 2020 and this has created a time constraint that affected the study as well.

1.9. The Thesis Organization

The research is organized into four chapters. The first chapter of the thesis is the introductory part where the general background, statement of the problem, research question, the objective of the research, the research method, and literature review are dealt with.

The second chapter of the research deals with FCP legal regime and problems in the Ethiopian banking sector in detail. The chapter has approached the issue by dividing it into *ex-ante* and *ex-post* legislative frameworks and discussed principles laid down by G20. It has also scrutinized associated problems in the legislative framework of FCP.

Chapter four investigates the banking and consumer protection institutional framework in-depth and evaluates the sufficiency of the FCP institutional framework from OECD's legal principles and countries' experience.

Chapter five rests with concluding remarks and recommendations that Ethiopia should give a due attention.

²¹ High-Level-Principles(n 13), p.4

1.10. Citation Rule

This study has adhered to dully acknowledge different pieces of literatures using the rules of citation of the Oxford University Standard for Citation of Legal Authorities (OSCOLA).

Chapter Two

The Ethiopian FCP legal framework and problems associated with

2.1. Introduction

Countries have already started to give specific and due attention to FCP under their legal, regulatory, and supervisory framework. Their focus majorly is initiated from the diversity of national circumstances and global market and regulatory developments within the financial sector.²² Governments are responsible for the deliberation of the legal framework concerning FCP, the delegation of regulatory and supervisory role to the relevant authority as well as the consultation of the initiative with stakeholders. The legal framework may cover institutional framework, the role of oversight bodies, financial education, access to basic financial products and services, disclosure requirements and transparency, responsible business conduct, responsible lending practice, data protection & privacy, effective resolution scheme, and complaint handling mechanisms, to the minimum.²³

Countries attempt to address these minimum issues through different approaches. Some countries used an institutional approach, meaning they attempt to address specific types of providers such as banks, insurance, MFI.²⁴ Saudi Arabia has issued, for instance, FCP directives for Bank²⁵, which shows its adherence to the institutional approach. This approach sometimes misses covering some types of providers.²⁶ Another approach is an activity-based approach through either a stand-alone legal framework in the form of overarching FCP law or specific products and services provision. A Stand-alone legal framework is used by countries like Canada, Colombia, Mexico, and Peru. Such an approach usually covers a variety of provider types and products. It is also claimed to have an advantage of transparency, flexibility, and clarity for authorities to implement overarching principles. The Legal framework that addresses specific

²² Directorate for Financial and Enterprise Affairs Committee on Financial Markets G20/OECD Task Force on Financial Consumer Protection, *Effective Approaches to Support the Implementation of the remaining G20/OECD High-Level Principles on Financial Consumer Protection*, (September 2014), p.7.

²³ Ibid

²⁴ WB Group(n 19), p.26

²⁵ Banking Consumer Protection Principles (Saudi BCPP), 2013 (Saudi Arabia)

²⁶ WB Group(n 19), p.26

products and services focuses on services and products such as credit products and services. Australia, Ghana, Sierra Leone, South Africa, the United Kingdom, and the United States *inter-alia* have laws on credit products and services.²⁷

The post-1991 Ethiopian regime has introduced plenty of banking legal frameworks that attempt to address FCP. It is probably right to identify Ethiopia as a country that didn't have a specific FCP legal framework until 25th August 2020. Preceding the enactment of specific FCP, there were scattered provisions in different legislations and general consumer protection framework. To begin with, the 1995 constitution lays down the stepping stone that incorporates vital provisions that could be applied for FCP. But the constitution had no intention of addressing FCP at the time of deliberation or promulgation as the concept came into existence after the 2008 Economic crisis.²⁸ In addition, Ethiopia has officially acknowledged the importance of FCP for the first time under NFIS. NFIS that was published in 2017 has foreseen the need for a stronger financial consumer protection framework under its strategy 3. It underlines the importance of FCP in order to expand financial services to unreached societies with better quality. It further tries to take into regard the need for FCP in the face of rapid innovation through the use of technologies such as mobile phones. The strategy promised to deliver a better framework through improving and enforcing regulations dealing with product suitability, information transparency and disclosure, responsible lending rules, marketing and advertising rules, fair collection services, good customer services, and effective mechanisms for dispute resolution. The Civil Code, Commercial Code, Criminal provisions, BBP, NPSP, TCCPP, and NBE's directives are also helpful besides the stand-alone FCPD issued by NBE.

2.2. Definition of Financial Consumer

The term financial consumer is defined in some countries' legal framework to clearly provide the scope of protection while others simply regard it as consumer shopping/using financial products.²⁹ Even those who have defined the term used their own subjective approach rather than adopt a single universal meaning as there is no accepted reference for it so far.

²⁷ Ibid

²⁸ T. Chen(n 10), p.85

²⁹ Ibid p.3

Australia is one of the few countries which have a legal definition of financial consumers. Financial consumers are defined as consumers of services worth less than 40,000.00 Australian dollars or if worth more, then ‘of a kind ordinarily acquired for personal, domestic or household use or consumption’ or if the services are for use or consumption in connection with a small business, and cost more than 40,000.00 Australian dollars, ordinarily acquired for business use or consumption.³⁰

Saudi Arabia has also defined the term consumer under its banking consumer protection principles as “a natural person who is acting outside of the scope of his business and who is enjoying the products and services offered by a bank”.³¹ Italy has a somehow similar definition to Saudi Arabia. Consolidated Law on Banking of Italy defined consumers as natural person who is acting for purposes which can be regarded as outside his trade or profession.³² However, the provision differs from Saudi Arabia’s as it set exclusionary rules based on financial operation which has a greater value of the limits imposed by the Inter-ministerial Committee for Credit and Savings, even if the natural person is acting outside of the scope of his business.

Under the Ethiopian Legal system, the TCCPP defined a consumer as a natural person who buys goods and services for his personal or family consumption, whether the price is being paid by him or another person and not for manufacturing activity or resale.³³

Ethiopian banking directives have also attempted to define the term consumer. The LAPSOD defined a customer, rather than a consumer, as a person³⁴ who uses the services of a payment system operator.³⁵ The definition seems to encompass physical and juridical persons that imply that both can enjoy protections availed for consumers/customers under the frameworks.

³⁰ Australian Securities and Investments Commission Act (ASICA), No. 51 of 2001, (Australia).S 12BC

³¹ Saudi BCPP Art.3

³² Consolidated Law on Banking 1993 (Italy)

³³ Trade Competition and Consumer Protection Proclamation, the Proclamation No. 813/ 2013, Federal Negarit Gazeta, 20th Year No. 28 of 2013, ADDIS ABABA, 2013 Art.2(4)

³⁴ The term person is defined as any natural or juridical person under, Licensing and Authorization of Payment System Operators Directive No. ONPS/02/2020, Art. 2.36 (the directive is applicable only to payment system operators).

³⁵ Licensing and Authorization of Payment System Operators Directive, 2020, ONPS/02/2020, Art.2.9

The FCPD, on the other hand, defined the term as a current or prospective customer of financial service.³⁶ It seems the term consumer and customers are regarded as one and the same according to the definition.

2.3. Ex ante FCP in Ethiopian legislations

The division between ex-ante and ex-post is not a clear delimitation but rather a method employed to understand the FCP concept better. Hence, it should be clear that issues discussed transcend to one another though majorly can be found in one division. The point of reference taken as an event is the signing of a contract and the transfer of information by banks to FCs.

2.3.1. Equitable and fair treatment of consumers

Financial consumers should be treated equitably, honestly, and fairly at all stages of their relationship with FSPs and their agents. Treating consumers fairly should be an integral part of the good governance and corporate culture of all banks and authorized agents.³⁷ Banks should give special attention to low income, little educated, older people, and those with special needs of both sexes as well.³⁸

As to what is meant by “equitable and fair treatment” should be specified and should cover obligations for parties to deal in good faith, fair and clear advertising, improved transparency, accountability, provision of standardized (personalized) information, sound & clear advice, and implement adequate product approval processes to provide products to consumers by countries.³⁹ The legal framework may prescribe for banks to adhere to responsible business conduct and prohibit bad practices such as aggressive or misleading commercial practices, exploitation of vulnerable consumers, and unfair contractual terms.

Some countries have specified what equitable and fair treatment encompasses in their own terms. Australia incorporated under ASICA provisions in relation to false and misleading

³⁶ Financial Consumer Protection Directive, 2020, FCP/01/2020, Art.2.13

³⁷ High-Level-Principles(n 13) Principle-1

³⁸ Mulugeta Bekele, *Practices of Customer Protection in Financial Institutions: the Case of Selected Private Commercial Banks*, MA diss., Ethiopia, St. Mary University,2015, P.23

³⁹ Effective-Approaches to Support the Implementation of the remaining G20/OECD(n 22) p.27

representation/advertisement,⁴⁰ unfair contract terms,⁴¹ unconscionable conduct,⁴² and other detailed subject matters under their act.

Malaysia has also ruled that FCs shouldn't be subjected to unfair discriminatory practices, including unfair contract terms that significantly disadvantage financial consumers. Moreover, Banks should provide clear, relevant and timely information for FCs to make informed decisions before, during and after the point of sale, including the costs, risks and important exclusions or limitations.⁴³

Under the Ethiopian legal framework, to begin with, the constitution gives protection to consumers for the right to equality.⁴⁴ The provision sets that legislations should guarantee to all persons equal and effective protection without discrimination on different grounds.

The Civil Code is another legislation that tries to deem good faith and other relevant issues under contract law that financial consumers may benefit from. Beyond the general requirements for the formation of contracts, consumers who are parties to contracts are leveraged with protections against banks that benefitted unduly as the law renders it as an unconscionable contract.⁴⁵ Parties are also required to be bound beyond the terms of contract as to custom, equity, and good faith.⁴⁶ The Civil Code even obliges for contractual agreements to be interpreted in accordance with good faith⁴⁷ and courts are instructed to follow accordingly.⁴⁸ But contract legislation sees both parties on equal footing rather than protect FCs as needed.

⁴⁰ ASICA(n 30) S 12DB, 12DC, 12DG

⁴¹ Ibid S 12BF

⁴² Ibid S 12CB

⁴³ Fair Treatment of Financial Consumers, 2019, Central Bank of Malaysia, Art.S8.1

⁴⁴ The Constitution of the Federal Democratic Republic of Ethiopia,1995, Proclamation No 1, Neg. Gaz. Year 1, No.1, Art 25

⁴⁵ The Civil Code of the Empire of Ethiopia, 1960, Proclamation No. 165, Negarit Gazeta extraordinary issue, 19th Year, No.2 Art.1710

⁴⁶ Ibid Art.1713

⁴⁷ Ibid Art.1732

⁴⁸ Ibid Art.1785

The newly amended Banking Proclamation authorizes NBE to direct a bank in writing to withdraw, amend, or refrain from issuing a paid radio or television announcement, a poster, billboard, brochure, circular, or other documents, and a paid advertisement in a regularly published newspaper or magazine that it considers being false, misleading, deceptive, or offensive in line with a directive to be issued by the NBE.⁴⁹ In addition, where banks are under establishment unless NBE gives green light to advertise their product, it is not allowed for them to promote their business at all according to Art 3(4) of Proclamation no. 592/2008. However, the power of regulation doesn't extend to independent promoters and Medias and the Advertisement Proclamation applies to these institutions.

Equitable and fair treatment issues could be found in the newly issued FCPD. The directive on its first hand recognizes and obliges banks as well as agents to treat all financial consumers equitably, respectfully, honestly, fairly as well as without discrimination, unless provided by law, at all stages of their relationship with FCs. They are also expected to give due attention and priorities to vulnerable groups.⁵⁰

The directive further specifically required banks and their agents to follow fair treatments such as not to impose unfair contractual terms, unfair fees & charges, and unfair-credit related practices. The directive doesn't label all standard form contracts as unfair ones but specifically sets some terms as unfair. The directive acknowledged the civil code provision article 1710(2) and labels it as an unfair contractual term, where banks take advantage of consumer's simplicity of mind, senility or manifest business inexperience.⁵¹ Moreover, it regards terms that cause detrimental and cause a significant imbalance in the rights and obligations between FCs and banks. On the other hand, it deems terms as unfair where it is different from the one that is stipulated to protect the FSPs' legitimate interest. But it is quite questionable as to whether this protects FCs' legitimate interest as it talks about FSPs. The directive has also taken making changes on contracts without describing the circumstances in which such changes may be made, allowing

⁴⁹ Banking (Amendment) Proclamation, the Proclamation No. 1159/ 2019, Federal Negarit Gazeta, 25th Year No. 88 of 2019, ADDIS ABABA, 2019 Art.54

⁵⁰ Directive No. FCP/01/2020, Art.4.1

⁵¹ Ibid Art.5.1

charging of fees and charges not pre-disclosed or prohibited, and restricting early repayment of credit contract as unfair.

Unfair fees and charges are also regulated by the directive. It obliges banks not to charge any fees, which are not pre-disclosed, which obliges FCs to cover unreasonable administrative costs for early repayment of credits, closure of an account, enforcement action, or that are prohibited by law.⁵² The directive, however, doesn't provide as to what amounts to unreasonable administrative cost which makes it ambiguous.

The directive has also required banks to advertise and promote their products in such a way that it keeps accuracy, clarity & simplicity, advantages & risks in a balanced way, specify a name, license & register number, where it refers to interest rate designate as an annual rate, disclose fees & costs, and abstain from misleading or deceptive acts.⁵³

The Board of directors and senior managers will have to issue detailed policies and procedures and monitor their staffs, agents and third parties, for equitable and fair treatment of consumers and also on other general issues laid down in the directive.⁵⁴

2.3.2. Disclosure and Transparency

Financial Consumers should be provided with key information that informs fundamental benefits, risks and terms of the product by banks in order to enforce disclosure and transparency principle. The information provided by banks should be accurate, honest, understandable, and not misleading. They should also be notified of any existences of conflicts of interest associated with the authorized agent through whom the product is sold.⁵⁵ However, the information should not be overloaded as it reduces the usefulness of disclosure. This issue could be addressed through a standardized format in which information is disclosed to consumers, which often includes plain language requirements.⁵⁶ Peculiar rights and responsibilities of consumers as well as details of prices, fees, fines, risks, bank's complaints procedure, reporting procedures that

⁵² Ibid Art.5.1.2

⁵³ Ibid

⁵⁴ Ibid Art.6.1 & 6.2

⁵⁵ Effective Approaches to Support the Implementation of the remaining G20/OECD(n 22) p.6

⁵⁶ O.P. Ardic, J. A. Ibrahim, N. Mylenko, 'Consumer Protection Laws and Regulations in Deposit and Loan Services: A Cross-Country Analysis with a New Data Set,' (2011), Policy Research Working Paper 5536, p.4

consumers should follow in the case of unauthorized transactions, manner, and ground of termination of relationships along with its consequences should clearly be provided in concise & understandable language, font size & spacing that facilitates the reader's comprehension to consumers and written copy of general and specific terms & conditions should be given before consumers enter into any agreement or open deposit, a loan or current accounts.⁵⁷

Consumers are also given the right to precise information according to their requirement of a specific product or service in return which they need to give proportional information, for the purpose of consuming correct information, to banks.⁵⁸

Italy under its legislative Decree No. 141/2010 on Credit Agreements for Consumers has enshrined provisions such as pre-contractual transparency duties and verification of the creditworthiness of consumers.⁵⁹ The Italian consolidated law on finance required measures to be taken to identify and manage conflict of interest which may arise with customers. The rules on pre-contractual duties impose obligations on lenders or intermediaries to make financial consumers aware of the terms of the proposed loan, or credit agreement, and its consistency with their needs with a specified format.⁶⁰ They are also entitled to the right of early termination if the supplier connected with the credit agreement breaches its terms (if such a right is exercised, the lender must reimburse the installments already repaid by the consumer, plus any additional charges).

The Ethiopian legal framework attempted to address disclosure and transparency in some ways. Bank Corporate Governance Directive No SBB/71/2019 Art.12 obliges the board and senior management of a bank to be transparent to depositors and others in accordance with the law. The directive requires banks to post basic organizational structure, including business line structure. The directive however neither defines what disclosure is nor lists out relevant elements to be disclosed to consumers in detail. A better-detailed requirement of disclosure seems dealt with under UAD No. FIS/02/2020. This directive under Part 8 specifically addresses consumer

⁵⁷ Mulugeta Bekele(n 38) p.26

⁵⁸ WB Group(n 19), p.10

⁵⁹ V. Senatore, Financial Consumers and Applicable Provisions a European and Italian Perspective [2017], Vol. 2 No. 1, *The International Review of Financial Consumers*, p.26

⁶⁰ T. Chen(n 10), p.237

awareness and disclosure issues. The directive requires customers to be adequately informed of their rights and responsibilities including mechanisms to verify appointed agents and redressal mechanisms.⁶¹ Furthermore, FIs have to ensure that an agent discloses to its customers, list of charges or fees applicable for each service payable to FI, certificate of agency, terms and conditions, risks and responsibilities of customers and service providers, transparency in pricing products and services, five transactions conducted by a customer through an online system and other peculiarities enshrined under Annex-I by FIs.

The NPSP makes it mandatory for PIIs to prepare clear and standard sample terms and conditions, in relation to electronic fund transfers and stored value cards, applicable to all its customers in a similar manner and make it available for their review and possible agreement.⁶² But the Proclamation doesn't define what basic terms and conditions should be rather obliged for PIIs like banks to submit to the NBE for approval before use. The Proclamation further stipulates that a directive may be issued by the NBE on basic terms and conditions to be applicable to contracting parties in the business of electronic fund transfers and stored value facilities. Accordingly, new directives that regulate PIIs like banks and payment system operators are issued by the NBE on 1st April 2020. The directive issued on PIIs is cognizant of customer protection, from the beginning of licensing under the provision that requires issuers attest under their policy and procedures transparency and disclosure issues.⁶³ The directives have specifically dedicated a single provision that deals with customer protection. Both directives rules that PIIs and operators to disclose issues such as the price for products and services, rights and responsibilities of users, terms and conditions of the use of PIs and viewing information of transaction in online system and issuance of receipt.⁶⁴

FCPD has also recognized for accurate, simple, clear and timely information about product features, risks, obligations, and other relevant terms to be provided to FCs and security

⁶¹ Use of Agents Directive, 2020, Directive No FIS/02/2020, Art.3 (This directive is about agent service provision and banks may use agents to deliver their product).

⁶² National Payment System Proclamation, Proclamation No. 718/ 2011, Federal Negarit Gazeta, 17th Year No. 84 of 2011, ADDIS ABABA, 2011 Art.19

⁶³ Licensing and Authorization of Payment Instrument Issuers Directive, 2020, Directive No, ONPS/01/2020, Art.4.6.h (This directive is applicable to payment instrument issuers including banks).

⁶⁴ Directive No. ONPS/01/2020 (n 56) Art.12 and Directive No. ONPS/02/2020 Art.18

providers.⁶⁵ The directive has incorporated very detailed and extensive matters in its ambit. It has dealt with issues such as form and manner of disclosure, publications, availability & display of product pricing, terms and conditions, key fact statements (KFS), contents of contractual documents' terms and condition, signing and provision of contract, periodic statements, notification of changes, payment receipts, and verbal explanation.

The directive has introduced for banks to provide FCs any information, KFS, contracts and notice with a regional language on top of Amharic and English language with plain expression and be displayed with minimum font size. Banks are also required to publish, display and make available, in suitable places for FCs to retrieve and keep it for future reference as well as provide copies, the standard terms and conditions including fees and annual percentage rate in relation to all financial product and services. FCs are given the right to have ample time to review the KFS and obtain a verbal explanation regarding financial products and services before signing any contract.⁶⁶ FCs have, on the other hand, a duty to provide sufficient information for the banks to identify the relevant financial product and services so that they could have KFS.

The directive has also provided for banks to disclose contents of contractual terms and conditions including consumer credit contracts, deposit account or stored value product, payment or funds transfer product.⁶⁷ They should specifically disclose, key features of financial product or service with consumers' benefits, rights, risks, responsibilities, fees & charges along with the basis of calculations & the total amount, details of any changes which may be made to any term of the contract & how information is transmitted, the manner data is collected, used & disclosed along with the method the data is secured, information as to how a complaint is made & contact detail for external dispute resolution services, minimum balance required, amount of credit, nature & amount of deductions before a loan is disbursed, number of repayment & date due along with their method of calculation, amount of interest with their annual rate & applicable default rate, and FCs' responsibilities regarding prudent use & safeguarding of necessary identifiers are *inter-alia*.⁶⁸

⁶⁵ Directive No. FCP/01/2020 Art.4.2

⁶⁶ Ibid Art.5.2.4.6

⁶⁷ Ibid Art.5.2

⁶⁸ Ibid

The directive, in addition, prohibits banks from entering into or to enforce contracts unless the contract is in writing or provided in a specified and verifiable electronic way acceptable by FCs as well as provide the final signed contract.⁶⁹

2.3.3. Responsible business conduct

This principle majorly relates to the fair treatment of consumers and the effort that Banks and agents should put on to further consumers' rights. As some points are attempted to be discussed under the first sub-section of this paper, other relevant issues are scrutinized here.

Banks and AAs are responsible, to work in the best interest of their customers and be responsible for upholding FCP as an objective. They also are responsible to assess the financial capabilities, situation, and needs of their customers depending on the nature of transaction and information primarily provided before agreeing to provide advice, products or services.⁷⁰ Moreover, banks have to be held responsible and accountable for the actions of their AAs. FI and AA staff should be properly trained and qualified on top of endeavoring to avoid conflicts of interest. To uphold consumers' interest sustainably, countries need to incorporate under their regulatory framework specific prohibitions of unfair practices with respect to credit card provisions, deposit accounts & credit products on issues such as bundling and tying, unfair penalty and fees, aggressive high-pressure sales practices among other things. Therefore, it is important that financial service providers⁷¹ to have sales policies and procedures that align with good practices and strongly and clearly emphasize ethics in sales, including the need for consumers to be duly informed and treated fairly by salespeople.⁷²

Australia under ASICA prohibits pyramid selling of financial products⁷³ and dealt with harassment and coercion issues.⁷⁴ The National Credit Code of the country required lenders to

⁶⁹ Ibid

⁷⁰ High-Level-Principles(n 13) Principle-6

⁷¹ According to FCPD Art 2(16), financial service provider means banks, insurers, microfinance institutions, Capital Goods Finance Companies, postal savings, money transfer institutions, or similar institution as specified by the NBE.

⁷² WB Group(n 19), p.37

⁷³ ASICA (n 30) S 12DK

⁷⁴ Ibid 12DJ

lend responsibly. Malaysia, on the other hand, required FSP to act honestly, fairly, and professionally having regard to the interests of financial consumers. FSPs' staff, representatives & agents are also required to carry out their duties with due care, skill, and diligence.⁷⁵

In the Ethiopian banking law, the prudential regulatory scheme has rules in relation to banking governance that may be relevant for FCP. Beyond such regulations, specific issues are discussed in FCP legal frameworks.

Under the NPSP the propriety of an agent is emphasized as the principal is obliged to discontinue the agency relation where the NBE is not satisfied with the fitness and propriety of the agent.⁷⁶ A directive that is issued following the enactment of NPSP also requires agents to conduct their business with proper and fair handling of users.⁷⁷ Moreover, the directive requires banks to assume full responsibility and liability for all actions and omissions of the agent under a contractual agreement, even though not included in the contract, with the agent.⁷⁸

FCPD lays down a general obligation for banks and their agents to consider FCs' objectives, needs, capacity & behaviors before providing any financial product, design, market, and distribution accordingly with a view of minimizing the risk of harm.⁷⁹ It elaborates that policies and strategies should uphold these obligations including steps taken to define types of FCs for whom financial product or service is intended, to identify potential risks and potential harm. It moreover obliges banks to craft written policies and procedures to determine whether a financial product provided to a specific FCs are likely to meet their financial objectives, needs, and capacity.⁸⁰ They should also take the necessary steps to verify the information on which they rely to assess FCs' creditworthiness.

In addition, banks are expected to close FCs' deposit account, where required to do so, and cancel any recurring payments while refrain from charging the deposit account with a new

⁷⁵ Fair Treatment of Financial Consumers of Malaysia, Art.G13.1

⁷⁶ National Payment System Proclamation No. 718/2011, Art.10(4)

⁷⁷ Directive No. FIS/02/2020, Art.16(2/d)

⁷⁸ Ibid Art 9, Annex-I & Art.16(1/c)

⁷⁹ Directive No. FCP/01/2020 Art.4.3

⁸⁰ Ibid Art.5.3

charge.⁸¹ The directive has set a particular provision for unfair credit practices that banks should abstain from as well. The directive has also provided extensive procedures and requirements for debt collection such as, the prohibition of any disclosure to third parties, requirement against harassment or engaging in any other unfair or abusive conduct towards FCs. Conducts that amounts to unfair or abusive acts are listed to include, communicating before or after working hour, public shaming, attending at a workplace for repayment, threatening to harm or seize property, making any misrepresentation in connection with debt regarding character, amount owned, legal rights and consequences. Banks are not only responsible for their own actions but also for the conduct of any party to whom the bank has sold a debt owing under a contract. In addition, banks are expected to structure a controlling mechanism and conduct appropriate training for third parties acting on their behalf.⁸²

Unauthorized and mistaken transaction issues are discussed in a broader sense along with liabilities under the directive. It primafaciely requires banks to disclose as to what situations amount to fraud, unauthorized or mistaken transactions, and consumers' obligations along with limitations for liabilities in such cases.⁸³ It further requires banks to have clear procedures to deal with security breaches and unauthorized transactions including mechanisms to reimburse or compensate FCs for losses. Banks, moreover, need to assist FCs to recover mistakenly transferred funds on top of being held liable for security breaches that resulted in losses. In addition, the directive seems to set issues of compensation in cases of loss for unauthorized transactions by segregating liability from consumer fraud and gross negligence. However, the directive doesn't require banks to compensate FCs but rather requires disclosure as to the fact that they are compensated.⁸⁴ BoDs are set to be held liable and responsible for the conduct of its staff, agents, and any person acting on its behalf to FCs.⁸⁵

⁸¹ Ibid Art.5.1

⁸² Ibid

⁸³ Ibid

⁸⁴ Ibid

⁸⁵ Ibid Art.6.1

2.4. Ex post Protection

Consumers are also given protections after they have entered into an agreement with banks and their agents. Such protections might relate to fraud, privacy, and dispute settlement issues.

2.4.1. Protection of Consumer Assets against Fraud and Misuse

Consumer accounts might be accessed by employees of banks, agents, and other fraudsters to use private information for dishonest purposes. The service provider is the entity that is actually providing the service to consumers and is ultimately responsible for ensuring transparent, fair, safe services and protects consumers' funds and personal information.⁸⁶ Relevant controlling and protection mechanisms should appropriately and with a high degree of certainty be implemented to protect consumers' deposits, savings, and other similar financial assets, including against internal or external frauds, misappropriations, or misuses.⁸⁷ Banks should design mechanisms that guard against fraud by staff and their agents encompassing fit and proper criteria, compliance with conflicts of interest, separation of functions, and procedure to notify on incidents timely.⁸⁸ Adequate and technologically upgraded safety mechanisms such as a trustworthy ID verification mechanism should be implemented in PIs compatible with risk levels of internet and mobile banking services. Also, in cases of unauthorized payments, banks and AAs have to quickly refund/compensate consumers for financial loss sustained unless it can be proved that the loss occurred was due to the negligence or fraudulent behavior of consumers.

Sound and prudent oversight and management on the part of Banks themselves as well as prudential regulation and supervision is a key safeguard that can prevent frauds. Hence, the licensing and/or registration of Banks and AAs procedure should be implemented to mitigate the risks of fraud by non-regulated/non-registered or non-supervised entities.⁸⁹ Moreover, Regulators and supervisors have to review reports prepared by internal and external auditors. In addition, Banks and payment service providers should be required to report periodically to the regulators or supervisors the measures they have put in place against fraud.

⁸⁶ Telecommunication Standardization Sector of ITU, *Commonly identified Consumer Protection themes for Digital Financial Services*, (2016), Focus Group Technical Report, P.2

⁸⁷ High-Level-Principle(n 13) principle-7

⁸⁸ Effective Approaches to Support the Implementation of the remaining G20/OECD(n 22) p.36

⁸⁹ Ibid p.32

Australia under the National Credit Code requires credit providers to be licensed.⁹⁰ Moreover, the Australian Payment Network's guideline has laid down fraud detection & customer authentication method.⁹¹ Zimbabwe under the FCP framework required regulated entities to have in place relevant information, control, and protection mechanisms to protect customers' financial assets against fraud, misappropriation, or other misuses.⁹² Italy has also issued Law no. 166/2005 that contains provisions in relation to payment card fraud prevention.⁹³

The Ethiopian Civil Code has required agreements to be free from fraud and treats them as Voidable contract if fraud exists. The banking business and national payment system Proclamations on the other hand require the registration and licensing of companies and individuals before engaging in banking and payment operation businesses which mitigates the risks of fraud by non-regulated/non-registered or non-supervised entities. Protection through criminal sanction could also be found under NPSP Article 35 and Computer Crime Proclamation in relation to fraudulent activities.⁹⁴ Corruption crime Proclamation also covers certain types of criminal activity such as illegal charging a small number of fees by bank employees or intentionally or negligently giving away an accessing password to third parties to gain benefits.⁹⁵

A Directive that regulates the requirements for licensing and renewal of banking business speaks of that banks have to put in place minimum comprehensive policies, procedural manuals, programs, and guidelines for detection and prevention of criminal activities, including frauds.⁹⁶ Fraud is defined as an act or omission by shareholders, directors, employees, and customers

⁹⁰ T. Chen (n 10),p.17

⁹¹ Australian Payments Network, *Australian Payments Fraud*, 2017, p.4

⁹² Consumer Protection framework, 2017, Directive No. 1-2917/BSD, Reserve Bank of Zimbabwe, Art.3.5

⁹³ Payment Instrument fraud prevention, *Department of the Treasury* [website],www.dt.mef.gov.it/enattivita_istituzionali/antifrode_mezzi_pagamento/, accessed May, 2020.

⁹⁴ Computer Crime Proclamation, Proclamation No. 958/2016, Federal Negarit Gazeta, 22nd Year No. 83 of 2016, ADDIS ABABA, 2016 Art.10 specifically deal with computer related fraud.

⁹⁵ Corruption Crimes Proclamation, Proclamation No. 881/2015, Federal Negarit Gazeta, 21st Year No. 36 of 2015, ADDIS ABABA, 2015 Art.13(6)

⁹⁶ Requirements for Licensing and Renewal of Banking Business Directive, 2013, Directive No SBB/56/2013, NBE, Art.6.1.13

committed with the intention of gaining dishonest or unlawful advantages under FMD.⁹⁷ The Directive requires banks to have well-defined fraud monitoring and control policies and procedures for fraud detection, mitigation, and reporting. It further obliges banks to ensure the organizational structures and systems to be designed to facilitate communication on actual or attempted fraud to notify BoDs, management members, and other concerned staff. Besides, banks should train their employees & stakeholders on top of maintaining detailed records of frauds.⁹⁸ However, the directive hasn't set minimum standards for banks to consider when they craft relevant policies.

LAPIID and LAPSO hold an objective of maintaining the safety and efficiency of the NPS along with guaranteeing the effective protection of customers. The Directives prohibits persons to engage in the payment business and operating system without a proper license. Such entry regulation by the NBE is the first step that mitigates the risks of fraud by non-regulated/licensed entities. LAPIID is observant of the fulfillment of certain expected requirements including procedures that should be taken to safeguard funds of users of the PI before a license is granted.⁹⁹ Not only does the directive set an entry requirement but also regulate operational activities that intend to keep the safety of users. Parallel to ITU requirements, the directives require banks particularly to set up fraud monitoring tools with well-defined rules to ensure that customers' accounts are well protected.¹⁰⁰ Both directives oblige banks and AAs to report to the NBE any suspected or confirmed cases of fraud, major security breaches, or any material service interruption. LAPIID also obliges banks and AAs to follow KYC and CDD procedures laid down under the law.

These legal frameworks seem incapable of detecting and protecting different kinds of frauds. Ato Zelalem Fikadu who is deputy director of corruption crimes prosecution directorate, affirms that frauds on Banks are increasing at an alarming rate and there are more than forty cases under prosecution. He further informs that in the past two years more than 200 million birr were lost

⁹⁷ Fraud Monitoring Directive, 2014, Directive No. SBB/59/2014, NBE, Art.2.5

⁹⁸ Ibid Art.4.3, 4.4 & 4.5

⁹⁹ Directive No. ONPS/01/2020 Art.4.6.d.ix

¹⁰⁰ Directive NO. ONPS/02/2020 Art.8.3.c

because of fraudulent acts by perpetrators from both inside and outside of banks.¹⁰¹ He also reasons out that the requirement for fraud monitoring, such as ID requirement is not sufficient and the reluctance by banks to out-compete competitors made the problem worst. Ato Efreem Baraki, who is a senior legal expert in NBE, argues that FMD is insufficient to address current and future challenges as the directive is not comprehensive enough and is an outdated one. He poses as an example of a lack of standard of ID to be availed to FSP to obtain financial services. He further claims that the FCPD should have incorporated fraud monitoring and protection issue with sufficient study on the ground.¹⁰²

2.4.2. Protection of Consumer Data and Privacy

Banks and AAs will definitely collect personal information along with financial information from consumers to deliver appropriate services. This information should be protected through appropriate control and protection mechanisms.¹⁰³ Mechanisms should define the purposes for which the data may be collected, processed, held, used and disclosed whether electronic or paper-based data. It should also acknowledge the rights of consumers to be informed about data-sharing, to access data and to obtain the prompt correction and/or deletion of inaccurate, or unlawfully collected or processed data.¹⁰⁴ What constitutes a lawful collection of data differ across jurisdictions and among international guidelines and principles. “What constitutes informed consent can also pose challenges, particularly where adhesion contracts are common, or in the era of digital financial services, big data, and alternative credit scoring models”.¹⁰⁵ Nonetheless, it could be defined and limited to the purpose for which data are collected and banks should be permitted to use the data only for these purposes. For instance, the purpose might be for assessing data subjects, financial status & creditworthiness for credit purposes.¹⁰⁶ Moreover, data should not be sold for marketing purposes without prior authorization by the consumer.

¹⁰¹ Interview with Ato Zelalem Fikadu, vice director of corruption Crime Prosecution Directorate, FAG, Addis Ababa,(Sep.7, 2020)

¹⁰² Interview with Ato Efreem Baraki, Senior Legal Expert, NBE, Addis Ababa(Sep.7, 2020)

¹⁰³ High-Level-Principles(n 13) Principle-7

¹⁰⁴ Ibid

¹⁰⁵ WB Group(n 19), p.46

¹⁰⁶ Effective Approaches to Support the Implementation of the remaining G20/OECD(n 22) p.47

Security, in addition, should be in place to protect against unauthorized access to consumers' information and any threats or hazards to data security or integrity.¹⁰⁷ The protection might be against accidental loss, alteration, unauthorized or accidental access, destruction, use, modification or disclosure, in accordance with the guidelines set by the relevant authority.¹⁰⁸ Relevant policies and procedures should be put in place to ensure the privacy of consumers and protect their data. These frameworks should consider consumer waivers on privacy rights so that banks and their agents do not take advantage of consumer behavioral biases and ultimately should be given for consumers to choose to share their data or not. "For example, electronic consumer agreements may come with a waiver marked by default that allows the sharing of consumer data with third parties for marketing purposes. Unless the consumer rejects the default waiver, the information will be shared. This type of practice should not be allowed; rather, active consent by the consumer should be required to be obtained".¹⁰⁹ It is quite vital for the framework to keep banks liable for protecting client data regardless of the number and types of third parties involved in the design, sale, and delivery of services.¹¹⁰

Italy has enacted legislative decree no. 101/2018 to regulate general data protection that includes banks and their agents, in data collection, processing, and use.¹¹¹ The Italian Data Protection Authority has taken measures on the banking institution called UniCredit for violation of the Italian personal data protection code, for instance.¹¹²

Australia has also enacted Treasury Laws Amendment (Consumer Data Right) Act 2019 which sets out the legislative framework for the consumer data rights regime and The Competition and Consumer (Consumer Data Right) Rules 2020 (CDR Banking Rules) which will enable consumers to instruct their bank to provide access to data relating to their credit and debit cards,

¹⁰⁷ WB Group(n 19), p.47

¹⁰⁸ Effective Approaches to Support the Implementation of the remaining G20/OECD(n 22) p.46

¹⁰⁹ WB Group(n 19), p.49

¹¹⁰ Ibid

¹¹¹ R. Panetta, "Analysis: Italy's GDPR Implementation Law," International Association of Privacy Professionals, [website], 2018, <https://iapp.org/news/a/analysis-italys-gdpr-implementation-law/> accessed May 11, 2020

¹¹² 'Italian Grante Fines Bank 600, 000 Euros for Pre-GDPR Data Breach', *Hunton Andrews Kurth*, www.huntonprivacyblog.com/2020/07/01/italian-grante-fines-Bank-600000-euros-for-Pre-gdpr-data-breach/, accessed August 9, 2020

deposit and transaction accounts, as well as data relating to their mortgages and personal loans.¹¹³

Under the constitution of Ethiopia, everyone has the right to the inviolability of his notes and correspondence including postal letters, and communications made by means of telephone, telecommunication and electronic devices.¹¹⁴ In addition to this constitutional provision, the rules regarding personality rights incorporated under the civil code such as the right to inviolability of correspondence may have an implication on the right to privacy.¹¹⁵ As banks also have a principal-agent relationship with their customers, the requirement to keep customers' privacy is also governed by rules of agency. Agents, in this case, banks (including their agents), could not use any information obtained in the performance of their duties as agents to the detriment of the principal (bank customers).¹¹⁶ The Banking Business Proclamation No. 592/2008 and the amendment Proclamation No. 1159/2019 don't possess many points concerning data and privacy protection. The obligation to keep information confidential mostly is laid on NBE.¹¹⁷ The Proclamation also rules the possibility of establishing, operating and apportioning costs of credit information systems among banks.¹¹⁸ Where NBE collects any information from banks to fulfill its obligation, it cannot disclose to any persons except provided under the law. The NPSP indirectly requires for the privacy of consumers' data to be kept intact through imposing a criminal sanction that violates confidentiality other than required by court, law and legally authorized person.¹¹⁹

Bank corporate governance directive rules that BoDs should review and approve code of conduct on confidentiality of third parties' information and maintain the appropriate level of

¹¹³ *2020 Australian Privacy Outlook*, (2020), PwC legal, P.8

¹¹⁴ Ethiopian Constitution Art.26

¹¹⁵ Ethiopian Civil Code Art.31

¹¹⁶ *Ibid* Art.2209(2)

¹¹⁷ Banking Proclamation No.592/2008 Art.28(4) &29(5)

¹¹⁸ *Ibid* Art.57

¹¹⁹ National Payment System Proclamation No.718/2011 Art.35

confidentiality at all times with respect to information or data pertaining to the bank's customers.¹²⁰

UAD requires banks to enter into a contract that obliges agents to keep confidentiality of customer and user information.¹²¹ UAD and LAPIID, moreover require banks to present customer protection policies and procedures which address the obligation of keeping secrecy, confidentiality, and disclosure of customers' information.¹²² LAPIID rules for all transactions to have single-factor authentication, like user-created personal identification number, and two-factor authentication shall be applied for transactions that amount greater than Ethiopian Birr 1,000.¹²³ Banks and AAs are also responsible to know their customer and follow CDD procedures such as name, date of birth, residential/business address, telephone number, photo, and identification card of the account holder in the system. Banks are also responsible to keep cyber security breach & data loss information and submit the report to the NBE in hard and soft copies along with a covering letter signed by the Chief Executive Officer or his delegate within seven calendar days after the end of every quarter.¹²⁴

LAPSOD holds as one objective to maintain the safety and efficiency of the NPS and protect customers' interests.¹²⁵ The directive requires operators to present to the NBE the manner in which data security, integrity, and confidentiality are ensured to be licensed. Payment system operators are obliged to disclose to their customers the confidentiality of customers' information.¹²⁶

FCPD generally requires banks to keep FCs data secure and confidential and only use and disclose for legitimate purposes agreed by FCs or otherwise permitted by law.¹²⁷ In the first hand, the directive specifically required banks to craft and apply policies and procedures to

¹²⁰ Directive No. SBB/72/2019 Art.9 and Annex-II and Art.10.4.20

¹²¹ Directive No. FIS/02/2020, Art.9 and Annex-II

¹²² Directive No. FIS/02/2020 Art.4(2) and Annex-I and Directive No. ONPS/01/2020 Art.4.6.h

¹²³ Directive No. ONPS/01/2020 Art.4.6.C.vi

¹²⁴ Directive No. ONPS/01/2020 Art.13.2

¹²⁵ Directive No. ONPS/02/2020 preamble

¹²⁶ Ibid Art.18.2.d

¹²⁷ Directive No. FCP/01/2020 Art.4.4

ensure confidentiality and security of FCs' data. They should inform and make available their policies or procedures to FCs and post on their website, that depicts protection of data, collection, use & disclosure as well as particular data that will be collected. It further regulates the manner of collection, use of data, access, correction of data, and take necessary steps to keep data confidential. Banks should collect data using lawful and fair means and use them for the original purpose of collection or with explicit and informed consent from consumers. Consumers are allowed to access their data without any fees unless it is prohibited by law or the cost is prohibitively high.¹²⁸ Banks should also review FCs' claims that data retained are inaccurate or incomplete and correct accordingly as well as advise third parties who have an interest in the decision of correction.

2.4.3. Dispute Resolution

G20 high-level-principles on FCP sets under principle 9 that countries should ensure consumers have access to adequate complaints handling and redress mechanisms that are accessible, affordable, independent, fair, accountable, timely, and efficient. Such mechanisms should not impose unreasonable costs, delays, or burdens on consumers. In accordance with the above, banks should have in place mechanisms for complaint handling and redresses. Consumers are unlikely to initiate and go through a legal hurdle when subjected to unfair treatment due to insufficient resources and/or understanding. Hence, recourse to an independent redress process should be available to address complaints that are not efficiently resolved via the FSPs' internal dispute resolution mechanisms.¹²⁹ Governments should also provide collective redress mechanisms in order to reduce the demand for individual proceedings.¹³⁰

Australia has obliged banks to avail of an internal dispute resolution facility and resolve complaints within 45 days.¹³¹ Where the internal mechanism fails to address complaints, external dispute mechanisms are availed through the form of independent Ombudsman, membership of

¹²⁸ Ibid Art.5.4

¹²⁹ High-Level-Principles(n 13) Principle-9

¹³⁰ 'Resolution on G20 Action on Financial Consumer Protection,' (2011), Trans-Atlantic Consumer Dialogue, Doc. No. Finance 02-11, p.4

¹³¹ T. Chen(n 10), p.21

which is a legal requirement. While ombudsmen are free to be accessed by consumers, and while banks are bound by the decisions of these ombudsmen, consumers are not.

Italy has also required banks to take complaints and resolve the grievance within 30 days of receiving the complaint.¹³² Where complaints aren't handled by an internal mechanism, consumers can contact the Banking and Financial Ombudsman which is an out-of-court settlement scheme. The Ombudsman's decisions are not legal judgments and aren't legally binding however if banks don't comply with a decision, its non-compliance is made public.

2.4.3.1. Internal mechanisms

The internal mechanism of dispute resolution refers to complaints handling by banks and AAs themselves. Banks are required to have written policies and procedures for the proper handling and resolution of consumer complaints. They are specifically required to assign someone responsible for the operations of the complaints handling function, but the BoD is ultimately responsible for the effective implementation of the policies.¹³³ They need to make sure their complaint handling system is accessible, affordable, independent, fair, accountable, timely, and efficient. Independence might be interpreted to mean the complaints handling function to be independent of the unit the complaint is brought against. Accessibility refers to considering geographical locations as well as vulnerable groups according to their situations. Hence, banks and AAs should make sure that illiterate consumers, speech and hearing impaired consumers can access tailored channels to submit and resolve their complaints. As banks use alternative distribution channels to deliver their product and service, such channels should be considered to play a role in internal complaints handling.¹³⁴

Legal provisions that govern the banking industry have incorporated provisions that oblige banks to avail internal redress system to their consumers. Banking Proclamations, however, doesn't possess a single provision that deals with the subject matter except an authority given to the NBE to determine the minimum conditions for consumer protection through directives. The NPSP however contains certain provisions that discuss internal complaint handling. Under the

¹³² Submitting Complaints, *Banca D'Italia* [website], <https://www.bancaditalia.it/servizi-cittadino/servizi/esposti/index.html?com.dotmarketing.htmlpage.language=1>, accessed August 10, 2020.

¹³³ WB Group(n 19), p.55

¹³⁴ Ibid

Proclamation operators, participants and PIIs are expected to establish internal complaint handling procedures in relation to electronic fund transfers and stored value facilities and advise users on the procedures for lodging complaints.¹³⁵ The NBE is authorized to issue a directive that rules the procedures for investigating and handling complaints in relation to electronic fund transfers and stored value facilities according to the Proclamation. It further rules that any operator, participant or PIIs have to resolve complaints or disputes with its customers in relation to the processing of electronic fund transfers or stored value cards promptly through its internally established systems. Furthermore, such persons may not require their customers to present their complaints to any other party to the shared system or to have those complaints or disputes investigated by any other party to the shared system.¹³⁶ Directives issued following this Proclamation have internal complaints handling provisions that are worth discussing. UAD embodied helpful provisions concerning complaints handling and redress. Banks are obliged to present to NBE a document that contains customer protection policy and procedure that sets a reasonable timeframe to deal with customer complaints which in any case should not be more than thirty working days from the date of reporting or lodging the complaint.¹³⁷ The directive has also required banks to implement measures that ensure customers to be adequately informed of their rights and responsibilities including dispute resolution and redressal mechanisms.¹³⁸ The provision further tries to elaborate mechanisms that ensure customers' rights by obliging banks to provide customer care telephone numbers for lodging complaints by its customers and ensure the complaints are resolved within seven business days from the date of reporting and lodging the complaint with the FI. They are, moreover, expected to record all customer complaints and how such complaints are redressed and report to the NBE.¹³⁹

LAPID obliges banks and their agents to put in place a mechanism for customer support, complaint handling and dispute management with the necessary resources that includes at least an extended hours longer than the normal working hours.¹⁴⁰ It further requires a specific

¹³⁵ National Payment System Proclamation No.718/2011 Art.20

¹³⁶ Ibid Art.22(4)

¹³⁷ Directive No. FIS/02/2020, Art.9 and Annex-II

¹³⁸ Ibid Art.22

¹³⁹ Ibid Art.22(1) & Art.25(2)

¹⁴⁰ Directive No. ONPS/01/2020 Art.12

reference number to be assigned to the complaint and the complaint handling should be free of any charge to the complainant as well as be addressed within a maximum of three working days with availing the right to appeal to a higher-level officer. The directive also allows for complaints to be made in person, through writing, phone calls or any other traceable means and obliges banks and AAs to update and notify pertinent information like address, complaint reporting and contact details on its website, its offices or branches (where applicable) and agent premises. Besides, it entails banks to send a detailed explanation of the dispute and all related documents to NBE where a dispute arises among parties. This sub-provision particularly lacks clarity as the directive doesn't define who parties are and what exactly means by the term "among". It is set under article 12 of customer protection provision in the directive but seems to employ the exact terminology from article 31(1) of NPSP that mandatorily requires for mediation to take place to solve disputes. The sub-provision is not requiring a mere complaints report that should be brought to the NBE as it already has dealt with under article 13 for banks to keep a record and submit to the NBE. The exact terminologies transplanted from article 31(1) of NPSP to the directive seem to suggest that customers are among those articulated as "parties" hence, obliged to solve their matter through mediation. However, article 2(16) (a) of the NPSP envisaged parties that involve in the NPS to include operators, participants, issuers of PIs and any third party acting on behalf of them, either as an agent or by way of outsourcing agreements, whether entirely or partially operating in the country. However, the consumer is not listed as one of the parties involved in the NPS. Hence, it would be incorrect to mandatorily require FCs to participate in mediation to solve disputes as it is not a pro-consumer line of interpretation and NBE should resolve the ambiguity with clear terms.

LAPSOD demands banks to lay down a dedicated structure as well as written policies and procedures regarding consumer complaints handling.¹⁴¹ It deems operators as a first and primary instance for handling complaints with regard to the service of the payment system, unlike UAD. For this reason, it requires banks to ensure operators have the appropriate capacity to handle complaints and avail the necessary resources accordingly. Moreover, users should be provided with a free, easily accessible, efficient, timely, and impartial complaint handling process.

¹⁴¹ Directive No. ONPS/02/2020 Art.19

FCPD provides for banks to organize an internal complaint system that is accessible, transparent, effective, prompt, and free for FCs. Banks are duty-bound to make aware FCs for any available external dispute resolution mechanisms including that provided by NBE and court of law.¹⁴² Their policies and procedures should take into regard this concept so that consumers enjoy fair, accessible, transparent, free, and efficient redresses. Banks are also required to train complaint handling staffs, as long as feasible secure their independence, avail appropriate resources, and assist FCs in complaint submission.¹⁴³ Here the issue of independence should not have been compromised by feasibility but the law should have obliged banks to ensure their independence from the instance. The directive, in addition, requires banks to establish a compliant handling unit at the head office, accept complaints presented in any regional language & through a variety of mediums and respond to complaints within 10 business days through the same mediums used to submit complaints by the FC. BoDs are required to equip the unit with adequate resources such as office, human resource, telephone, personal computer fax, and the likes.¹⁴⁴

Once a complaint has been made, the bank has to acknowledge to that effect and give a unique reference number as well as investigate the complaint and inform the complainant the outcome with the reason or proposed settlement within 10 business days of receiving, unless lesser days are prescribed by other directives, along with contact information for available dispute resolution services.¹⁴⁵ Banks are also required to provide to their board and NBE on the volume, nature & extent complaints are resolved along with the root causes and relevant issues identified.

2.4.3.2. External Mechanisms

This mechanism generally refers to a structure where consumers resort beyond the internal complaint handling system. It actually refers to both ADR¹⁴⁶ methods and the court system that may be used by the consumers. But the primary objective of the external mechanism is not to present every opportunity to the customer rather to avail a system that protects customers' interests better. The court system is the traditional and the last resort that could be helpful for all,

¹⁴² Directive No. FCP/01/2020 Art.4.5

¹⁴³ Ibid Art.5.5.2

¹⁴⁴ Ibid Art.6.1.2

¹⁴⁵ Ibid Art.5.5.3

¹⁴⁶ ADR is defined under the Black's Law Dictionary as procedures for settling disputes by means other than litigation. It includes arbitration, mediation, mini-trials and other kinds.

not only for consumers, who are looking for a solution. It is evident that in many countries the judicial system does not work properly for consumers, due to being too burdensome, expensive, unreliable, intimidating, or not timely. Hence, for consumers to maximize and protect their interests, they should be given the right to appeal, within a reasonable timeframe, to an out-of-court ADR mechanism.¹⁴⁷ A report on the work to support the implementation of the G20 high-level-principles on FCP urges countries to consider a range of possible models such as an independent ombudsman, ADR service by regulators and industry associations when establishing an ADR mechanism.¹⁴⁸ The authorized body to entertain the case should, have powers to issue a binding decision on banks and AAs (not binding on the consumers), be independent and impartial from both parties, be free of charge to the consumer, be accessible to consumers, be staffed by professionals trained in the subject they deal with and has an oversight structure that ensures efficient operations. Binding also means that banks and their agents won't be allowed to appeal the decisions given by an ADR scheme as they could bring consumers through costly and lengthy processes in the court system, where consumers will be highly disadvantaged. On the other hand, consumers should not be compelled to use arbitration and forgo their right to go to court. Independence might be guaranteed through equal representation in the governing body of the relevant ADR mechanism from the regulatory office, banks and consumers. ADR mechanisms should be accessible through developing strategies that are user friendly and sensitive for multiple languages for communications with consumers.¹⁴⁹

There is no much to study in relation to ADR opportunities for consumers in the Ethiopian banking sector. The Banking Proclamations are completely silent on the possibility of resorting to an ADR mechanism where the internal compliant procedure has failed for any reason. The NPSP has also kept silent concerning the dispute that isn't solved by the internal complaint handling system. Article 31 of the Proclamation could not be raised as a system that is presented

¹⁴⁷ WB Group(n 19), p.50

¹⁴⁸ G20/OECD Task Force on Financial Consumer Protection, *Update Report on the Work to Support the Implementation of the G20 High-Level-Principles on Financial Consumer Protection*, (September 2013), p.21

¹⁴⁹ WB Group(n 19), p.52

for consumers to settle their disagreement with banks and their agents because the Proclamation talks about parties involved in the NPS and consumers cannot be deemed as such parties.¹⁵⁰

According to FCPD, FCs are capable of submitting their complaint to the NBE where banks have failed to give a due response or where they aren't satisfied with the decision. The NBE, afterward, may investigate and give a binding decision on banks, not on consumers, within 10 business days from the day it received the complaint unless a lesser day is prescribed by other directives.¹⁵¹

2.5. Other protections

The financial consumer protection system should also consider encompassing other approaches as they are crucial for the proper functioning of the system. Countries should closely look at the reality of their societies and banks to structure a system that protects FCs in addition to *ex-ante* and *ex-post* protection analyzed in the aforementioned sections. Consumers, for instance, are more illiterate in financial matters and when seen in comparison against banks and AAs they are more prone to harm. Competition is the other important issue that countries should consider implementing on banks to benefit consumers with quality products, reduced price as well as protect the spectrums of rights of consumers. Moreover, prudential regulation will make the financial system more effective in protecting consumers' interests. Ethiopia has implemented a number of laws to regulate banks prudently to have a sound financial system.

2.5.1. Deposit Insurance Fund

A deposit insurance scheme can also be used to guarantee deposits and boost consumers' confidence though it is insufficient for today's challenges in the financial industries.¹⁵² Ethiopia has acknowledged the need for the insurance system by giving the right to issue a regulation on

¹⁵⁰ Ashenafi Lemecha, Consumers and Third Parties Protection under the National Payment System Proclamation, LLM diss., Ethiopia, Addis Ababa University, 2017, p.34

¹⁵¹ Directive No. FCP/01/2020 Art.5.5.4

¹⁵² T. Chen(n 10), p.10

the establishment and management of DIF.¹⁵³ Currently, the government is underway to promulgate a regulation that establishes Ethiopian DIF.¹⁵⁴

2.5.2. Financial Education and Awareness

Consumers are also allotted with financial education and awareness that countries should endeavor to incorporate under their legal framework. It should be known clearly that there is no one-size-fits-all approach when it comes to designing consumer protection and financial literacy policy. Financial literacy is low among the poor, especially in developing countries. Consumers have a lack of awareness of the financial product or services due to a number of reasons such as illiteracy and inexperience on the part of borrowers, and differences in language.¹⁵⁵ Ethiopia as a developing nation has quite a number of illiterate populations.¹⁵⁶ Even the literate populations don't mean that they are financially literate group of people. Hence, the financial literate population drops majorly to a significant number. That is why it is particularly important to provide financial education to consumers and especially to vulnerable groups. Though banks and AAs have a prominent role in promoting financial education and awareness, all relevant stakeholders should participate to provide clear information on consumer protection, rights and responsibilities for consumers to be easily accessible.¹⁵⁷ “Appropriate mechanisms should be developed to help existing and future consumers develop the knowledge, skills, and confidence to properly understand risks, including financial risks and opportunities, make informed choices, know where to go for assistance, and take effective action to improve their own financial well-being”.¹⁵⁸

Ethiopia has incorporated relevant strategies to boost financial capability under NFIS. The strategy expects that a better understanding of risk, rewards, rights, obligations, and management of one's financial life will be boosted through financial capability. With that objective, the

¹⁵³ The National Bank of Ethiopia Establishment (as Amended) Proclamation, the Proclamation No. 591/ 2008, Federal Negarit Gazeta, 14th Year No.50 of 2008, ADDIS ABABA, 2008,Art.25

¹⁵⁴ Gelila Samuel, 'Central Bank Introduces Deposit Protection Fund,' *Addis Fortune*, (Addis Ababa, July 25, 2020), <https://addisfortune.news/central-bank-introduces-deposit-protection-fund/>, accessed, August 24, 2020.

¹⁵⁵ Ashenafi Lemecha (n 150) p.iii

¹⁵⁶ According to www.macrotrends.net Ethiopia's literacy rate is 51.77% by 2017

¹⁵⁷ High-Level-Principles(n 13) Principle-5

¹⁵⁸ Ibid

strategy envisioned to study the current capability and develop a unified, national financial capability strategy that addresses each priority segment accordingly. However, the country has not come up with the promised national financial capability strategy document to the researcher's knowledge.

Banks and AAs are not, beyond disclosure and transparency requirements discussed in the aforementioned subsection, required or given specific parts to play in creating financial awareness and education.

2.5.3. Competition

Competition avails immense financial products and services choice with a reduced price and greater quality.¹⁵⁹ According to the G20 high-level-principle for FCP, competitive markets should be promoted in order to provide consumers with a greater choice amongst financial services and create competitive pressure on providers to offer competitive products, enhance innovation and maintain high service quality. Consumers should be able to search, compare and where appropriate, switch between products and providers easily and at reasonable and disclosed costs.¹⁶⁰ However, as competition creates winners & losers and even complicates the relationship between banks and customers as services and fee structures become more complex and more sophisticated products proliferate, it is suggested a sector-specific approach since the banking sector has its own special needs and concerns.¹⁶¹

The subject of competition in the Ethiopian banking sector is a broad question that has to be studied separately from this research. However, it could be mentioned that TCCPP has not ousted out the banking sector from its ambit of governance. The Proclamation along with the newly enacted Banking Business Amendment Proclamation No. 1159/2019 regulates advertisements that are anti-competitive, mergers, anti-competitive & concerted practices that are not allowed,¹⁶² and abuses of dominance.¹⁶³ The existence of the minimum ceiling on deposit

¹⁵⁹ Joseph Yam, 'Consumer protection and the banking industry', [2001], p.2

¹⁶⁰ High-Level Principles(n 12) principle 10

¹⁶¹ Joseph Yam(n 159)

¹⁶² Trade competition and consumer protection Proclamation No.813/2013 Art.7

¹⁶³ Ibid Art.5

interest rates may affect rate adjustments according to market demands.¹⁶⁴ Moreover, the dominant position of the government banks may have an effect in reducing competition as well.¹⁶⁵

2.6. Problems associated with FCP legal framework

Ethiopia has endeavored to avail comprehensive protection for FCs. The FCPD along with other relevant legislation of the country show how they have addressed and covered important aspects of FCPs suggested by G20 high-level-principles and WB's best practices guideline. Though FCP legislative framework might be appreciated from different perspectives, there are some problems in the framework that needs further improvements.

The country has attempted to set as to who FCs are in different directives. However, it is quite difficult to treat the references as sufficient definitions as only the term customer is duplicated rather than give what it really means and whom it encompasses. On one hand, LAPSOD specifically availed protection for juridical and physical persons while FCPD kept silent as to whether juridical persons are included. However, as the FCPD defined the terminology to refer to all customers of FSPs it may be interpreted in such a way to include juridical persons. But, the concept of availing FCP is to assist consumers in a real sense, not to business personnel who want to do business further and even have the power to stand FSPs. The TCCPP on the other hand defined consumers to encompass only physical persons while FCPD kept silent as to whether juridical persons are included in clear terms.¹⁶⁶ Even interpreting to include all juridical persons misses the real sense of consumer and the primary reason to protect FCs.

Moreover, FCPD regards standard form contract as unfair where it is different from the one that is stipulated to protect the FSPs legitimate interest. But it is quite questionable as to whether this protects FCs' legitimate interest as it talks about FSPs. Though it may be referring for FSPs not

¹⁶⁴ Abay Yimer, S., *Financial market development, policy and regulation: the international experience and Ethiopia's need for further reform*, PhD diss., Amsterdam, University of Amsterdam, 2011, p.5

¹⁶⁵ Ibid

¹⁶⁶ Ato Efreem Baraki, who is senior legal expert in NBE share this view, in an interview conducted, as the definition incorporated under the FCPD didn't follow the country's legal framework on consumer protection. The expert further affirms that this gap is due to the lack of sufficient study on the subject matter from the beginning.

to benefit through contracts beyond their legitimate interests, it shouldn't be left for interpretation rather it should have been set in clear terms.

Besides; the FCPD has referred to general terminologies without giving a baseline that may be used for interpretation. It specifically obliges for banks not to impose unreasonable administrative costs without providing as to what amounts to unreasonable administrative cost which this opens a room for interpretation.

The other important point the legal framework should have incorporated is the issues of sales practices in specific rather than require in a general form. Issues such as bundling and tying, aggressive high-pressure sales practices, and pyramid selling are *inter-alia*. For instance, pyramid selling issue is addressed in Australian ASIC and Ethiopian TCCPP. The Ethiopian legal framework hasn't also covered the issue of conflict of interest and what amounts and what should be done except for the general requirement for policies to be presented to NBE.

In Addition, the country is facing a clear threat as fraud is increasing in the financial sector as confirmed by Ato Zelalem Fekadu. The insufficiency of the legal framework is associated with this problem.

The other vital point that the FCPD should have cognizant is the obligation of active consent in electronic transactions as it may have a detrimental effect. In a sense, unless the consumer rejects the default waiver, the information given by consumers will be shared. This type of practice should have not been allowed, rather, active consent by the consumer should rather be required to be obtained.

Another major gap associated with the legal framework is the issue of external dispute resolution mechanisms. FCPD seems to give the power for NBE to see disputes between FC & FSP and render a binding decision on FSP. But this kind of status the NBE has isn't clear from a legal point of view. The directive seems to give the power to adjudicate complaints which banking and NPS Proclamations haven't done so. NBE, according to the directive, is empowered to see facts & laws and entertain the dispute between FC and FSP. Banking Proclamation, however, required NBE to only issue a minimum requirement for FCP¹⁶⁷ without specifically giving the

¹⁶⁷ Banking (Amendment) Business Proclamation 1159/2019 Art.57

power to receive, review, and render a binding decision. The Power of adjudication, the power to give injunctive orders, the power to order compensation, the structure of the tribunal taking in regard the federal structure, the independence of the judges & the tribunal, issues of appeal and collective actions are not dealt with in any Proclamations in relation to FCP at all. The FCPD couldn't deal with these issues unless the Proclamation has specifically structured the framework. This is a clear transgression of judicial power and the appeal right of persons, hence this needs to be clarified.

Neither do we find such power in NPSP. Article 31 of NPSP and Article 12(5/j) of LAPIID should be clear that they are not in any way giving power to the NBE to adjudicate disputes between FC and FSP. LAPIID entails banks to send a detailed explanation of the dispute and all related documents to NBE where a dispute arises among parties.¹⁶⁸ This sub-provision particularly lacks clarity as the directive doesn't define who parties are and what exactly means by the term "among". It is set under Article 12 of the customer protection provision of the Directive but seems to employ the exact terminology from article 31(1) of NPSP that mandatorily requires for mediation to take place to solve disputes. The sub-provision is not requiring a mere complaints report that should be brought to the NBE as it already has dealt under article 13 for banks to keep a record and submit to the NBE the number of reported customers' complaints. The exact terminologies transplanted from article 31(1) of NPSP to the directive seem to suggest that customers are among those articulated as "parties" hence, obliged to solve their matter through mediation. This, however, is not a pro-consumer line of interpretation and NBE should resolve the ambiguity with clear terms. Besides, as the newly enacted banking Proclamation only gave the power to the NBE to come up with a minimum condition for consumer protection, it is questionable as to whether the adjudicative power of TCCPA is repealed and its power transferred to NBE. The draft electronic transaction Proclamation Art.34 is not helpful either though consumers could lodge a complaint to MoIT in relation to electronic transactions conducted by banks as the remedies are not clearly provided.

¹⁶⁸ Directive No. ONPS/01/2020 Art.12(5/J)

Lastly, FC education and awareness are important to further the rights of FCP. However, the country has not come up with the promised national financial capability strategy document to the researcher's knowledge.¹⁶⁹

¹⁶⁹ Interview with Ato Efreem Baraki,(n 102)

Chapter Three

The Ethiopian FCP Institutional Framework and Problems associated with

3.1. Introduction

Countries structured their own institutional framework that protects FCs according to their own context. The main point is not adhering to a particular kind of institutional framework but rather to give due emphasis to particular aspects for effective regulatory, supervisory, and enforcement mechanisms. This doesn't mean that there are no suggested kinds of institutional frameworks that enforce the FCP legal regime. The classical regulatory and supervisory frameworks adopted by oversight bodies play a role in consumer protections though they have a primary objective of ensuring financial stability.¹⁷⁰ Nonetheless, an additional and strengthened as well as dedicated and proportionate framework that protects FCP is considered vital to address recent and structural developments. Oversight bodies with the necessary authority and resources to carry out their mission to enforce the FCP legal framework should be structured in a way that takes into regard the international as well as national financial situations.¹⁷¹ The regulatory framework, in addition, is expected to be sensitive and proportionate to the variety of financial products and customers' rights and responsibilities which react to new developments. Moreover, banks and AAs have to be regulated to enforce FCs' rights and interests.

The institutional framework should explicitly and clearly contain the appropriate legal mandate for consumer protection. Specifically, the authorized body should be empowered to issue a binding regulation and other necessary guidelines for FCP as well as implement and enforce the legal and regulatory frameworks.¹⁷² The enforcement power should be sufficient enough to impose necessary and adequate measures to address non-compliance and instances of misconduct. Banks are mostly regulated by financial regulators hence market conduct regulation mostly lays on such institutions even though there are different approaches. One thing for sure could be said that the general consumer protection agencies are often focused primarily on the protection and safety of consumers regarding non-financial products and services, such as food

¹⁷⁰ High-Level-Principles(n 13) p.4

¹⁷¹ Ibid Principle-1

¹⁷² WB Group(n 19), p.11

safety, and do lack the power to license or register banks and their agents or to conduct supervision or take enforcement action against non-compliance.¹⁷³

3.2. Institutional Framework

The institutional framework may follow an integrated approach, twin peaks approach institutional/sectorial approach, or a hybrid twin peaks model.

3.2.1. Integrated Approach

An integrated (single or universal) approach is where one authority encompasses the responsibility for banks and their agents' regulatory as well as supervisory activities integrating both prudential and market conduct supervision mandates.¹⁷⁴ In the case of banks, it is common for the bank prudential supervisor to assume consumer protection responsibilities.

Such an approach is particularly susceptible to potential conflicts of interest that could emerge between consumer protection and the prudential functions when placed under the same authority. "For example, consumer protection supervisors may benefit from disseminating observed bad practices, including by naming and shaming individual providers. In contrast, prudential supervision is usually more secretive due to the sensitivity of the findings of a provider's financial soundness, on which the public and in particular depositors rely".¹⁷⁵

3.2.2. Twin Peaks Approach

Twin peaks approach is an approach where one agency is in charge of prudential regulation across the banking sector with their agents and another agency is responsible for undertaking market conduct regulation across banking and their agents. Thereby, there are two sectorally integrated agencies, each with a different function.¹⁷⁶

"Twin Peaks" as a regulatory approach was the brainchild of Michael Taylor who devised this approach in 1995.¹⁷⁷ He opined that to ensure efficient financial regulation and supervision a Twin Peaks model comprising of systemic protection that is regulated by one body, on the one

¹⁷³ Ibid P.12

¹⁷⁴ Effective Approaches to Support the Implementation of the remaining G20/OECD(n 22) p.9

¹⁷⁵ WB Group(n 19), p.4

¹⁷⁶ Effective Approaches to Support the Implementation of the remaining G20/OECD(n 22) p.9

¹⁷⁷ N.C.Kongwa, (n 8) p.16

hand, and consumer protection that is regulated by another body, should be implemented on the other hand, which both should comprise their own staff and governing boards. This approach while minimizes regulatory gaps and the risk of conflicts of interest that could arise when the consumer protection function is performed by a financial sector authority that also has a prudential mandate, it increases consistency in the implementation of laws and regulations.¹⁷⁸ This approach should be substantiated by coordination from the prudential regulator and market conduct authority. Otherwise, the necessary result might not be achieved as expected. Australia, for instance, has the Australian Prudential Regulatory Authority, that regulates the financial soundness and the ASIC, which regulates the market conduct of financial institutions and the Australian Competition and Consumer Commission which has wide general consumer protection powers, including competition law. These institutions have signed a memorandum of understanding to coordinate and act accordingly.¹⁷⁹

3.2.3. Institutional Approach

An institutional or sectorial approach is where a single agency is responsible for the regulation/supervision of a type of institution or sector (e.g. banking, insurance, and securities) from a prudential and business conduct perspective.¹⁸⁰

Many countries such as Brazil, Ghana, Malawi, Nigeria, and Portugal, follow a multiagency institutional arrangement in which existing central banks and other authorities with a prudential mandate become responsible for consumer protection for different a bank and other financial sectors.¹⁸¹

3.2.4. Hybrid Twin Peaks

As the name signifies hybrid twin peaks approach is where there is a combination of approaches. For instance, one agency conducts prudential and business conduct regulation of two sectors.¹⁸²

¹⁷⁸ WB Group(n 19), p.12

¹⁷⁹ Ibid p.13

¹⁸⁰ Effective Approaches to Support the Implementation of the remaining G20/OECD (n 22) p.9

¹⁸¹ WB Group (n 19), p.12

¹⁸² Effective Approaches to Support the Implementation of the remaining G20/OECD (n 22) p.9

3.3. Ethiopian FCP Institutional framework

FCP may transcend from a given authority as the legal framework that furthers consumers' interests is wide enough to touch some other institutions as well.

3.3.1. National Bank of Ethiopia

The constitution of Ethiopia has explicitly set out the power to enact the administration of NBE and matters relating to local currency as well as foreign exchange issues to the HPR.¹⁸³ HPR, following its mandate, issued The Monetary and Banking Proclamation No. 83/1994 until it was repealed by Proclamation no. 591/2008.

3.3.1.1. Organizational Structure of the NBE

From the FCP point of view, perhaps it is important to come forward that Ethiopia doesn't have a separate institution or agency from the prudential regulator that enforces FCP frameworks, unlike Australia who has separate bodies from the prudential regulator. The country neither has an external institution that resolves disputes which couldn't be resolved by banks' internal complaint system. Countries like Italy and Australia, on the other hand, have a financial ombudsman that resolves disputes which arise between customers and banks.

The NBE is structured to encompass BoDs, Governor and Vice Governor, who are appointed by the Government, and necessary staffs.¹⁸⁴ The BoDs are vested to have powers, responsibilities, and functions of NBE.¹⁸⁵ The Board should hold a meeting every three months to the minimum and quorum is deemed constituted where four out of seven members are present for the meeting one of whom should either be the Governor or the Vice Governor. The decision of the Board is made by a simple majority of the members present and in cases of a tie, the chairperson will have a casting vote. The governor is a chief executive officer of the bank who is responsible to direct and supervise the administration and operation of the NBE in accordance with the law and

¹⁸³ Ethiopian Constitution Art.55(10)

¹⁸⁴ Ethiopian National Bank (Amended) Establishment Proclamation 591/2008 Art.3(5)

¹⁸⁵ Ibid Art.9

decision of the BoDs.¹⁸⁶ The Vice Governor is responsible to assist and in the absence of the Governor, to discharge all functions conferred upon the Governor.¹⁸⁷

The NBE has not yet established a dedicated FCP directorate within its office but some selected consumer protection issues are reviewed during supervisory inspections by the directorate responsible for banks until recently.¹⁸⁸ The Bank has established a separate unit in the financial inclusion secretariat after the promulgation of FCPD with limited resources.

3.3.1.2. Powers and Duties of the Bank

NBE is empowered with the licensing and supervising of banks¹⁸⁹ and authorizes persons to establish and operate a system as well as issue payment instruments.¹⁹⁰ It has also a duty, on the other hand, to create favorable conditions for the expansion of banking services.

No one is allowed to, engage in the banking business, use the name bank or its derivative, transact a banking business at any place other than that authorized, close an existing place of business, introduce new banking services, merge with or take over the banking business of another bank, alter the name under which it is licensed to do banking business, without authorization from the NBE.¹⁹¹

The NBE may also prescribe qualification requirements for bank directors, chief executive officer and senior executive officers, duties and responsibilities of the BoDs, their maximum remuneration as well as approve their appointments and termination. NBE may also, for sufficient cause, suspend or remove a director, a chief executive officer, or a senior executive officer of a bank.¹⁹² In addition, NBE is empowered to prescribe the minimum capital amount and reserve requirements as well as set liquidity adequacy requirements for banks. Moreover, it

¹⁸⁶ Ibid Art.10

¹⁸⁷ Ibid Art.11

¹⁸⁸ World Bank, *Diagnostic Review of Financial Consumer Protection of Ethiopia: Key Findings and Recommendation*,[2017], p.27

¹⁸⁹ Ethiopian National Bank (Amended) Establishment Proclamation 591/2008 Art.5(7)

¹⁹⁰ National Payment System Proclamation No. 718/2011 Art.4/2(a)

¹⁹¹ Banking Business Proclamation No.592/2008 Art.3(3)

¹⁹² Ibid Art.17(1)

has the power to establish and manage DIF.¹⁹³ NBE is also empowered to take such steps to establish, modernize, conduct, monitor, regulate & supervise payment, clearing and settlement systems.

The NPSP gives power to the NBE to establish conditions, rules, procedures, and standards for the governance, operation and management of systems and verify from time to time that such conditions, rules, procedures or standards are met. The NBE may also prescribe the basic criteria for the appointment of directors and chief executive officers of operators and issuers of payment instruments. In addition, it may prescribe charges for the services participants and operators provide and other particularities that are laid down in Article 4. No person is allowed to introduce a new system, merge with or take over a system of another operator and alter the name under which it is authorized to operate a system without NBE approval.¹⁹⁴ The Bank is empowered to take into consideration the interests of consumers, including the terms and conditions governing their relationship with operators. NBE may further prescribe the criteria for being an agent of operator and issuer of PIs.¹⁹⁵

In relation to electronic fund transfers, NBE may prescribe by directive basic terms and conditions to be applicable to contracting parties in the business of electronic fund transfers and stored value facilities. Moreover, the NBE is empowered to review and approve sample terms and conditions, in relation to electronic fund transfers and stored value cards, that are applicable to all its customers.¹⁹⁶

3.3.1.3. Regulatory and supervisory mandate

The NBE is generally mandated to regulate¹⁹⁷ and supervise banks and their agents through legislating necessary regulatory frameworks according to the mandate given by relevant Proclamations. Besides the general mandate of issuing necessary regulatory directives and orders

¹⁹³ Ibid Art.5(18)

¹⁹⁴ National Payment System Proclamation No. 718/2011 Art.5

¹⁹⁵ Ibid Art.10(5)

¹⁹⁶ Ibid Art.19

¹⁹⁷ Ethiopian National Bank (Amended) Establishment Proclamation 591/2008 Art.14

to implement the banking and NPS Proclamations¹⁹⁸, there are specific provisions that both Proclamations contain in relation to FCP.

The NBE has the power to issue directives for banks to keep sound information management and internal control systems, disclosure, fraud monitoring, corporate governance, and other essential obligations to carry out the business.¹⁹⁹ The newly amended Banking Proclamation No. 1159/2019 has also enabled NBE to determine the minimum conditions that should be met by banks for FCP.²⁰⁰ Moreover, the Bank may issue a directive to ensure the suitability of banking services to disabled customers as it deems appropriate.²⁰¹ The NBE may also issue a directive in relation to advertisements that prohibits false, misleading, deceptive, or offensive advertisements.²⁰² In addition, NBE may issue a directive that prescribes standards for banks' minimum security measures.²⁰³ Besides, it may issue directives for the establishment, operation and cost apportionment of the credit-information-sharing system among banks.

In addition, NBE may prescribe by directive the procedures for investigating and handling complaints in relation to electronic fund transfers and stored value facilities.²⁰⁴

Besides issuing regulatory frameworks, NBE possesses a relevant supervisory role as well. The Bank is specifically mandated not only to license banks but also to supervise them.²⁰⁵ One of the supervisory technical tools that NBE possesses is the license renewal requirement. The Bank is empowered to require banks to renew their licenses according to the conditions of the renewal of the banking business license directive. Moreover, appointments of any directors, chief executive officer or senior executive officer of a bank at the time of licensing or at any other time may not be valid unless written approval is granted by the NBE. NBE has the power to take and review complete and duly signed financial statements and audit reports, including audit findings and

¹⁹⁸ Ibid Art.27

¹⁹⁹ Banking Proclamation No. 592/2008 Art.6(1)

²⁰⁰ Banking (Amendment) Business Proclamation 1159/2019 Art.57

²⁰¹ Ibid Art.56

²⁰² Ibid Art.54

²⁰³ Ibid Art.53

²⁰⁴ National Payment System Proclamation No.718/2011 Art.20

²⁰⁵ Ethiopian National Bank (Amended) Establishment Proclamation 591/2008 Art.3(7)

recommendations. The NBE may, if not satisfied with the external audit report, order a second audit or require the prompt appointment of a new auditor who shall make an independent audit report. The Bank may also collect any information from banks, as it may deem appropriate.²⁰⁶

The NBE not only is endowed with reviewing reports, statements and other documents, it may also periodically or at any time, without prior notice, make, or cause to be made, an on-site examination of any bank. The information gathered, the report reviewed and the result of on-site examination may serve for NBE to take appropriate measures and enforce the legislative framework.

NBE is, ironically mandated to handle complaints brought against banks and their agents and render binding decisions according to FCPD Article 5.5.4.3.

3.3.1.4. Enforcement mechanisms

The NBE has multifaceted powers to enforce the legislative as well as regulatory frameworks through different methods. In particular, the bank is authorized to suspend or remove a director, a chief executive officer, or a senior executive officer of a bank for sufficient cause or impose a fine on such persons.²⁰⁷ Where a bank has failed to comply with the relevant laws and directives or with the terms and conditions of the license or has engaged in practices detrimental to the interests of depositors or has serious weaknesses in its corporate governance, the NBE may, require the bank for discussion, assign officers to watch proceedings and express their concern at any meetings of the bank, instruct in writing corrective measures to be taken by the bank, restrict or suspend or prohibit payment of dividends by the bank, order the bank to suspend for specified time any or all of its banking businesses or put the bank under receivership. NBE may also revoke the license of any bank.²⁰⁸ FCPD provides that financial institutions may be subjected to a ten thousand birr penalty, in addition to any other measures taken, for their failure to fulfill their obligation.²⁰⁹

²⁰⁶ Banking Business Proclamation No.592/2008 Art.28

²⁰⁷ Ibid Art.17(1) & Art.31(3)

²⁰⁸ Ibid Art.32

²⁰⁹ Directive No. FCP/01/2020 Art.10

The NBE is also endowed with the power to publish, in whole or in part, any information or data furnished or collected from Banks, taking in regarded customers' and banks' privacy.²¹⁰

3.3.2. TCCPA

Competition among business persons benefits consumers with reduced prices and increased quality. The TCCPP is legislated to induce competitive markets and govern accordingly that ultimately benefits consumers. The country currently enforces a competition law that aims at preventing and eliminating anti-competitive and unfair governmental and nongovernmental trade practices, safeguarding the interests of consumers, maximizing economic efficiency and social welfare.²¹¹ The general competition law does not exempt the banking institutions from its ambit hence, the law and TCCPA may play an irreplaceable role in making banks competitive.

Some specific duties of the Authority, such as a merger, have to be fulfilled in cooperation with NBE as the Bank has the power to approve the merger of banks. Moreover, the Authority is empowered to overview and to take necessary measures against unfair competitive acts of a bank. Where abuses of market dominance and anti-competitive agreements or concerted practices are found among banks the authority is responsible to take appropriate measures.

3.3.3. Other stakeholders

In order for financial consumers' rights to be furthered, other stakeholders have to play their own role. Banks themselves, consumer associations and consumers have an irreplaceable role that they may play. Beyond these groups, Broadcasting Authority, police, prosecution office and courts should also be considered as the formal institutions that may play in FCP. BA has the power to regulate, supervise and take appropriate measures on promoters and media. The authority has to take into regard the advertisement Proclamation along with NBE's regulatory framework to enforce the rights of FCs. Attorney General hasn't brought criminal charges against perpetrators that directly relate to FCP so far.²¹² On the other hand, the office has brought many charges against perpetrators in other sectors that have violated consumers' rights.²¹³

²¹⁰ Ethiopian National Bank (Amended) Establishment Proclamation 591/2008 Art.55

²¹¹ Trade Competition and Consumer Protection Proclamation No.813/ 2013

²¹² Interview with Ato Baye Shiferaw, a senior prosecutor in consumer protection team, economic directorate, FAG, Addis Ababa, (Sep. 8, 2020)

²¹³ Ibid

Documents Authentication and Registration Agency has to also ensure that persons looking for its services abstain from any fraudulent activities as the documents authenticated or registered by the agency have an indirect effect on financial consumer.

3.4. Problems Associated with the Ethiopian FCP Institutional framework

The institutional structure that furthers FCP in Ethiopia can be categorized as an integrated approach. It is an integrated one in a sense, the prudential regulator and market conduct regulator both lays in one institution, which is NBE. Though the NBE has issued FCPD and other directives that relate to the concept, there is no separate directorate established in the institution. The Bank has however established a separate unit that has a separate mandate from the prudential regulator directorate.²¹⁴ The unit/team isn't adequately resourced to focus on and accomplish responsibility to handle FCP issues.

The other important issue is the power of seeing complaints through a form of appeal that banks couldn't redress through the internal complaints system. It's not only the legal framework that is questionable but also the institutional mandate that emanated from FCPD. The NBE shouldn't be taken and regarded to have the necessary power to adjudicate disputes that arise between FC and banks. Its mandate should be clearly be provided in relevant Proclamations and be separate from enforcing institution or unit for better success.

Additionally, the NBE, TCCPA, and BA, though have peculiar roles from the FCP perspective, specificities such as clear roles, responsibilities, and objectives haven't been dealt with as required. In addition, their manner of cooperation and coordination is not known so far as the institutions haven't signed any memorandum of understanding in relation to FCP.²¹⁵

Moreover, other stakeholders such as the police and prosecution offices aren't investigating and prosecuting issues concerning FCP though some complaints on non-issuance of ATM receipt has been reported based on TCCPP.²¹⁶

²¹⁴ Interview with Ato Efreem Baraki,(n 102)

²¹⁵ Ibid

²¹⁶ Interview with Baye shiferawu,(n 212)

Chapter Four

Conclusion and Recommendations

4.1. Conclusion

Market conduct regulation gets its momentum after the 2008 GFC as it has evidenced the need for comprehensive protection of FCs. Canada nonetheless, was early, which is in 2001, in establishing a sector-specific consumer protection office that protects consumers' interest. Following the crisis in 2008, the G20 Finance Ministers and Central Bank Governors called on the OECD, to develop common principles of consumer protection frameworks in the field of financial services. On behalf of the G-20, in early 2011 the OECD issued a document entitled "G20 High-Level-Principles on Financial Consumer Protection". It specifically calls for legal recognition of FCP, oversight bodies with necessary authority and resources to carry out their mission, fair treatment, proper disclosure, improved financial education, responsible business conduct by FSPs and AAs, objective and adequate advice, protection of assets and data including from fraud and abuse, competitive frameworks, adequate complaints handling and redress mechanisms and policies which address, when relevant, sectorial and international specificities, technological developments and special needs of vulnerable groups.

Ethiopia has also recognized the need for a stronger FCP framework under NFIS that was published in 2017 in its strategy 3. Before 2017 however, TCCP Proclamation No. 813/2013 which replaced Trade Practice and Consumer Protection Proclamation No.685/2010 has attempted to cover consumers' issues under its ambit. A specific and tailor-made FCP legislative framework is recently introduced by Banking (Amendment) Proclamation No. 1159/2019. It is probably right to clearly identify Ethiopia as a country that didn't have a specific FCP legal framework until 25th August 2020. On this date, NBE has introduced a tailor-made directive that regulates banks and other financial institutions and availed a comprehensive FCP for FC.

The legal framework on FCP could also be found in different legislations of the country. The Ethiopian legal framework recognizes and obliges banks as well as agents to treat all FCs equitably, respectfully, honestly, fairly as well as without discrimination, unless provided by law, at all stages of their relationship. They are also expected to give due attention and priorities to vulnerable groups such as inexperienced consumers, physically disabled, and so on. Moreover, it has recognized for accurate, simple, clear and timely information about product features, risks,

obligations and other relevant terms to be given to FCs. In addition, it lays down an obligation for banks and AAs to consider FCs' objectives, needs, capacity and behaviors before providing any financial product and design, market and distribute accordingly with a view of minimizing the risk of harm. Banks are also required to have well-defined fraud monitoring and control policies and procedures for fraud detection, mitigation and reporting. Besides, banks are obliged to keep FCs data secure and confidential and only use and disclose for legitimate purposes agreed by FCs or otherwise permitted by law. Banks have to also organize an internal complaint system that is accessible, transparent, effective, prompt and free for FCs. FCs are capable of submitting their complaint to the NBE where banks have failed to give a due response or where they aren't satisfied with the decision.

The Institutional framework under Ethiopia could be regarded as an integrated approach as both prudential regulation and market conduct regulation lays on NBE. The NBE is structured to encompass BoDs, governor and vice governor, which are appointed by the government, and necessary staffs. The BoDs are vested to have powers, responsibilities, and functions of NBE. The Bank is empowered with licensing and supervising banks and authorizes persons to establish and operate a system as well as issue payment instruments. NBE is vested to determine the minimum conditions for consumer protection by banks, ensure the suitability of banking services to disabled customers, legislate and regulate issues in relation to advertisements, and prescribe standards for banks' minimum security measures. Where a bank has failed to comply with the relevant laws and directives issued by NBE, the Bank may take necessary measures along with a penalty. Other stakeholders like TCCPA, Broadcasting Authority, Police, Prosecutor, courts, and Documents Authentication and Registration Agency play an impeccable role in FCP as well.

Though the country has issued a useful and better FCP framework, the following points are specific drawbacks that need improvement.

- First, the legal regime doesn't give the meaning of FCs and whom it encompasses clearly. Even though FCPD is interpreted to encompass juridical persons, it misses the primary reason to avail consumer protection for physical persons.
- Second, FCPD regards standard form contract as unfair where it is different from the one that is stipulated to protect the FSPs legitimate interest. But it is quite questionable as to whether this protects FCs' legitimate interest as it talks about FSPs. Though it may be

referring for FSPs to benefit through contract beyond its legitimate interests, it shouldn't be left for interpretation rather it should be clarified.

- Third, the FCPD has referred to general terminologies without giving a baseline that may be used for interpretation. It specifically obliges for banks not to impose unreasonable administrative costs without providing as to what amounts to unreasonable administrative cost which this opens a room for interpretation.
- Forth, the FCP legal regime has not specifically ruled issues in relation to sales practices such as bundling and tying, aggressive high-pressure sales practices, and pyramid selling.
- Fifth, Financial Fraud is increasing both in quantity and techniques which will negatively affect consumers' right and their trust in the financial system. Though there is a directive on fraud monitoring, it is incomprehensive and outdated framework to protect financial consumers' interests.
- Sixth, the legal framework doesn't deal with active consent in electronic transactions. In a sense, unless the consumer rejects the default waiver, the information will be shared. This type of practice should have not been allowed, active consent by the consumer should rather be required to be obtained.
- Seventh, FCPD seems to give the power for NBE to see disputes between FC & FSP and render a binding decision on FSP. BBP or NPSP, however, required NBE to only issue minimum requirements for FCP without specifically giving the power to receive, review, and render a binding decision. The Power of adjudication, the power to give injunctive orders, the power to order compensation, the structure of the tribunal taking in regard the federalism structure, the independence of the judges & the tribunal, issues of appeal and collective action is not dealt in any Proclamations in relation with FCP at all. The FCPD hence, couldn't deal with these issues unless the Proclamation has specifically structured the framework. This is a clear transgression of judicial power and the appeal right of persons laid down under the Ethiopian Constitution.
- Eighth, it is emphasized that FC education and awareness are important to further FCs' rights. However, the country has not come up with the promised national financial capability strategy document to the researcher's knowledge.

- Ninth, though NBE has established a separate unit that has a separate mandate from the prudential regulator directorate, the unit/team is under-resourced to focus on and handle its mandate to conduct regulatory power.
- Tenth, the NBE, TCCPA, and BA, though have peculiar roles from the FCP perspective, specificities such as clear roles, responsibilities and objectives, haven't been dealt with as required. In addition, their manner of cooperation and coordination is not known so far as the institutions haven't signed any memorandum of understanding in relation to FCP.
- Lastly, stakeholders such as the police and prosecution offices aren't investigating and prosecuting issues specifically concerning FCP even those complaints on non-issuance of ATM receipt have been reported based on TCCPP.

4.2. Recommendation

The comprehensive endeavor to regulate market conduct regulation and avail FCP in the Ethiopian legal, as well as institutional framework should be recognized and appreciated in general. Nonetheless, the following points should be taken into regard for a better FCP.

- First and foremost, the term FC should be clearly defined rather than duplicate the term customer and clarify as to whether juridical persons are included in FCP. The definition should parallel with other legislations, such as TCCPP, to limit itself with physical persons and also traders for whom FCP is needed as well as SME so that the limited resources be appropriately used for those persons who don't have the necessary capability to stand banks and AAs.
- FCPD Article 5.1.1.2.d. regard standard form contract as unfair where it is different from the one that is stipulated to protect the FSPs legitimate interest. But it is quite questionable as to whether this protects FCs' legitimate interest as it talks about FSPs. Though it may be prohibiting FSPs to benefit through contract beyond its legitimate interests, it shouldn't be left for interpretation rather it should be clarified. Hence, the specific provision should be crafted in a way that recognizes financial consumer's legitimate interests rather than FSPs.

- A clear baseline that may be used to evaluate banks not to impose unreasonable administrative costs should be provided.
- Sales practices in specific rather than require in general form have to be addressed encompassing bundling and tying financial products & services, aggressive high-pressure sales practices, and pyramid selling.
- The country needs to craft a robust fraud monitoring and protection scheme to protect FCs taking into consideration the practical problem and future challenges. To effectively address fraud issues, the country needs to implement a National Identity Card or database to easily identify who is approaching the bank. It should further consider segregation of duties along with rotations of employees and dual control system, periodic checks/investigation of employees, periodic changing of passwords of employees on top of deactivation requirement of usernames of employees who are on leave or left the bank, requiring for banks to implement technology tools that monitor transactions & behaviors and employ layered/multifactor authentication and notification processes, installed cameras in ATMs and branch offices.
- Ethiopian legal framework has to specifically address and set minimum requirements in relation to conflict of interests and measures to be taken beyond requiring banks to present their policies to NBE.
- The other vital point that the legislative framework should be cognizant of is the obligation of active consent in electronic transactions as it may have a detrimental effect.
- External dispute resolution mechanism should clearly be given by Proclamations rather than by directive. The power to adjudicate disputes between FCs and FSPs with necessary procedures should be elaborated as well. The legislation should address, powers of injunctive orders, the power to order compensation, the structure of the tribunal taking in regard the federal structure, the independence of the judges & the tribunal, issues of appeal, and collective actions.

- FC education and awareness are important to further the rights of FCP, hence the country should come up with the promised national financial capability strategy document in consultation with all stakeholders, including consumer protection associations.
- The country should either establish individual units with adequate resources or follow the twin peak approach and specifically establish a separate agency from the prudential regulator and regulate market conducts of all FSPs, including banks.
- Institutions', such as NBE's, TCCPA's, and BA's peculiar role be clearly provided from the FCP perspective and these institutions should cooperate and coordinate for better protection. These institutions along with stakeholders should sign a memorandum of understanding to rightly play their role and stretch to the end in protecting FCs.
- Stakeholders such as police and prosecution offices should start by their own initiation to investigate criminal activities in relation to FCP even beyond handling cases that are brought to their attention by the complainant. Moreover, the Document Authentication and Registration Agency of Ethiopia should give due attention to its services to protect FCs from fraudulent activities that may harm them.

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