



ELECTRONIC COMMERCE AND CONSUMER PROTECTION IN GHANA.

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Abstract: The advent of electronic commerce (e-commerce) has significantly transformed the way businesses operate and consumers engage in transactions globally. Ghana, with its burgeoning digital economy, is no exception. The use of modern technology, and internet accessibility coupled with the outbreak of the coronavirus pandemic has contributed to the meteoric rise of electronic commerce. As more Ghanaians embrace online shopping and digital financial services, the need for robust consumer protection mechanisms has become paramount. This article delves into the e-commerce landscape in Ghana, examining the key stakeholders, regulatory frameworks, and growth trends shaping the sector. It further explores critical consumer protection issues such as unfair competition, privacy breaches, electronic contracts, and fraud. Through an evaluation of the Electronic Transactions Act, 2008 (“Act 772”) and related regulations, this article assesses their effectiveness in addressing these concerns and identifies gaps in the existing legal framework. Finally, recommendations are proposed, emphasizing the need for proactive measures to foster trust and confidence among consumers to enhance consumer protection and build trust in Ghana's e-commerce ecosystem.

IndexTerms - E-commerce, Consumer Protection, Payment Systems, Stakeholders.

1. INTRODUCTION

In recent years, electronic commerce (e-commerce) has marked a seismic shift in trade and commerce by enhancing economic growth and digital transformation globally. In Ghana, the rapid adoption of internet services, coupled with a rise in smartphone usage, has propelled the growth of e-commerce, making it an essential component of the country's economic landscape. From online retail platforms to digital financial services, businesses and consumers alike are increasingly embracing the convenience and accessibility of online transactions.

However, the rise of e-commerce births a new set of challenges, particularly in the area of consumer protection. The shift from traditional brick-and-mortar establishments to digital platforms has exposed consumers to risks such as fraud, privacy violations, and the use of unconscionable terms in electronic contracts. These risks underscore the need for a robust legal framework to safeguard the interests of consumers while fostering a healthy and competitive e-commerce environment.

The importance of consumer protection in e-commerce cannot be overstated. Ensuring that consumers are protected from unfair practices, fraud, and privacy breaches is essential to fostering trust and confidence in the digital marketplace. In this context, Ghana has made significant strides in establishing regulatory frameworks to govern e-commerce activities. Key stakeholders, including telecommunications companies, financial institutions, and e-commerce platforms, play a critical role in shaping this evolving landscape.

This article is divided into four main parts. The article begins with an overview of the e-commerce sector in Ghana, highlighting key trends and growth patterns. It subsequently delves into the current state of e-commerce by examining the roles of various stakeholders. The second part of the paper examines the current institutional and regulatory frameworks for e-commerce in Ghana. The next part of the paper discusses the key consumer protection issues arising from e-commerce activities, including unfair competition, privacy concerns, fraud, unconscionable terms in electronic contracts, and related issues. The paper concludes by summarizing the key findings, proposes recommendations for enhancing consumer protection, and emphasizes the need for proactive measures to strengthen consumer protection.

2. E-COMMERCE IN GHANA

Electronic commerce refers to the use of the internet for marketing, identification, payment and delivery of goods and services [1]. The World Trade Organisation (WTO) defines electronic commerce (e-commerce) as the “*production, distribution, marketing, sale or delivery of goods and services by electronic means*”, which can be between enterprises, households, individuals, governments, and other public or private organizations” [2]. In Ghana, aside from the marketing and selling of products online, digital services such as online gaming, cloud services, video or audio streaming, digital marketplace operations, and online advertisement services are largely considered e-commerce businesses for tax purposes [3].

Ghana has witnessed exponential e-commerce growth over the years. Ghana has approximately 15 million internet users who are buying online every day. Leading local e-commerce platforms include Hubtel, Plendify, Glovo, Jiji, Eats, and Bolt Food [3]. The industry enormously benefits from the improved internet services provided by local telecommunication companies and the pivotal role of social media apps in ensuring the visibility of products and services. As of 2023, the penetration rate of the e-commerce market in Ghana stood at 12.52 percent. This share increased from 12.4 percent in 2018 and is expected to reach nearly 17 percent by 2028 [4]. The number of users in the e-commerce market in Ghana was forecast to continuously increase between 2024 and 2029 by 2.9 million users (+55.88 percent). If the consistent increase goes through the tenth consecutive increasing year, the indicator is estimated to reach 8.12 million users and therefore a new peak in 2029 [5].

One of the major anchors of the e-commerce landscape is the adoption of enhanced payment systems, primarily through mobile banking. The adoption of mobile banking has revolutionized payment systems across the country. This has enabled an easier, quicker and more efficient payment system for goods and services. Local banking institutions have enabled mobile banking applications that facilitate transactions, thus reducing human contact and improving efficiency. A more pervasive illustration of an improved payment system is the widespread adoption of mobile money services by local telecommunication companies in Ghana, especially, MTN, Telecel and AirtelTigo. For example, in 2023, transactions made through Mobile Money Interoperability in Ghana registered the highest volume compared to other payment systems. This reached over 171.3 million transactions, followed by GhIPSS Instant Pay, which registered around 115.4 million transactions. Also, transacting operations performed through the automatic clearing house (direct credit and debit methods) were altogether more than 10.2 million [6].

Another influencing trend of e-commerce in Ghana and other parts of the world is inextricably linked with the rise of the use of social media applications. Presently in Ghana, there are over 24 million active internet users in the country with nearly 70% internet penetration coverage [7]. Both conglomerate and small businesses have leveraged on the effectiveness of social media tools to market their products and services. This practice usually involves businesses relying on social media to build brand awareness, expand visibility and reach, attract online followers and generate online sales. Recent studies have shown that social media advertising can be up to three times more effective than traditional advertising methods [8]. According to Statista, the social media advertising market is the second largest market within digital advertising with a global revenue of up to US\$207 billion [9].

The effectiveness of social media can be attributed to the fact that social media platforms allow advertisers to target their campaigns based on user interests, geography, demography and behavioural patterns. This facilitates their reach and audience with greater precision. It is also effective because it enables businesses to expand their reach significantly since most internet users spend the most time each day on these social media platforms. These targeted advertisements further enable businesses to engage their target audience seamlessly. On Facebook, Instagram, Snapchat and X, many businesses have set up business accounts, where they can engage customers and potential customers and address their concerns directly. This phenomenon creates a more personalised interaction between business entities and their consumers.

Furthermore, by tapping into the influence of social media, businesses can collect and analyse data, receive personalised feedback and reviews from customers and consumers on their performance and efficiency. This enables them to optimize strategies and improve the quality of services based on the data they receive. Inevitably, this leads to customer satisfaction and ensures quality delivery of services.

Notwithstanding the remarkable strides e-commerce has made in Ghana, it is riddled with a number of challenges which include consumer protection issues of unfair competition, privacy, fraud, misrepresentation, cybersquatting, trademark dilution, trademark infringement, and unconscionable terms in electronic contracts, geographical indication concerns in online transactions, security of payment, scams, customer disputes, information overload, phishing, spam advertisements, predatory marketing, among several other challenges. There is also the cost of access, lack of access in certain instances, and forum for redress in cases of breach can be a thorny matter. In issues of litigation, the applicable law, venue, enforcement of awards or judgement and many related matters can pose challenges.

2.2 STAKEHOLDERS OF E-COMMERCE IN GHANA

Banks, telecommunication companies (“telcos”), and e-commerce platforms play pivotal roles in the development of the e-commerce ecosystem in Ghana. Their operations are guided by a robust regulatory framework. These stakeholders contribute significantly to ensuring that the e-commerce space is secure, consumer-friendly, and compliant with international standards, promoting trust in digital transactions while safeguarding consumer rights.

This part analyses the various roles of three key stakeholders of e-commerce in Ghana. These stakeholders are banks, telcos, and e-commerce platforms.

2.2.1 Banks:

Banks are critical enablers of e-commerce in Ghana, primarily through their provision of financial services, online payment solutions, and the issuance of electronic payment instruments such as debit and credit cards. They contribute to the overall trust and functionality of e-commerce by ensuring secure, reliable, and efficient payment systems. In discussing the role of banks as e-commerce stakeholders, the role of legislation cannot be overlooked.

The *Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930)* regulates the activities of banks and deposit-taking institutions in Ghana, ensuring their stability and solvency. Under this Act, banks are required to adopt robust systems to safeguard consumers' financial transactions, which is crucial for online payments in e-commerce. It mandates banks to implement secure payment systems to prevent fraud and protect consumers' funds.

Also, the *Payment Systems and Services Act, 2019 (Act 987)* governs electronic payments and mobile financial services. It enables banks to act as payment service providers (PSPs), allowing them to provide real-time payment solutions for e-commerce transactions. By issuing e-money and offering mobile money services in partnership with telcos, banks ensure consumers can engage in online transactions seamlessly. Under the *Electronic Transactions Act, 2008 (Act 772)*, banks must comply with several provisions of the Act to facilitate secure online payments, which includes the use of digital signatures and encryption technologies. The Act validates online contracts, ensuring that electronic transactions are legally binding, which enhances the security and trust in digital commerce.

Relating to consumer protection, banks contribute to consumer protection through their compliance with Anti-Money Laundering (AML) (through the Anti-Money Laundering Act, 2020 (Act 1044) and Know Your Customer (KYC) regulations, which are enshrined in Act 930 and the Payment Systems and Services Act. These regulations prevent fraud and ensure that all parties in a transaction are verified and protected from identity theft. Act 987 also mandates banks to implement secure payment gateways, ensuring that consumer data is protected during online transactions. In cases of unauthorized transactions, the law places the liability on service providers, providing consumers with legal recourse and protection against financial loss.

Banks are major stakeholders in the e-commerce system, not only do they provide services that facilitate entire e-commerce transactions, but they also exercise oversight responsibilities by ensuring that other stakeholders are in due compliance with established regulations.

2.2.2 Telecommunication Companies (Telcos)

Telcos are essential for providing the infrastructure necessary for internet connectivity and mobile payments, which are the foundation of Ghana's e-commerce ecosystem. They offer mobile money services and ensure reliable digital communication channels between consumers and e-commerce platforms.

Telecommunication companies provide the necessary internet connections, whether through broadband, fiber optics, or mobile networks (3G, 4G, 5G), which are essential for both consumers and businesses to engage in e-commerce.

The Electronic Transactions Act, 2008 (Act 772) governs the operations of telcos, ensuring that they provide reliable telecommunications and internet services. The Act obligates telcos to maintain high standards in network security and service delivery, which are critical for the smooth operation of e-commerce platforms. Telcos, through partnerships with banks, are key players in Ghana's mobile money ecosystem. Act 987 allows telcos to act as Payment Service Providers (PSPs), facilitating mobile payments and enabling consumers to use mobile wallets for online shopping and other e-commerce-related transactions. The *Data Protection Act, 2012 (Act 843)* requires telcos to protect the personal data of consumers using their networks for e-commerce transactions. They must ensure that consumer information is handled with confidentiality and that data breaches are prevented, enhancing consumer trust in mobile and online transactions.

Telcos protect consumers through secure mobile payment solutions regulated under Act 987. Mobile money platforms, such as MTN Mobile Money and Vodafone Cash, provide robust encryption and two-factor authentication to safeguard consumer funds and personal data. Telcos offer secure payment gateway solutions that integrate seamlessly with e-commerce platforms. This fosters trust and convenience for online shoppers, leading to a flourishing e-commerce landscape. Another impact of telcos on the e-commerce market is the role of targeted

advertisement. By analysing user data with artificial intelligence (AI), telcos can help e-commerce businesses deliver targeted advertising and promotions. This personalized approach increases customer engagement and sales conversions.

It is also important to note that telcos often provide SMS-based or app-based multi-factor authentication for verifying e-commerce transactions, enhancing security for both merchants and customers.

2.2.3 E-Commerce Platforms

E-commerce platforms such as Jumia, Tonaton, and Zoobashop serve as intermediaries between buyers and sellers, facilitating the purchase and sale of goods and services online. These platforms are instrumental in creating marketplaces where consumers can shop conveniently from various vendors. Act 772 ensures that electronic contracts and digital signatures are legally recognized, allowing consumers and vendors to conclude binding contracts online. The Act also mandates platforms to provide transparent information about products, services, and payment terms. E-commerce platforms must comply with the provisions of the Data Protection Act, 2012 (Act 843) to ensure the protection of consumer data. Platforms are required to implement strict data security measures, prevent unauthorized access to consumer information, and adhere to regulations regarding the storage and sharing of personal data. They enable businesses to reach a global audience, providing consumers with access to a vast array of products from around the world, regardless of geographic location.

Act 772 ensures that e-commerce platforms maintain transparency in their operations by providing accurate information on product descriptions, prices, and delivery timelines. This protects consumers from fraudulent or misleading information when making purchases online. The Data Protection Act requires platforms to protect consumer privacy, ensuring that personal data collected during transactions is secure and used only for legitimate purposes. Violations of this Act can result in sanctions, providing a deterrent against data breaches. E-commerce platforms often provide dispute resolution mechanisms, giving consumers the ability to resolve complaints regarding defective products, non-delivery, or misrepresentation. This creates a safer environment for online transactions, fostering trust in the e-commerce system.

E-commerce platforms also integrate with various payment gateways (credit cards, mobile wallets, bank transfers) to securely process transactions. This ensures that consumers can pay for their purchases through a variety of methods at their convenience. They also provide systems to manage and track customer orders, from the time of purchase to delivery, ensuring a smooth transaction process for both buyers and sellers.

3. LEGAL AND REGULATORY FRAMEWORK OF E-COMMERCE AND CONSUMER PROTECTION IN GHANA.

Ghana's legal regime on e-commerce and consumer protection presents a level of complexity. This is largely due to the fact that the entire body of regulatory framework which governs both e-commerce and consumer protection are reflected in several pieces of legislation, rules, guidelines and practice directions. A sound appreciation of the regulatory regime, requires one to wade through series of legislation, some primary and central to e-commerce while others reflect the need for consumer protection. The paper thus proceeds to discuss the legal and regulatory framework of electronic commerce in Ghana, highlighting pertinent statutes that are central to e-commerce in Ghana:

3.1 Electronic Transactions Act, 2008 (Act 772)

The Electronic Transactions Act, 2008 (Act 772) codifies the existing regulations that govern electronic commerce in Ghana. As reflected under **section 1** of its object statement, the Act aims inter alia: to remove and prevent barriers to electronic communications and transactions. Similarly, it also seeks to promote the development of electronic transaction services responsive to the needs of consumers. Thus, the Act facilitates electronic transactions, while it simultaneously accords protection to consumers of electronic commerce and transactions.

The relevant provisions on electronic commerce and consumer protection from Act 772 are summarised as follows:

According to section 144 of the Act, electronic transactions are defined as transactions through an electronic agent such as a computer programme or other automated means. Since e-commerce qualifies as an electronic transaction, the Act therefore applies to businesses that sell or market their goods and services online. As provided in section 2, the Act applies to electronic transactions and electronic records of every type.

Section 5 of the Act recognizes electronic messages and records, affirming that requirements for information to be in writing or printed form are satisfied if the information is in electronic form. This legalizes and promotes the use of e-commerce by ensuring that electronic documents are treated with the same legal weight as traditional paper documents.

Section 11 ensures that legal signatures have the same effect as other forms of signatures used in contractual agreements.

Section 23 emphasises that agreements formed through electronic means are valid, bolstering the legitimacy of contracts concluded online.

The Act places significant emphasis on protecting consumers in e-commerce transactions. The following provisions contain consumer protection mechanisms:

Section 47 mandates that suppliers of goods or services must provide detailed information to consumers, including:

- (a) the full name, legal status, and physical address of the supplier.
- (b) a detailed description of the goods or services, enabling informed consumer decisions.
- (b) the full price of goods, including all costs like taxes and delivery fees.
- (c) the terms of the transaction, delivery timelines, payment methods, return policies, and dispute resolution mechanisms.

This provision ensures transparency, requiring e-commerce platforms to disclose crucial information that protects consumers from fraud or misleading practices.

Section 48 obligates suppliers to fulfill orders within a stipulated period (14 days unless otherwise agreed). If the goods or services are unavailable, the supplier must notify the consumer and refund any payments within seven days. This section protects consumers from undue delays or non-fulfillment of orders.

Section 49 grants consumers a grace period within which they can cancel transactions without penalties. For goods, the grace period is 14 days after receipt, and for services, it is seven days from the conclusion of the agreement. This flexibility provides consumers with the ability to withdraw from unsatisfactory agreements without incurring unnecessary financial penalties.

Section 50 addresses unsolicited electronic communications, prohibiting companies from sending such messages to consumers without prior consent. Violations are subject to significant fines or imprisonment, ensuring that consumer privacy is respected.

Section 51 focuses on the liability for misuse of electronic payment media, such as credit cards or mobile payments. Consumers are generally not liable for unauthorized use of their electronic payment tools unless they acted in collusion or negligently allowed the misuse.

Suppliers are required to implement secure payment systems to protect consumer data. Failure to provide sufficient security may make the supplier liable for any damage suffered by the consumer.

Section 53 ensures that even if an e-commerce transaction involves foreign parties or laws, Ghanaian law takes precedence in matters concerning consumer protection when goods are supplied to consumers in Ghana. This provision extends the jurisdiction of Ghanaian consumer protection laws to cross-border e-commerce, ensuring that consumers are protected in international transactions.

Section 54 of the Act establishes mechanisms for the resolution of disputes arising from e-commerce transactions. Suppliers are required to provide access to alternative dispute resolution mechanisms, ensuring that consumers have a recourse to resolve disputes without resorting to costly litigation.

Section 81 allows for the establishment of a dispute resolution process specifically for conflicts between consumers and service providers.

Sections 90 to 94 outline the obligations of intermediaries and service providers. These entities are required to ensure the secure transmission and storage of electronic records and are protected from liability in certain cases, such as when they act merely as conduits for the transmission of data. However, they are still required to act on "take-down notices" if infringing content is identified, ensuring compliance with intellectual property and consumer rights laws.

The Act provides for the protection of critical electronic records and systems through **Sections 55 to 62**, which are particularly relevant for ensuring that the infrastructure supporting e-commerce in Ghana is secure. These sections empower the Minister to designate certain systems and databases as critical and impose strict security protocols for their management.

3.2 Payment Systems and Services Act 2019 (Act 987)

Another relevant legislation that impacts e-commerce in Ghana is the Payment Systems and Services Act, 2019 (Act 987). This is because the operation of the e-commerce business is largely aided by electronic payment systems. Act 987 was enacted to amend and consolidate the laws relating to payment systems, payment services, and to regulate institutions which carry on payment service and electronic money business in Ghana. The Act applies to banks, specialised deposit-taking institutions, a dedicated electronic money issuer, including their affiliates and agents. Under section 3 of the Act, one of the core functions of the Bank of Ghana, which is the principal body for supervising and regulating the payment systems, is to among others, regulate payment service providers and electronic money businesses. In terms of consumer protection,

the provision further ensures that customers of electronic money issuers benefit from adequate transparency, fair treatment and effective recourse mechanisms.

One of the key features of the Act is the requirement of the *Terms of Service Agreements*. The law requires electronic money issuers, payment service providers and anyone operating an electronic transaction platform to enter terms of service agreements with consumers. Terms of Service Agreements help businesses limit their legal liability while maintaining control over their digital platform [9]. As Bansah observed, these terms have clauses on pertinent issues such as copyright, limitation of liability, payment, refunds and returns and the right to cancel a subscription or service. Since e-commerce sometimes has cross-border implications, some providers include a choice of law and jurisdiction clause that stipulates the country whose law will govern any dispute that may arise [10].

Under section 20 of Act 987, a service provider shall have: an appropriate and tested technology system equipped with fraud and monitoring and detection tools; a valid third-party certification from a reputable certification authority; a system capable of interoperating with other payment systems in the country; and a cybersecurity policy when applicable.

In terms of consumer protection, Act 987 has outlined consumer protection provisions under sections 44 to 47 of the Act.

Accordingly, the Act provides that the electronic money issuer or payment service provider must do the following:

- a. Observe universal principles on consumer protection, including equitable, honest and fair treatment of all customers; transparency and disclosure of benefits, risks and terms of any product or service offered in an accessible form; protection of customers' data and privacy; and adequate systems for complaints handling and redress.
- b. Ensure high-quality performance of at least 99.5% service availability and accessibility. Within 24 hours of disruption or anticipated disruption, the service provider must inform the users through a short messaging form under section 45.
- c. Explain product material and general product elements to a prospective client and ensure that the prospective client understands the nature and form of the product terms and conditions, features, and specifications.
- d. Ensure marketing follows the general principles of honesty and transparency.
- e. Provide users with details of customer service points and agents, as well as the description of products and services of the service provider with applicable charges.
- f. Display all fees and service charges at all their offices and premises of agents.
- g. Announce change of fees and service charges to its customers at least seven days before such change.
- h. Give the user an electronic notification of charges or fees with an option to cancel a transaction before its authorisation.
- i. Allocate a unique identification number to their agent conspicuously displayed at the agent's location.
- j. The law also requires service providers to establish effective complaint procedures and redress for users who may be aggrieved.

4. Other Forms of E-Commerce Regulations and Consumer Protection Laws in Ghana.

Protection Against Unfair Competition Act, 2000 (Act 589): Act 589 mandates businesses and service providers to ensure fair business practices. **Sections 1 to 4** provide that business owners must omit misleading information and ensure their commercial activities are consistent with honest practices. They are also prohibited from making false statements that may disparage the products or goodwill of other business owners.

Other forms of legal regulation include the Income Tax Act, 2015 (Act 896). This Act regulates the imposition of tax and outlines tax obligations that businesses and consumers must adhere to. The Value Added Tax (Amendment), 2022 (Act 1082) also creates further tax obligations applicable to electronic commerce transactions.

In matters of intellectual property, registration of patents and trademarks of businesses is important. These are covered under **sections 12 and 13** of the *Copyright Act, 2005 (Act 690)* and **section 10** of the *Trademark Act, 2004 (Act 664)*. These provisions are essential for the registration and protection of intellectual property rights of businesses.

E-commerce transactions rely heavily on information from the consumer to process the transactions. This calls for the protection of data and vital information of consumers. The *Data Protection Act, 2012 (Act 843)* acts as the framework to regulate businesses from infringing on the data received from their consumers.

5. ISSUES IN CONSUMER PROTECTION

The rise of online marketplaces has had a significant impact on consumer behaviour in Ghana. Electronic commerce has made it easier for consumers to access products and services from different parts of the country and the world. Secondly, it has facilitated the growth of the cashless economy, with more consumers opting for digital payments. Again, it has created a more competitive market, with businesses striving to offer better prices and quality to attract customers. However, with the rise in the use of electronic commerce by consumers, online businesses and online marketplaces in Ghana become more vulnerable to issues, including scams and fraud [11].

Like any other area of commercial activity, e-commerce presents numerous opportunities not only for legitimate businesses but also for unscrupulous elements whose intent is to exploit the weaknesses of the new marketplace for their own gains. Busalim appropriately captures this when he argues that security breaches, fraud and customer disputes, information overload, invasion of privacy, etc represent just some of the consumer-related risks associated with e-commerce because of the distance factor, limited information and encounter with goods, services, sellers and providers in electronic commerce [12]. The following are some of the issues associated with e-commerce on consumer protection:

5.1 Privacy:

The rapid development of e-commerce technologies within the last few years has made it necessary for organizations to extend their businesses and services online as well as invest in the security of their systems. However, the anonymity of the internet and e-commerce transactions has a great impact on the trust that exists between the buyer and the seller and the security and privacy of the customer's data. Customers in an e-commerce transaction are concerned about their personal information that could be stolen by criminals whilst making an online payment. The sellers, on the other hand, are also apprehensive that the person making the card payment on the other side of the Internet might not be the legitimate cardholder. Some e-commerce websites resort to asking for personal information of potential customers such as names, e-mail addresses and credit card/mobile money numbers. Most websites also track the browsing data of customers to identify their interests in order to create a profile for their preferences [12]. This data may however end in the hands of unscrupulous persons who use it for purposes other than the original purpose for which they were provided. As noted by Tadesse & Kidan (2005), privacy and security concerns are some of the key barriers to the implementation of advanced e-commerce systems in Africa. Prevailing security issues in relation to the development of e-payments in Africa minimize the level of confidence in e-payments.

In an online survey to gauge users' response to EU cookies compliance, only 69 percent of users indicated to have knowledge of cookies and 17 percent would not accept cookies in their browsers [13]. Advocates of customer privacy believe that consumer discomfort with online monitoring would reduce the use of online resources on sensitive topics.

It is estimated that sixty percent (60%) of e-commerce websites do not inform users about data collected on them, provide any information on security protection for user data, or how data is used, and 70% do not indicate to users how the data taken from them is treated with third parties [14].

5.2 Fraud:

The early years of e-commerce in Africa witnessed the prevalence of electronic commerce-related crimes, some of which were age-old forms of fraud that were re-designed for the online environment, while some are entirely new forms of crime that are native to the online environment. One of the most common types of fraud in online marketplaces in Ghana is "fake product" scams, where sellers list products for sale that are counterfeit or do not fit the description made to the consumer. Another common type of fraud is "advance fee" scams, where fraudsters request payment upfront for goods or services that they never deliver.

The Internet Crimes Complaints Centre (IC3) Report for 2010 rated Ghana among the top ten (10) countries of global internet fraud [15]. The report is suggestive of the level and nature of internet fraud in the country. Persons and entities in these countries have an appetite for computer crime because it is inexpensive, ubiquitous, fast and physically anonymous. Evidence from the Global Internet Report in 2015, demonstrates that Ghana is ranked second among West African countries with the highest growing internet fraud and seventh in the 10 countries with the increasing records of Internet fraud in the world.

To mitigate these risks, some online marketplaces in Ghana have put in place measures such as seller verification, buyer protection policies, and dispute resolution mechanisms. For example, Jumia Ghana offers a “Jumia Guarantee” program, which provides buyers with a refund or replacement if they receive counterfeit or faulty products. Tonaton also has a “*Buyer Protection*” policy that allows buyers to request a refund or return for products that are not as described.

Despite these measures, fraud and scams remain a challenge in online businesses and online marketplaces in Ghana. Consumers are advised to exercise caution when shopping online, to research sellers and products thoroughly, and to use secure payment methods such as mobile money or credit cards.

5.3 Unconscionable Terms:

Unlike traditional commerce, e-commerce relies utterly upon agreements drafted and presented by one party on a take-it-or-leave-it basis. This often leaves the consumer at the mercy of the business or the service provider. A study in 2019 found that online standard form terms present at the level of an academic article that is not meant for the public. They are dense and contain long sentences, most of which far exceed an average recommended sentence readability length of 25 words [16]. Such contracts' validity arises from the recipient's 'adherence' to the terms given. These so-called 'adhesion' contracts are enforceable except to the extent a term is found unconscionable. It is reasonable to assume that they have taken advantage of the additional negative characteristics of online standard form terms to further exploit online consumers. Online markets should be regulated by taking steps to prevent exploitation and promote the efficacy of pre-online contract initiatives. Steps such as enforcing readable online standard form terms and upfront disclosure, are, at best, marginal.

For example, in the US case of *Comb v. PayPal, Inc.* 218 F. Supp. 2d 1165 (2002), where the court found that the e-commerce agreement obligated users to arbitrate their disputes pursuant to the commercial rules of the American Arbitration Association, which is cost prohibitive in light of the average size of a PayPal transaction. Accordingly, the court denied motions by PayPal to compel users who commenced putative class action suits arising out of PayPal's allegedly inappropriate handling of customer accounts and/or complaints to resolve their claims via arbitration.

The court noted several important factors in deciding as to why the contract clauses of PayPal were unconscionable: The court reasoned that PayPal could issue binding amendments to the User Agreement at any time without notice to users. Furthermore, the court argued that the dispute resolution program of PayPal was unconscionable because:

- (i) it was mandatory and required that it was resolved in Santa Clara County, California, where PayPal is located;
- (ii) PayPal maintained possession of customer funds until any dispute is resolved; and
- (iii) no class actions were allowed. The court found these provisions were an attempt by PayPal 'to insulate itself contractually from any meaningful challenge to its alleged practices'.

5.4 Electronic Contracts of Adhesion:

Traditionally, commercial transactions guarantee a certain level of negotiation between the parties on the terms of the contract. E-commerce operates differently in this regard. Usually for e-commerce agreements, the terms are often determined by only the business or the supplier of the goods and services, for which the consumer has little to no room for negotiation or to amend the terms of the agreement. More often than not, they set out standard form contracts with exclusionary clauses which may cause significant imbalances between the consumer and the business.

Online business to consumer contracts are mostly standard form contracts. The known characteristic of standard form terms is that they are written in tiny print with tight margins and are often ‘*long, detailed, full of legal jargon*’ and ‘*one sided*’. Consequently, consumers fail ‘in a reliable and predictable fashion’ to read the terms [17]. The conclusion that consumers do not read paper standard form terms has become ‘so well accepted and documented as to be virtually enshrined as dogma within the contracts literature’. It has been accepted by the common law courts for over 50 years— ‘the customer has no time to read [standard form terms], and if he did read them, he probably would not understand them.’ A reason that consumers may not read online standard form terms is that they are incomprehensible. They are dense and contain long sentences, most of which far exceed an average recommended sentence readability length. There are no set standards regarding the online placement of onerous contractual terms. Businesses hide controversial terms on the website and within the e-standard form and ‘experiment with online presentation to deter reading’ as much as possible. For example, PayPal’s terms and conditions are longer than Shakespeare’s Hamlet, and Apple’s iTunes terms and conditions are longer than Macbeth [17]. These characteristics of no limits on the length of standard form terms, the inability to negotiate even notionally with the machine offering the terms and the noisy and colourful interactivity of the machine distracting the consumer from the legal nature of the transaction bring into question whether the act of clicking an intangible icon on a web page is psychologically equivalent to setting a mark on paper to approve the paper’s contents.

5.5 Exclusion Terms:

Undoubtedly, exclusion terms are important and form a crucial aspect of commercial agreements. Their effect is to exclude the liability of the seller of a product. Exemption clauses fall into two categories:

- (a) those which seek to exclude liability for specified breaches of contract; and
- (b) those which seek to limit liability to a set sum or to particular types of loss.

An example is a supplier who sells monitors via its website, operating on tight margins in a competitive market. The supplier can generally achieve delivery within seven days, but is reliant on steady demand, its own supplier and a third-party delivery service. The supplier may want to use a contract clause to limit damages payable for late delivery to consumers to say 10cedis per day. In a business-to-business transaction, it may want to exclude altogether liability for lost profits caused by late delivery.

The problem with exclusion clauses however is that they are tempered by the supplier who is in a greater bargaining power to his advantage. Sellers do not do enough to draw the attention of the customers to them. Depending on the nature of the terms and conditions, a link to a separate page which displays them might be insufficient. The best way is to display them as part of an ordering process so that the site user must click to indicate acceptance of them.

Further, there is usually doubt as to the meaning and scope of the clause. The clauses are usually ambiguous and may not offer a clear meaning as to the liability the seller is trying to exclude.

5.6 Promotions, Marketing, Non-Delivery and Mis-Delivery Issues:

Compared to other African countries, Ghanaian consumers are more receptive to advertisements and show a stronger interest in promotions and attractive packaging. They are also more willing to try new brands and are better connected with the media. There are 10.11 million internet users in Ghana currently which accounts for 35% of the total population [18]. This means that sellers have a good chance of appealing to a large consumer base by using e-commerce as a tool. It could entail introducing new products or services, utilizing new marketing channels or establishing a fresh marketing message. Thus, online markets can successfully respond to changing market dynamics and fulfil evolving client expectations by implementing new marketing methods, hence increasing their market competitiveness. Furthermore, through targeted and interactive communication channels, marketing promotes increased client involvement. Engaging customers using novel marketing tactics such as social media marketing, influencer marketing, and experiential marketing can develop deeper customer relationships and loyalty, leading to higher business performance.

The problem with online marketing however is the problems associated with the purchase of products marketed. Some consumers do not receive the products advertised to their expectations. Products displayed during marketing are often different from those actually available for sale. Moreover, some unscrupulous sellers take advantage of online marketing to promote their products and give customers misleading impressions on the quality of products advertised. Customers eventually pay for commodities which are never received or delivered to them. Despite the policies and efforts of some e-commerce businesses to provide buyers with a refund or replacement if they receive counterfeit or faulty products, the issues of concern remain pervasive.

5.7 Unfair Competition and Consumer Confusion:

Some businesses and service providers do not engage in fair business practices and rely on misleading information and dishonest practices. They also create consumer confusion through false statements that may disparage the products or goodwill of other business owners. Cybersquatting, trademark infringement, and several online scam activities affect consumer confidence in products.

6. THE WAY FORWARD

As the world embraces the Fourth Industrial Revolution, technology has become an immense factor in human evolution. The role of the internet is now inextricably linked with daily human interactions. E-commerce offers exciting prospects and opportunities, and as such, must be embraced wholeheartedly. This means that attempts must be made to review, enhance, and improve such systems to ensure efficiency and protection of consumers.

6.1 Summary of the Findings and Key Insights

a. *Rapid Growth of E-Commerce in Ghana*

Ghana's e-commerce industry has experienced significant growth, driven by increased internet penetration, mobile banking adoption, and the widespread use of social media for marketing. This rapid growth is largely attributed to the large-scale penetration of internet in Ghana and how it has impacted the mode of business in Ghana and across the world.

b. *Role of Key Stakeholders*

Banks: Banks play a crucial role by providing online payment solutions, secure financial transactions, and ensuring compliance with regulations such as the Banks and Specialised Deposit-Taking Institutions Act and the Payment Systems and Services Act. They also enable mobile money transactions in partnership with telcos, enhancing seamless digital payments.

Telecommunication Companies (Telcos): Telcos provide the infrastructure for internet connectivity and mobile money services, crucial for e-commerce transactions. They also contribute to secure communications and mobile payment systems through partnerships with banks.

E-Commerce Platforms: Platforms such as Jumia and Zoobashop facilitate transactions between buyers and sellers, offering secure payment integration, transparent product information, and dispute resolution mechanisms.

c. *Consumer Protection Issues:*

Privacy Concerns: Consumers face risks of data breaches and misuse of personal information during e-commerce transactions. As such, there is a continuous need for compliance with key regulations to protect privacy in online transactions.

Fraud: Online scams, such as fake product listings and advance fee fraud, are common in Ghana's e-commerce sector. Despite efforts by platforms like Jumia to provide buyer protection, fraud remains a challenge.

Unconscionable Contract Terms: E-commerce agreements often include dense, standard form contracts that are difficult for consumers to read and understand, creating imbalances between businesses and consumers.

Legal and Regulatory Framework: The Electronic Transactions Act 2008 and Payment Systems and Services Act 2019 are the key legal instruments governing e-commerce in Ghana. These laws focus on securing online payments, protecting consumer data, and ensuring transparency in e-commerce contracts. However, gaps remain in addressing certain consumer protection issues comprehensively.

Challenges: Despite the promising growth of e-commerce, challenges such as data privacy, fraud, lack of a comprehensive Consumer Protection Act, and the complexity of the regulatory framework hinder full consumer protection, there is still an overriding commitment to ensuring the protection of consumers of e-commerce businesses.

7. **Recommendations**

In ensuring a greater level of consumer protection for the e-commerce sector, the following recommendations are useful and practical in improving the current regulatory regimes for e-commerce transactions in Ghana.

First, it is recommended that the Parliament of Ghana enact a Consumer Protection Act. Presently in Ghana, there is no substantive legislation on electronic commerce. Rather, other legislative enactments have specific or general provisions that reflect the need to ensure consumer protection in Ghana. The scope of this proposed law should cover all nature of transactions, including traditional and electronic commerce. Although the Electronic Transactions Act has made strides in this regard, it is not comprehensive enough to guarantee the full range of rights and responsibilities of consumers. Similarly, the Act should consolidate the existing rules and provisions on consumer protection and codify them into a single legislation for easier access and practicality. Furthermore, this law should include a chapter on Unfair Contract Terms. Unfair contract terms in the nature of standard form contracts and exclusionary clauses may be draconian to consumers since they may create significant imbalances in contractual and commercial transactions. The essence of these provisions should aim at preserving the sanctity of contracts on one hand and offer protection to the weaker bargaining party, that is the consumer in this case.

It is also recommended that Ghana implements a Consumer Protection Policy Framework. Currently, there is such a policy under development. Although not yet formalized into law, Ghana's Consumer Protection Policy framework aims to provide further protection for consumers in the digital space. E-commerce platforms will be required to adopt fair trading practices, offer clear return policies, and address customer complaints efficiently. The essence of this policy should provide a clear roadmap for stakeholders in implementing the rules under the proposed Consumer Protection Act and general guidelines to guarantee a greater level of consumer protection.

Another recommendation proposed is the establishment of an Electronic Commerce Tribunal. The role of this special tribunal is to act as the arbiter and resolve disputes and claims involving consumers and businesses. This tribunal should be composed of persons with background in law and regulation of e-commerce and consumer protection, industry persons and other qualified persons across various sectors with the expertise to adjudicate on such matters. This tribunal should have jurisdiction, not exceeding certain amounts and the scope of their operations should be well defined. This recommendation is particularly important due to the congestion of courts in Ghana making justice delivery a slow,

and relatively expensive process. This Tribunal may also have the jurisdiction to provide advisory opinions to businesses in their operation of electronic commerce.

8. CONCLUSION.

Ghana's e-commerce sector is thriving, supported by improved internet access, mobile payment systems, and social media marketing. However, challenges related to consumer protection must be addressed to foster greater trust and participation in the digital economy. Strengthening the regulatory framework, including enacting a dedicated Consumer Protection Act and improving enforcement of data protection laws, is crucial to ensuring a safe and reliable e-commerce environment for consumers in Ghana.

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