

Efficiency of Ethiopian Telecom Consumers Protection Law: Lessons from Safaricom's Previous Experiences in Kenya

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Abstract

This article assesses the efficiency of Ethiopia's telecom consumer protection laws in protecting consumers from potential infringements, particularly through the previous experiences of Safaricom's telecom consumer rights violations in Kenya. It employs a comparative research approach, analyzing the consumer rights infringements in Kenya and assessing how they would be treated under Ethiopia's current legal framework. The central question of this article is whether Ethiopian law can effectively safeguard consumers if similar infringements occur in Ethiopia. It draws cases against Safaricom's consumer rights violations, including the rights to privacy of service users, suspension of telecom services without sufficient cause and provision of poor-quality services with high tariff rates and limited networks in Kenya. The Ethiopian telecom consumer protection law has the deficiency to redress the recurrence of similar violations in Ethiopia, mainly the absence of legal regimes for high tariffs, governing M-Pesa transactions and the mandate to provide awareness for consumers by the Ethiopian Communication Authority (ECA). Besides, the absence of clear and sufficient guidelines to determine and control service providers' conduct, in addition to the weak practice of an organized participation of the consumer associations shows the legal framework's poor capacity to defend the possible rights violations. Therefore, this article suggests legislative interventions to address the identified gaps, mainly regulating service tariffs, governing M-Pesa transactions, and empowering ECA and consumers to organize and participate in their rights protections.

Keywords: Consumer Protection, Consumer Rights infringement, Ethiopia Communication Authority, Telecom Consumer, Safaricom

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1. Introduction

Communication between people was once severely limited by geographical lag. Today, thanks to ongoing advancements in telecommunications we live in an information age where distance is no longer a barrier to communications.¹ The earliest forms of telecommunication included smoke signals and drums, however by the late 18th century the first telegraph lines were constructed. From there, telecommunication developments steadily expanded the ways people could communicate over long distances.² The introduction of telecommunication services in Ethiopia dates back to 1894. Consequently, Ethiopian telecom consumers have been receiving services since that time.³ However, the telecommunications sector in Ethiopia has faced significant challenges since its inception due to the very low penetration and quality of telecommunications and information communication technology (ICT) services. Additionally, there was only one state-owned operator Ethio-telecom controlling telecommunications infrastructure with exclusive rights to provide fixed and mobile phone, internet and data services.⁴ This monopoly on extending telecom services to users restricted consumer interests and hindered the growth of the telecommunications industry.⁵

¹ Anton Huurdeman, *The Worldwide History of Telecommunications*, available at <https://www.wiley.com/en-us/The+Worldwide+History+of+Telecommunications-p-9780471722243>, last accessed on March 31, 2023

² Global Tech Communications, *Short History of Telecommunications*, available at <https://globaltechwv.com/2021/01/a-short-history-of-telecommunications/>, last accessed on March 31, 2023

³ Alemeshet Getahun Kassa, *Telecom Voice Traffic Termination Fraud Detection Using Ensemble Learning; The Case of Ethio Telecom*, (Thesis Presented to The Faculty of Informatics Of St. Mary's University In Partial Fulfillment of the Requirements for the Degree of Master of Science Computer Science July 27, 2020), pp. 1

⁴ Candidate number 8004, *The Regulation of Telecommunications in a Monopoly Market Structure: The Ethiopian Experience*, (Thesis Submitted in Partial Fulfillment of the Degree of Master of Laws in Information Communications Technology (ICT) Law University of Oslo Faculty of Law, 12.2012), pp. 1.

⁵ Deyu Liu, *Research on Economic Law Protection of Telecom Consumer Rights*, 3rd International Conference on Economics, Social Science, Arts, Education and Management Engineering, volume 119, August 2017, pp.5

In 2018, to address these sectorial issues, the Ethiopian government decided to restructure the telecommunications market and introduce competition in the provision of telecommunications services.⁶ Based on this government policy, Safaricom Telecommunication Company was awarded a license to operate in Ethiopia. This license became effective on July 9, 2021, and is valid for a fifteen (15) year term from the effective date with the possibility of renewal for additional fifteen (15) year terms subject to fulfilling all license obligations.⁷ Before commencing service in Ethiopia, the company had a history of operating in Kenya, where it was involved in various consumer rights violations. To mention a few, in the case of Adrian Kamotho Njenga versus Safaricom, this company was accused of disclosing the personal data of millions of subscribers to unauthorized individuals. According to this case, these consumers' data has been transferred from Safaricom servers to publicly accessible Google Drive repositories and other unsecured devices that have been irregularly subjected to analytical and data mining scripts in a manner not sanctioned by law.⁸ Another Kenyan court case involved Joshua Kiprop Kisorio, who filed a petition on November 4th, 2019, claiming that "an unauthorized party, Abdinajib Adan Muhumed, was able to access my Safaricom phone's call data records, along with those of three other unknown individuals". The petitioner argues that this constitutes a violation of his right to privacy, as protected under Article 31 of the Kenya Constitution.⁹

Furthermore, Safaricom Telecommunications Company was accused of consumer rights violation by suspending telecom services without sufficient cause in Kenya.

⁶ Communications Service Proclamation No. 1148/2019, August 2019, preamble 1

⁷ Dickson Otieno, Safaricom to operate in Ethiopia as "Safaricom Ethiopia PLC", July 15, 2021, available at <https://tech-ish.com/2021/07/15/release-safaricom-ethiopia-plc/>, last accessed on March 25, 2023

⁸ Kenya insight, Safaricom Faces Class Action Suit Over Massive Data Breach as Case Lands on CA's Desk, February 8, 2021, available at <https://kenyainsights.com/safaricom-faces-class-action-suit-over-massive-data-breach-as-case-lands-on-cas-desk/>, accessed on march 20, 2023

⁹ Joshua Kiprop Kisorio v Safaricom Plc & 4 others; Abdinajib Adan Muhumed (Interested Party); 2019, the high court of Kenya at Nairobi, constitutional & human rights division petition no. 448 of 2019

For instance, Wilfred Nderitu and Charles Kanjama filed a case at the Kenyan high court by alleging that their SIM cards were suspended and that they were forced to re-register to enjoy services and products offered by Safaricom.¹⁰ In 2014, most telecom consumers complained about the company's service with poor quality, high tariff rates and limited network services to certain locations in Kenya; consequently, the telecom company's services were inefficient and accused of infringing its consumers' rights in Kenya.¹¹ The likelihood of the recurrence of these consumer rights violations in Ethiopia is high due to several socio-structural factors. The social factor that made this happen in Ethiopia is the similarity of the illiteracy level of telecom consumers in both countries. In addition, an institutional factor that makes the risk possible to occur in Ethiopia is the resemblance of institutional set-up. In Kenya, a communication commission safeguards telecom consumer rights. Here in Ethiopia, a similar institution exists under a different name. Since the company is currently providing telecom services in Ethiopia, it became important to evaluate the capacity of Ethiopia's telecom consumer protection law in safeguarding and resolving consumer claims in the event of rights violations or claims occurring in Ethiopia.¹²

Therefore, this article assesses whether Ethiopia's telecom consumer protection laws are sufficient to protect and address consumer claims in Ethiopia if consumer rights infringements and claims similar to those that occurred in Kenya materialize in Ethiopia. Based on the relative importance they have a part from the aforementioned

¹⁰ Business daily, Safaricom CA face second class action suit over SIM listing, available at <https://www.businessdailyafrica.com/bd/corporate/companies/safaricom-ca-face-second-class-action-suit-over-sim-listing-4016004>, last accessed on march 31,2023

¹¹ Ketry Kubasu, *Factors influencing customer satisfaction with services offered by Safaricom mobile cellular network*, (Thesis submitted to Strathmore Business School (SBS) Strathmore University, 2018), pp. 5

¹² In Ethiopia telecom consumer law includes , Telecommunications Consumer Rights and Protection Directive No. 832/2021, telecommunications lawful tariffs directive no. 797/2021, telecommunications licensing directive no. 792/2021, telecommunications service dispute resolution directive no. 796/2021 , telecommunications quality of service directive no. 794/2021, SIM Card Registration Directive No. 799/ 2021, Telecommunications Interconnection Directive No. 791/2021, Telecommunications Wholesale National Roaming Directive No. 800/2021 and Telecommunications Infrastructure Sharing and Collocation Directive No. 793/2021,

points; this article seeks to highlight the rights and duties of telecom consumers under Ethiopia telecom consumer's protection law. Additionally, the article attempts to identify gaps and pinpoint loopholes in Ethiopia's consumer protection laws, particularly in comparison to those of other countries such as Kenya and Nigeria. The selection of Kenya and Nigeria jurisdictions is based on strategic considerations. Kenya was chosen due to Safaricom's presence, allowing for valuable insights into successful company management practices. Nigeria, on the other hand, was selected for its well-established telecom industry, positioning it as one of the leading markets in Africa. This decision aims to leverage lessons learned from both countries to foster growth within the Ethiopian telecom industry.

2. Telecom Consumers and Rights Infringements: meaning and trends

2.1. Who is a telecom consumer?

The term “telecom consumer” lacks a universally accepted definition; it varies across jurisdictions.¹³ Safaricom Ethiopia's draft consumer rights and protection code defines a consumer as any individual utilizing its services.¹⁴ A kin to this definition in Kenya, telecom consumers are defined as “any person who uses the services or purchases the products of a particular telecom services provider without necessarily being a subscriber to the provider”.¹⁵ This definition encompasses those who use a service with authority from the customer. However, the Ethiopia Consumer Protection law defines a consumer as a “natural or legal person who receives or has received telecommunication services from an operator through a service subscription agreement”.¹⁶ This definition is also affirmed by other laws of telecom consumer

¹³ Mekdes Bekele Tefera, *Consumer Protection in Ethiopia's Telecom Sector: New Beginnings and Prospects*, (Thesis Submitted in Partial Fulfillment of the Requirements for the Degree of Master of Laws (LL.M.) in Business Law, September 2021), pp. 10

¹⁴ Safaricom Telecommunication Private Limited Company Draft Consumer Rights and Protection Code of Conduct, January 2023, Article 3 (3)

¹⁵ See Kenya information and communications (consumer protection) regulations, 2010, article 2

¹⁶ Telecommunications Consumer Rights and Protection Directive No. 832/2021 article 2 sub article 6

protection in Ethiopia.¹⁷ The definition provided by Safaricom Ethiopia's code and Kenya's telecom consumer protection law is broader compared to the definition of the directive, Article 2(6). Under the code of the company and Kenya law, merely using or requesting a service qualifies someone as a consumer, regardless of a formal subscription. However, the Ethiopian consumer protection law narrowly encompasses users with direct contractual relationships with the service provider, excluding those who utilize services without a formal subscription to the service provider. For example, family members or employees of a business consumer who access the telecom network or service with the consumer's permission are not considered direct consumers. This limits their ability to exercise certain sector-specific consumer protection rights.¹⁸ In this article, a “telecom consumer” shall be defined as a telecom user who utilizes or requests a service and does not include individuals lacking a contractual relationship with the service provider.

2.2. Service providers' infringements of telecom consumer rights

Telecom consumers across the globe enjoy certain fundamental rights regarding their privacy, fair treatment and protection from deceptive practices. However, several service provider actions can infringe upon these rights. Understanding these service provider actions that infringe upon telecom consumer rights empowers consumers to be vigilant and take steps to protect themselves. The following discussions analyze these common infringements, including disclosure of customer information, price discrimination, telemarketing, slamming, and cramming.

Disclosure of customer information is the principal infringement act of telecom service providers. Authorized telecom service providers are obligated to safeguard customer privacy which entails adhering to the principles of data minimization, collecting only the information necessary to provide services. Furthermore, they

¹⁷ See telecommunications quality of service directive no. 794/2021, article 2(6) and Telecommunications Service Dispute Resolution Directive No. 796/2021, article 2 (4)

¹⁸ Supra note 13, pp. 36

must refrain from disclosing this personal information to third parties without the customer's express and informed consent.¹⁹ Information of consumers prohibited to transfer to third parties, among others includes Calling Line Identification (CLI), CLI is data that is generated at the time a call is established and passed through the carrier's network. Such data includes the number of the party being called, the calling party's number, the date and time of the call, the call's duration and routing information.²⁰ Oftentimes, service providers transfer such sensitive data to third parties without obtaining express consumer consent which finally leads to a violation of consumer rights. Most countries established different legislations to prevent this from happening. For instance, authorized service providers in Ethiopia are obliged to develop a policy for the protection of consumer privacy for the proper collection, use, and protection of information collected from consumers.²¹ Similarly, Kenya's consumer protection law prohibits telecom companies from disclosing or allowing unauthorized monitoring of subscriber communications and data.²² However, most countries allow exceptions for legal investigations upon court order, to strike a balance between privacy rights and national security concerns.²³

Price discrimination, which refers to the practice of charging different customers with varying prices for the same service, is also another form of infringement of the rights of telecom users. This strategy is often employed by monopolies to maximize profits at the expense of consumer welfare.²⁴ However, telecom regulations in most countries generally require service providers to adhere to non-discriminatory pricing, charging equivalent fees for identical services to all customers regardless of their

¹⁹ Telecommunication Authority of Trinidad and Tobago, *Consumer and Customer Quality of Service standards for the Telecommunications and Broadcasting Sectors of Trinidad and Tobago*, (July 2014), pp. 50

²⁰ Ibid

²¹ Telecommunications Consumer Rights and Protection Directive, supra note 16, article 15 sub article 4

²² Kenya information and communications (consumer protection) regulations, 2010, article 2, Supra note 15, article 2

²³ Supra note 19, pp.50

²⁴ Ibid pp.52

socio-economic background.²⁵ For instance, Ethiopian telecom consumer protection laws uphold this principle by mandating that service providers ensure equal and similar prices to services for all consumers.²⁶ This fosters a fair and competitive market environment, benefiting both consumers and service providers.

Further, telemarketing is another consumer infringement practice where the service providers or independent telemarketing agencies utilize a telecommunications service to promote and sell products or services. For instance, they use text messaging services to notify consumers of product sales and promotions. Telemarketing practices can be employed by the service provider or by authorized third parties acting on the service provider's behalf²⁷ that affect the consumer in various ways.²⁸ It may bombard consumers with unwanted telemarketing messages infringing upon their right to privacy and quiet enjoyment. Besides, telemarketing can be associated with scams, pyramid schemes and deceptively overpriced products/services causing financial harm to consumers. They also may use aggressive tactics to pressure consumers into purchases creating a stressful and manipulative environment that can be a nuisance, especially at inconvenient times, interfering with consumers' daily routines and right to rest.²⁹ To overcome such challenges, most countries have regulations to limit these abuses, which include a prohibition on service providers from any telephone solicitation to any residential or mobile telephone subscriber on specified periods such as sleeping time.³⁰

Moreover, slamming, which refers to an illegal practice of switching a customer's service from one provider to another without the explicit and informed consent of

²⁵Martin Lundborg, Ernst-Olav Rühle, Christian Bahr, *discounts and price discrimination in the telecommunications regulation of NGA networks*, 21st European regional ITS conference Copenhagen, September 13-15, 2010, pp. 5

²⁶ Telecommunications Consumer Rights and Protection Directive, supra note 16, article 8

²⁷ Supra note 19, pp.52

²⁸ Ibid, pp.53

²⁹ Telemarketing, available at <https://www.ftc.gov/business-guidance/advertising-marketing/telemarketing>, last accessed on April 14, 2023

³⁰ Supra note 19, pp.54

the customer, is a major issue in telecommunications, particularly in the context of telephone and internet services. Slamming is not only illegal but often results in higher costs for the consumer and a disruption of their service. It can occur as a result of misleading advertising, a lack of understanding of contract terms, or even a malicious attack on the consumer.³¹ Most legal regimes condemn and aspire to prevent such practices, but slamming continues to be a consumer concern.³²

Another common type of fraud and abuse by telecommunications service providers is cramming. Cramming is the practice of placing unauthorized, misleading or deceptive charges on a customer's bill. These charges can be difficult to detect and come in various forms such as charges for unauthorized phone services (call waiting, voicemail) or charges for third-party services unrelated to phone services (stock market updates, chat lines, etc.).³³ It is often hard to detect unless a customer carefully reviews his or her bill.³⁴

3. Rights and Obligations of Telecom Consumers under Ethiopia Laws

3.1. Telecom Consumers' Rights

3.1.1. Pre-contractual rights

Telecom service contracts fall under the purview of Ethiopia's Civil Code.³⁵ The requirements of general contract law like consent, capacity, object of contract and

³¹ Jessica, What Is Slamming in Telecommunications, Feb 14, 2023, available at <https://www.openworldlearning.org/what-is-slamming-in-telecommunications/>, accessed on April 24, 2023

³² EveryCRSReport, Slamming: The Unauthorized Change of a Consumer's Telephone Service Provider, available at <https://www.everycrsreport.com/reports/RL33598.html>, last accessed on April 16, 2023

³³ Telecommunications: Update on State-Level Cramming Complaints and Enforcement Actions (Letter Report, 01/31/2000, gao/rced-00-68), available at: <https://www.govinfo.gov/content/pkg/GAOREPORTS-RCED-00-68/html/GAOREPORTS-RCED-00-68.htm>, accessed on April 16 2023

³⁴ Supra note 13, pp.54

³⁵ Ibid, pp. 43

form are also important here.³⁶ Thus, Ethiopian general contract law plays a crucial role in protecting consumers from coercion, misrepresentation and unfair practices during negotiations.³⁷ First, the consumer has a right to affirmatively select her/his service provider when multiple options exist.³⁸ After the consumer selects her/his service provider before entering into a contract, s/he has the right to receive comprehensive pre-contractual information, free of charge, in a clear, understandable and accurate format, in a language that is clear, understandable, helpful and accurate in Amharic, English and where requested, in one of the official regional working languages in Ethiopia.³⁹ The pre-contractual information provided by a service provider to consumers includes a list and description of the equipment and services it offers, including the rates, terms, and conditions for that equipment and services; service quality levels offered; the waiting time for initial connection; and where applicable, service areas and coverage maps for subscription services, a sample contract for the services provided, and specific and clear information regarding contract cancellation, and where contracted quality service levels are not met.⁴⁰ This information is provided to a consumer in two ways: in print format upon request and through email, text message or other preferences as agreed by the consumer.⁴¹

Consumers are only bound by the service provider's terms and conditions upon signing the service agreement or explicitly accepting them through any communication channel.⁴² As contracting parties, this prevents consumers from being bound by a transaction to which they have not agreed.⁴³ The Ethiopian Civil

³⁶ Civil Code of the Empire of Ethiopia, Article 1679-1710, Article 1711-1718 and Article 1719 – 1730, Proc. No. 165/1960, Fed. Neg. Gaz. (Extraordinary issue), Year 19, No. 2

³⁷ Ibid article 1705

³⁸ Southern Africa Development Community, *Consumer Rights and Protection Regulatory Guidelines in the Electronic Communications Sector in SADC*, Revised 2021, pp.13

³⁹ Telecommunications Consumer Rights and Protection Directive, Supra note 16, Article 9

⁴⁰ Ibid article 9 sub article 2

⁴¹ See ibid article 9 (1) and Article 10 (3) cumulatively

⁴² Civil Code of the Empire of Ethiopia, supra note 36, Article 1679 and 1693(2)

⁴³ Telecommunications Consumer Rights and Protection Directive, supra note 16, article 12 sub article 1

Code further reinforces these protections by ensuring the services and goods purchased are durable, of good quality, and accompanied by fair contractual terms.⁴⁴ Generally, the service provider must furnish the consumer with clear and easily understandable terms and conditions including, among other things, services, price, contract duration and notice period.⁴⁵

3.1.2. Right to privacy

The Ethiopian constitution generally recognizes the fundamental right to privacy by encompassing protection against unlawful searches of personal property or residences, seizure of personal possessions, and violation of the confidentiality of correspondence, including postal letters, telephone communications, and electronic messages.⁴⁶

More specifically, consumer privacy concerns are addressed under consumer protection law. This law safeguards the proper collection use, and protection of consumer information.⁴⁷ The key protections under the law include restrictions on processing and storing personal data beyond purposes originally communicated to consumers, prohibition on selling, sharing or exposing consumer data to third parties without explicit consent, and implementation of appropriate safeguards to prevent unauthorized access and use of consumer data.⁴⁸ In case of data breaches, the service provider is also obliged to notify both the consumer and the Ethiopian Communication Authority (ECA) within 72 hours. The service provider is further obliged to take immediate action to secure the network and protect consumers from any adverse consequences.⁴⁹

⁴⁴ Civil Code of the Empire of Ethiopia, supra note 36, article 2282

⁴⁵ Jochen Homann, *More protection and transparency for consumers*, (30 November 2021), pp.2

⁴⁶ Federal democratic republic of Ethiopia constitution, proclamation no 1/1995, Negarite Gazette, article 26

⁴⁷ Telecommunications Consumer Rights and Protection Directive, supra note 16, Article 15 sub article

⁴⁸ Ibid article 16 sub article 2

⁴⁹ See Ibid Article 15 (3 & 4)

Infringement of these privacy rights can incur both civil and criminal liabilities. Unlawful search and publication of personal information without consent can result in civil suits.⁵⁰ Furthermore, the Federal Criminal Code of 2004 criminalizes the violation of privacy of correspondence or consignments, including email and telecommunications, punishable by up to six months of imprisonment or a fine.⁵¹

3.1.3. Right to access

All Consumers have the right to access basic telecommunications services.⁵² This access right includes inbound and outbound dialling capabilities for voice, data and inbound and outbound texting services at reasonable prices and minimum service requirements as determined in the Ethiopia Communication Authority (ECA) quality of service directive.⁵³ Moreover, consumers have the right to access emergency services like services of local emergency service entities such as police, ambulance, rescue and fire-fighting and other services as determined from time to time by the ECA free of charge.⁵⁴ Consumers also have the right to benefit from service continuity and have the right to get due notice where any interruption is envisaged.⁵⁵

3.1.4. Right to get quality services

The right to access high-quality services and goods is a critical right of consumers among others.⁵⁶ Telecom consumers are entitled to the right to get communications services that meet quality of service parameters without outages.⁵⁷ When services

⁵⁰ Civil Code of the Empire of Ethiopia, supra note 36, article 28

⁵¹ See the Criminal Code of Ethiopia, Proclamation No. 414/2004, Federal Negarit Gazeta 2005-05-09, article 604, 605/606

⁵² Kinfe Micheal Yilma and Halefom Hailu Abraha, *The Internet and Regulatory Responses in Ethiopia: Telecoms, Cybercrimes, Privacy, E-commerce, and the New Media*, available at: <http://dx.doi.org/10.4314/mlr.v9i1.4> Mizan Law Review, vol. 9, No.1, pp. 152

⁵³ Telecommunications Consumer Rights and Protection Directive, supra note 16 article 7 sub article 1

⁵⁴ Ibid Article 13 (1)(a)

⁵⁵ Ibid article 7 (3)

⁵⁶ Tessema Elias, *Gaps and Challenges in the Enforcement Framework for Consumer Protection in Ethiopia*, Mizan law review, Vol. 9, No.1, pp. 106

⁵⁷ Telecommunications quality of service directive no. 794/2021, July 2021, Article 5

are in ways to outage, telecommunications operators are obliged to issue the public advanced notice of planned major outage of services at national, regional and/or city levels, by publishing the news on their website, social media pages, and electronic media with wide coverage at least forty-eight (48) hours before the planned outage.⁵⁸ In the event of any unplanned service degradation and service outages, the service providers are obliged to notify affected customers of any major service degradation or service outages which extend beyond four (4) hours in an area corresponding to regions and cities through SMS, social media and electronic communication media options.⁵⁹ Any affected customers by service outage will be compensated by telecommunications operators in terms of tangible service benefits to the customer including, but not limited to additional airtime or data allowance. However, such compensation will not be awarded to consumers when the non-performance is due to an event of force majeure.⁶⁰

3.1.5. Right to clear and accurate billing

The consumer has a right to accurate and clear bills for products and services they have consumed.⁶¹ To this effect, service providers are obliged to present the consumer with billing statements that are accurate, timely, and verifiable for post-paid accounts.⁶²

3.1.6. Right to remedy

Due to the likelihood of disputes between consumers and service providers in their relationships, the consumer has the right to receive a fair settlement of bona fide claims against the service providers.⁶³ Telecom consumers can fill their claim for

⁵⁸ Ibid article 15 sub article 1

⁵⁹ Ibid article 16 sub article 2

⁶⁰ Ibid article 21 sub article 2

⁶¹ Supra note 38, pp. 14

⁶² Telecommunications Consumer Rights and Protection Directive, supra note 16 article 12 (2)

⁶³ Supra note 38, pp. 13

resolution with the ECA in written or electronic submission using forms available on the ECA website.⁶⁴

3.2. Obligations of telecom consumers

While telecom consumers enjoy a wide range of rights, they also have corresponding obligations. Consumers are obliged not to use any equipment or related facilities provided by the service provider for reasons other than those related to normal service conditions and not do anything that interferes with the functioning of such equipment or facilities, without prior written authorization from the service provider. This prohibition includes the use of virtual private network (VPN) application to access blocked websites by service providers.⁶⁵ In addition, obligations include unauthorized manufacturing, assembly, import or offer for sale of any telecommunications equipment is prohibited in Ethiopia.⁶⁶

Under the law, modification or attachment of any unauthorized device to the service provider's equipment or facilities is prohibited without prior written authorization from the service provider.⁶⁷ Furthermore, consumers are prohibited from re-sell of any service provided by the service provider except as permitted by the service agreement of the service provider and subject to any applicable licensing or authorization by the Authority.⁶⁸ Additionally, consumers are obliged not to misuse or abuse public telecommunications services, including by dishonestly obtaining telecommunications services, possessing or supplying equipment that may be used to obtain telecommunications services dishonestly or fraudulently, and using

⁶⁴ Telecommunications Service Dispute Resolution Directive No. 796/2021, July 2021, Article 7 (2)

⁶⁵ Telecommunications Consumer Rights and Protection Directive, supra note 16, Article 22

⁶⁶ See Telecom Fraud Offence Proclamation 761/2012, September 12, Art 3 (1), Computer Crime Proclamation No.958/2016, Art.32, Revised Anti-Corruption and Special Procedure and Rules of Evidence Proclamation No.434/2005, Art.42 and Prevention and Suppression of Terrorism Crimes Proclamation No.1176/2020, Art.34 and Art.42 (5)

⁶⁷ Telecommunications Consumer Rights and Protection Directive, supra 16 article 22 sub article 2

⁶⁸ Ibid article 23 sub article 1

telecommunications services to send obscene messages, threatening or otherwise contrary.⁶⁹

Another prohibition on consumers is concerned with illegal telecom operations. It is prohibited to establish any telecommunication infrastructure other than that established and to bypass the telecommunication infrastructure and provide domestic or international telecommunication services.⁷⁰ In this regard, according to Article 3(3) of the Telecom Fraud Proclamation, the Ministry of Science and Technology is obliged to prescribe types of telecom equipment the manufacturing, assembling, importation, sale or use of which may not require permits, and set their technical standards. However, some studies show that even the Ministry of Science and Technology must list out and prepare technical standards for telecom equipment that would be assembled, imported for sale or any use without prior notice of the authority, which it has not done yet over more than seven years of its establishment.⁷¹ The Consumer has also duty to ensure the appropriate disposal of wastes from the utilization of ICT goods and services such as scratch cards and damaged equipment.⁷² Finally, consumers are prohibited from using equipment or devices that interfere, in any way, with the normal operation of a telecommunications service, including any equipment or device that intercepts or assists in intercepting or receiving any service offered by the licensee that requires special authorization.

4. Safaricom's Consumer Right Infringements in Kenya and the Efficiency of Ethiopian Telecom Consumers Protection Law

By building on these discussions of consumer rights and obligations, in this section, this article analyzes the previous consumer right infringement cases against Safaricom Telecommunication Company in Kenya, evaluates and analytically

⁶⁹ Ibid article 23 (2) (a-c)

⁷⁰Telecommunications Consumer Rights and Protection Directive, supra note 16, Art. 9(1)

⁷¹ Hana Teshome, *telecom fraud law and the practice in Ethiopia, challenges and the way of forward*, (thesis submitted in partial fulfillment for LL.M degree AAU, March 2021), pp. 4.

⁷²Supra note 38 pp. 16

discusses whether Ethiopian telecom consumer protection laws are sufficient to address such infringements if they happen in Ethiopia.

4.1. Consumer data breach

In a well-known case of Safaricom against its former employees and a third-party Mr. Benedict Kabugi in a Kenyan Court of Milimani, civil case number 194 of 2019, consumer data breaching problems were established against Safaricom. The company admitted that consumer's data was in the hands of third parties and they have been unable to access Google drive where the data is stored by one of the employees.⁷³ In Ethiopia, consumer protection laws, specifically the Special Consumer Protection Directive in Article 15, attempt to address such scenarios in detail. This article states that service providers shouldn't sell and expose consumer data to third parties and the obligation is put on their shoulders to protect consumer data from unauthorized access and use. Besides, authorized service providers are obliged to refrain from disclosing the personal information of their customers to third parties without express, affirmative approval to do so for means that are expressly specified. If a similar claim arises in Ethiopia as it did in Kenya, it would be entertained under this provision. However, this provision may not be comprehensive enough. Article 15 (4) of the directive requires service providers to notify consumers within three days of any disclosure of their data, which may not align with the principles of consumer privacy rights. Technological data can spread rapidly across the globe within minutes, and providing a three-day notice period might be unreasonable.

Furthermore, the directive fails to specify the measures that service providers should take to address data breaches. While it mentions "appropriate safeguards", this term is open to subjective interpretations. Even when subsequent articles attempt to define what appropriate safeguards entail, the specificity may still not be sufficient to

⁷³ Supra note 10.

effectively address the issue. In conclusion, while Ethiopia has laws in place to entertain data breach claims, the current provisions may not be extensive enough to prevent potential data breaches effectively. Further refinement and clarification may be necessary to adequately protect consumer data in the digital age.⁷⁴ There is a law in Ethiopia by which data breach claims could be entertained; however, it is not adequate to avert possible data breaches.

4.2. Misinterpretation and non-disclosure of facts about services

Regarding misinterpretation and non-disclosure of facts about services, three claims arose over Safaricom. In one of the cases between Mr. Nehemy versus Safaricom Nanyuki Branch which was submitted to Kenya Communications Commission, Mr. Nehemy argued that the company's employee sold the product to him with non-disclosure of facts about their service and product, in a detailed manner. He stated that "I bought a Lenovo phone from Safaricom Shop in Nanyuki which was defective and they were taking too long to resolve the problem". The Authority initiated investigations into the allegation and the commission by analyzing the claim from Section 55 (a) (i) False or Misleading Representation Section 56 (2) (a) Unconscionable Conduct Section 64 (1) Defective Goods, and decided that the defendant needed to resolve the issue by providing a new phone to the complainant consumer.⁷⁵

In addition, in another case filed to the Communication Commission of Kenya between Mr. Joseph versus Safaricom, Mr. Joseph argued that "the one GB data bundle advertised by Safaricom is not one GB; therefore, that was misleading and fraudulent to consumers."⁷⁶ In other court proceedings, the plaintiffs, Gichuki Waigwa, Lucy Nzola, and Godfrey Okutoyi, are seeking KES 305 billion in damages from Safaricom and other defendants for fraudulent misrepresentation, material non-

⁷⁴Telecommunications Consumer Rights and Protection Directive, *supra* note 16, Article 16 (1-6)

⁷⁵ Kenya Communication Commission, *Consumer Protection Cases*, page 1

⁷⁶ *Ibid*

disclosure of facts, illegal and unlawful investment of M-Pesa account holders' funds, predatory lending practices, and charging of exorbitant interest rates. According to the lawsuit, the three accused Safaricom of fraudulent misrepresentation and material non-disclosure of facts related to the risk assessment audit of the M-Pesa Service.⁷⁷ In Ethiopia, similar consumer protection issues are addressed under Article 9 of the Telecom Consumer Protection. Under the provision, it is stated that contracts shall be made available to consumers which outline all relevant provisions under which services are to be provided. Where telecommunication service providers promote services to customers according to subscriber contracts, they are obliged to ensure that such contracts are made available and clearly and accurately explained by representatives of the authorized provider before the customer commits to the relevant service. To make it simple, consumers have the right to receive clear, correct and complete information in service contracts, including details relevant to service provision.

This right is widely constructed to include consumers' right to be adequately informed about the quality, quantity, potency, purity, standard and price of goods and services which in return would protect them from unfair trade practices. They have also the right to be respected by business persons and to be protected from such acts of the business person as insult, threat, frustration and defamation, and the right to be compensated for damages they suffered because of transactions in goods and services.⁷⁸ The provision also stipulates that service providers should provide a list and description of equipment and services offered, along with terms and conditions. Generally, the provisions outlined in Article 9 of the Ethiopian Telecom Consumer Protection Directive address issues of non-disclosure of facts about services and equipment, ensuring that consumers are adequately informed and protected from

⁷⁷ Brian Murimi and Mwanawanjuguna, <https://ntvkenya.co.ke/news/safaricom-sued-for-kes-305-billion-over-fuliza-seravice/> accessed on April 19, 2023

⁷⁸ Dessalegn Adera, *The Legal and Institutional Framework for Consumer Protection in Ethiopia*, (thesis Submitted in Partial Fulfillment of the Requirements for the Master of Laws Degree at the School of Law, Addis Ababa University, Addis Ababa June 2011), pp. 69

unfair practices. Should similar claims arise in Ethiopia as seen in Kenya, this regulation provides a framework for addressing consumer grievances effectively.

4.3. Access and transfer consumer's money from m-Pesa account without their consent

Relevant to this point in Kenya, there is a well-known case involving Joseph Gitonga Kihanya and a lobby group called Uzalendo. They want to know if Safaricom staff can access the PINs of people with M-Pesa accounts and if the money in those accounts is safe. This lawsuit started after a story revealed that M-Pesa details of individuals named Benson Akasi and Alfred Marenya were accessed and shared publicly. Mr Kihanya says, "Safaricom customers face big risks because employees leaked their information," and he believes this issue needs urgent attention to prevent money loss. The case is still ongoing.⁷⁹ Without an adequate legal framework and the complex historical background of the company, at the national launch of Safaricom Ethiopia in Addis Ababa, Ethiopia's Finance Minister, Ahmed Shide, announced that the mobile money platform, M-Pesa, had been approved to start its services across the country.⁸⁰ So far, the country lacks legislation to guide the M-Pesa transactions and conduct of service providers. Drawing on the experience from Kenya, the forthcoming law should prohibit access to consumer accounts by staff members of the company. Furthermore, the forthcoming law should state strong penalties for non-compliance with obligations since most internet users in Ethiopia are new to the technology and could be described as naïve users compared to the more experienced operators who use different complicated techniques to cheat their victims.

⁷⁹ Business Daily, Users allowed to sue Safaricom over clients bank details access, available at <https://www.businessdailyafrica.com/bd/economy/users-allowed-to-sue-safaricom-over-clients-bank-details--4092154>, last accessed on April 20, 2023

⁸⁰ Victor Oluwole, Safaricom gets approval to launch M-PESA in Ethiopia, available at <https://africa.businessinsider.com/local/markets/safaricom-gets-approval-to-launch-m-pesa-in-ethiopia/tmttz4b>, accessed April 20, 2023

4.4. High charge for services

In Kenya, Safaricom dominates the Kenyan mobile market and sweeps up more than 90 percent of revenues in areas such as voice calls and text messaging. In addition, Safaricom also enjoys dominance of the network infrastructure, owning the bulk of cellphone towers in marginal and low-populated areas. This unfair competition in the industry has led to the exit of Yu (India's Essar Telecoms) from the Kenyan market. The regulator in Kenya has failed to come up with a winning formula that guarantees effective competition in the telecommunication sector. Using market dominance, Safaricom Limited in Kenya has over the years continued to charge high prices for its services, especially in M-Pesa transactions, messages, data and voice making the lives of consumers very miserable.⁸¹

The author strongly believes that Ethiopia could face a similar fate because the country's laws lack specific provisions to constrain excessive tariffs. Lawful Tariffs Directive No. 797/2021 merely states that service providers should charge "justifiable and reasonable" rates. This vague language leaves room for subjective interpretation and could allow service providers to exploit consumers with high prices. As seen in the case of Kenya, unregulated services charge can result in consumers being charged exorbitant fees. To prevent such a scenario in Ethiopia, it is imperative for the law to explicitly set tariffs for services. In situations where monopolies are unavoidable, price regulation is essential to ensure a fair return for the firm while protecting consumers from excessive charges.⁸²

Despite its shortcomings, the law in Ethiopia provides some safeguards against excessive pricing. Article 6(2) of Lawful Tariffs Directive No. 797/2021 requires service providers to transparently publish all charge and discount information.

⁸¹ Vincent O. Nyagilo, *the role of Communication Authority of Kenya (CAK) in telecommunication industry: the case of dominance of players in the industry in Kenya* (serial publishers, 2017), ISSN 2616-1818, pp. 618

⁸² Ahmed Galal and Bharat Nauriyal, *Regulation of telecom in developing countries: outcomes, incentives and commitment*, December 1994, pp.4

Additionally, Article 15 entrusts the Ethiopian Communications Authority (ECA) with the responsibility of ensuring tariff certainty. Furthermore, the directive stipulates that tariff changes must be notified to the ECA, which has 15 days to respond to the notification. These measures aim to prevent unilateral and unjustifiable price increases.⁸³

4.5. Suspension of services without sufficient reason

Regarding the suspension of services without sufficient reason, there are several cases in which Safaricom is made a defendant in Kenyan courts. However, the popular case is between Wilfred Nderitu and Charles Kanjama and Safaricom. According to this case, counsel Wilfred Nderitu and Charles Kanjama say in a case filed at the High Court that their SIM cards were suspended on October 15 and that they were forced to re-register to enjoy services and products offered by Safaricom. Mr. Nderitu says that he gave his identity card to an authorized dealer and was successfully registered when he registered his line over two decades ago. But he received a message telling him to register his number on October 15 and thought it was a mistake. He says, “this does not rhyme with my legitimate expectation that once I have registered and been on-boarded onto the platform, the 1st defendant (Safaricom) has to ensure that I enjoy unfettered access to the products and services for as long as I pay the predetermined rates.” In another case, Mr Kanjama says he has been a Safaricom subscriber for more than 20 years, but “That I learnt on 15th October 2022 with utter shock and dismay that my SIM card was suspended. As a result, I could not make calls, send messages, access my M-Pesa wallet or make any payments.” The lawyers say they are aware of numerous people who have the same claim and might be willing to join the case.⁸⁴

For such type of violation, Ethiopia's legal framework offers clearer protections for consumers. The Telecommunications Consumer Rights and Protection Directive

⁸³Lawful Tariffs Directive No. 797/202, July 2021, Article 7 (1)

⁸⁴ Supra note 10

mandates service providers to give customers 48 hours prior notice in writing before service disconnection.⁸⁵ This provision empowers consumers to prepare for the disruption and potentially rectify any issues that might have triggered the suspension. The directive further emphasizes the service provider's obligation to deliver services free from disconnection, except in specific circumstances outlined in the contract or authorized by law. This strengthens the consumer's position and discourages arbitrary suspension practices.⁸⁶ If a similar case arises in Ethiopia, the consumer will likely find stronger legal backing under the telecommunications consumer rights and protection directive. The 48-hour prior notice requirement and the emphasis on uninterrupted service would also strengthen their protection.

5. Gaps of Telecom Consumer Protection Laws in Ethiopia

Ethiopia's telecom consumer protection law is marred by significant loopholes. Based on the analysis of the comparative experiences from Kenya and Nigeria telecom consumer protections experiences, the following discussions highlight the gaps in the telecom consumer protection laws of Ethiopia.

In countries like Nigeria,⁸⁷ consumer associations are well recognized and can freely operate as legitimate representatives of consumers' interests. They are invited to participate as stakeholders in policy formation and to communicate on behalf of consumers in the marketplace. However, telecom consumer protection law in Ethiopia has failed to include such associations, so poor and not well-informed telecom consumers in Ethiopia are left in the industry without any advocate who stands for their rights.

⁸⁵ Telecommunications Consumer Rights and Protection Directive, *supra* note 16, Article 7 (3)

⁸⁶ *Ibid* article 15 sub article 1

⁸⁷ See Dr. D.A. Akhabue, *Regulatory Framework for Consumers of Telecommunication Services in Nigeria*, International Academy Journal of Business Administration Annals Volume 7, Issue 1, PP 24-41, and ISSN: 2382-9175, April, 2019, pp.33.

In most countries, a bureau of Standards is established;⁸⁸ however in Ethiopia, even though the Trade Competition and Consumer Protection Authority was established to undertake the task of establishing a bureau of standards, the authority has failed to do so.⁸⁹ Such absence of a well-established Bureau of Standards creates difficulties for consumers in choosing between service providers offering seemingly similar services.

In Nigeria, the Nigeria Communication Commission (NCC) appoints an industry group to create a consumer code. This code needs the Commission's approval before it becomes effective. However, in Ethiopia, the service providers themselves create the consumer protection code. This can result in a code that gives more rights to the service providers and imposes more obligations on consumers.⁹⁰

In addition, the lack of clear rules governing the ECA enforcement procedures surrounding consumer privacy violations creates a transparency deficit. Without an independent investigative team, the regulator relies solely on evidence provided by service provider, which in turn raises questions about effective enforcement.⁹¹

Besides, the consumer protection directive's mandate for service provider codes to be available only in English and Amharic excludes a significant portion of the Ethiopian population.⁹² In Ethiopia, about 88 languages are spoken currently and so many consumers do not understand what is written in Amharic and English, so the

⁸⁸ For instance, in Tanzania Bureau of Standards (TBS) is established and responsible for setting standards and issuing certification marks across multiple sectors of the economy in Tanzania. The one motive behind standardization bodies and certification marks is to help consumers be confident and make informed choices in the market while ensuring that suppliers maintain standards. As a result, in Tanzania, consumers are usually more confident when purchasing products with the TBS mark. see Hilda Mwakatumbula, *consumer protection in the telecommunication markets in the post-liberalization era – the case of Tanzania*, (PhD thesis in graduate school of Asia-Pacific Studies, Waseda University, march 2017), pp. 44.45

⁸⁹ The Ethiopian Trade Competition and Consumer Protection Proclamation No.813/2013, March 2014, Art.36 (1)

⁹⁰Telecommunications Consumer Rights and Protection Directive, See supra note 16, article 5 sub articles 1.

⁹¹ Supra note 13 pp. 56

⁹²Telecommunications Consumer Rights and Protection Directive, supra note 16, Article 6 sub article 2

fate of those consumers is questionable. Are they illegitimate to understand their rights and duties?⁹³

Moreover, the NCC in Nigeria establishes procedures or guidelines for the making, receipt and handling of complaints of consumers regarding the conduct or operation of licensees and may, at its discretion, institute alternative dispute resolution processes for the resolution of the complaints.⁹⁴ However, the legal framework in Ethiopia offers no clear guidelines on how consumers can lodge complaints with the ECA.⁹⁵ Uncertainty regarding submission channels, email, website or other means is high which creates barrier for consumers seeking redress for grievances.⁹⁶

In Kenya, the Telecommunications Regulator Communications Commission of Kenya (CCK) runs a consumer consultation forum. The forum invites shareholders for discussions held in different public places across the country.⁹⁷ Consumers can only make robust choices between competing suppliers and services if they clearly understand the terms and conditions of the service they pay for. In this regard, consumer education and awareness creation play an important role.⁹⁸ However, in Ethiopia, there is no legal provision under the consumer protection law that obliges ECA to provide education for consumers.

The ECA is accountable to the Prime Minister, who can appoint the board and designate the chairman. Its budget is also allocated by the government (though it can also charge fees for services).⁹⁹ These provisions call into question whether it will

⁹³ World Population Review, What Languages do People Speak in Ethiopia, <https://worldpopulationreview.com/countries/ethiopia/language>, accessed on April 20, 2023

⁹⁴ Nigerian Communications Act, 2003, section 73

⁹⁵ Telecommunications Consumer Rights and Protection Directive, See supra note 16, Article 19 (2)

⁹⁶ Teferi Tibebu, *the consumer rights under Ethiopian laws: are they human or democratic rights*, (Thesis Submitted in Partial Fulfillment of the Requirements for the Degree of Bachelor of laws (LL. B) at the school of law, Wolkite university, unpublished) page 33

⁹⁷ Hilda Mwakatumbula, *consumer protection in the telecommunication markets in the post-liberalization era – the case of Tanzania*, PhD thesis in the graduate school of Asia-pacific studies, Waseda University, march 2017, pp.49

⁹⁸ Cullen International, *Specialize in consumer protection in the telecoms sector*, pp.5

⁹⁹ Communications Service Proclamation No. 1148/2019 supra note 6 Article 3 (2)

be able, in practice, to operate independently from the government, or whether it will be susceptible to political pressure. In such a scenario, the authority will fail to protect consumer interest in the industry.

Telecom consumers are defined under Kenya Consumer Protection Regulations 2010 as “any person who uses the services or purchases the products of a particular telecom services provider without necessarily being a subscriber to the provider”. However, in Ethiopia's consumer protection laws, consumers are defined as only users who are consumers of the service provider and exclude those who use a service with authority from the consumers.¹⁰⁰ Although consumers such as family members or employees of a business person who receives a telecom network or service from the provider are also users, they are not considered as a customer and are not eligible to exercise several sector-specific consumer protection provisions.

6. Conclusion and Recommendations

This article analyses and discusses the efficiency of the Ethiopian telecom consumer rights protection to redress the possible infringements of consumer rights, based on the experiences of Safaricom in Kenya. Firstly, it defines a telecom consumer as an individual receiving services from a provider, excluding those who use authority over the consumer. The article identifies various acts that infringe on telecom consumers' rights in the industry, such as disclosing customer information, price discrimination, telemarketing, slamming, and cramming. It also outlines different rights of telecom consumers, including the right to privacy, the right to access clear and accurate billing, and the right to a remedy. In addition to rights, the article highlights obligations of consumers such as not using the service provider's equipment for purposes other than normal conditions and not reselling any services provided.

¹⁰⁰ Telecommunications Consumer Rights and Protection Directive, See *supra* note 16, Article 2(6).
ISSN (Print): 2664-3979 ISSN (Online): 2791-2752
<https://journals.hu.edu.et/hu-journals/index.php/hujl>

While Ethiopian telecom consumer protection laws show strength in protecting consumer data breaches, the article identifies several gaps. For instance, the laws do not specify service tariffs, which could allow Safaricom Ethiopia to dominate the market and impose high tariffs without regulation, like in Kenya. Despite the licensing of Safaricom Ethiopia to conduct M-Pesa transactions, no laws have been legislated to guide these transactions. Furthermore, the laws fail to specify measures that service providers should take to prevent data breaches of consumer information. The narrow definition of a telecom consumer is another gap in the law. In contrast, countries like Nigeria and Kenya have established bureaus of standards and consumer associations to safeguard consumer interests in the telecom industry. However, Ethiopia has not established such bodies yet. The article also points out the lack of clear rules governing how the Ethiopian Communication Authority (ECA) determines whether an operator has violated consumer rights, especially concerning consumer privacy.

Therefore, to enhance the protection of telecom consumers in Ethiopia and ensure a fair and transparent telecom industry, this article provides specific suggestions targeting primary stakeholders mainly the legislators, the Trade Competition and Consumer Protection Authority, and the Ethiopian Communications Authority (ECA). The article demands the legislator expand the narrow definition of a telecom consumer to include those using services with the authority of the consumer. Additionally, laws should be legislated to establish consumer associations, and the telecom consumer code should be written in at least three to five working languages to ensure consumers across the country understand their rights. Moreover, the notice period for data breaches should be reduced from 3 days to 30 minutes. Given that Safaricom Ethiopia is allowed to undertake M-Pesa transactions in Ethiopia, there should be laws guiding these transactions, including clauses to prevent data breaches and prohibit the transfer of consumer information to third parties. Furthermore, the general terms in the lawful tariff directive should be amended to specify the tariff rates that service providers can charge.

Concerning the Trade Competition and Consumer Protection Authority, the article suggests establishing a bureau of standards to help telecom consumers distinguish between high-quality and low-quality services, similar to other countries' experiences such as Nigeria. This would enhance the ability of consumers to make informed choices about the services they use. Furthermore, it recommends that the Ethiopian Communications Authority (ECA) should establish a clear process for consumers to lodge complaints about service providers and conduct consumer education forums to inform telecom consumers of their rights and obligations. The responsibility of preparing the consumer protection code should also be shifted from service providers to consumer associations or other independent bodies without vested interests in the telecom industry. The ECA should establish an independent body to assess violations of telecom consumer privacy, rather than relying solely on information provided by service providers.