THE GROWTH OF E-COMMERCE IN NIGERIA - A Brief Overview

By

Tokunbo Orimobi LP

It is no longer news, that there has been a phenomenal increase in the amount of internet users in Nigeria. In the same vein, the number of online financial transactions has largely increased over the years. As at 2008, there was a 90% increase in the number of Nigerian internet users from the year 2000\(^1\). Businesses in the country have taken their means of communicating and trading with their consumers to the online space.

The aim of this article will be to briefly look at the e-commerce industry in Nigeria, its rapid growth and development, certain issues that have stalled its development, the issue of formation of contracts in online transactions and the need for a proper unified document to regulate e-commerce activities in Nigeria.

E-commerce is the use of the internet for marketing, identification, payment and delivery of goods and services. Through the e-commerce industry, the country has revolutionized the mode of business transactions by providing consumers with the ability to bank, invest, purchase, distribute, communicate, and explore anytime and anywhere access to the internet is available.

Nigeria has integrated the electronic payment system into its financial system, a step that has reduced the flow of physical cash in the economy. There has also been large encouragement of electronic-based transactions, which is largely due to the effects of globalization

With the emerging growth of e-commerce, Nigeria is fast-approaching an increase in economic growth\(^2\). Nigeria has been described as the fastest growing telecommunications country in Africa\(^3\) with growth rates reaching an amazing 21,891.1% in 2010\(^5\), regardless of the fact that less than 60% of the population are active internet users\(^5\). What this means is that there is still a growth expectancy of about 40% as regards the internet market in Nigeria. This is important because it shows the need for addressing issues that deal with online contracting, whilst using the internet.

It has been argued, that the increase in the usage of the internet has been sporadic and can be much better, but this has stalled because of the reluctance of Nigerians to embrace the online community as a result of lack of trust\(^6\). There are various reasons for this lack of trust e.g. the high levels of illiteracy in the country, the fact that there is no express legislation that deals with e-commerce, high levels of internet scams and 419\(^7\) etc. A major part of this

---

3. Ayo et al, 2007
4. *Ibid*
5. *Ibid*
6. *Ibid*
The article tries to focus on the hotly debated issue that arises from online contracting; which is the formation of contract.

The Nigerian legal system was modelled based on the English system. Contracts are basically either simple or specialty contracts. Simple contracts can be concluded in writing, orally or by conduct. Specialty contracts are contracts, which are formed by deed and must be in writing e.g. deed of assignment. For the purpose of this article, discussions will concentrate on simple contracts concluded electronically. There is as yet no legal basis to form a specialty contract electronically. The main reason is because at the moment, the particular method of execution of a deed cannot be performed electronically.

Since simple contracts can be concluded orally or by conduct, it is submitted that concluding such a contract electronically is only worthwhile if it offers more protection than the other methods of formation. In order to achieve this result, the relevant law must be clear enough to permit such a result. It will be seen below that this is far from true.

**Formation of Contracts**

In analysing contract formation, the educated person will intuitively think of it as the standard and generally acceptable elements of a contract (offer, acceptance, consideration, intention to create legal relation). Hence the function of the law of contract is to discriminate between those transactions that are enforceable and those that aren’t.⁸

A major issue here is how to determine when a contract can be said to have come into existence in an electronic environment.⁹ It also deals with the problem of offer and acceptance in online deals and the difference between an offer and an invitation to treat on online goods. In the case of contracts concluded by e-mail one of the major issues is timing i.e. ascertaining when the contract has been concluded i.e. “accepted”, which would in turn foreclose the possibility of the offeror retracting the offer. One position which follows a rule known as the postal rule is to say that the contract is deemed to have been formed once the email has been sent. The other rule known as the communication rule makes receipt of email the touchstone. The second rule in particular gets more complicated because emails travel to a server before being sent onward and thus, could be delayed. Again, would receipt be the time of receipt by the server, the time of delivery from the server to the addressee’s email account or the opening of the email by the addressee? It must be remembered that a sender may be able to retrieve an email sent to an addressee if the addressee hasn’t opened the email.

Another challenge is whether emails can be categorized as species of contract in writing

---

⁸ ibid

⁹ For further reading on the subject matter, please see lecture notes on Legal Systems and Contract Law, Robert Gordon University 2009
within the meaning of our Nigerian Statute of Fraud, 1677 or Lagos State Law Reform (Contract) Law and our various statutes on real property and landed instruments, all of which require certain contracts to be in writing and be duly executed\(^\text{10}\). The question then is would an electronic mark or sign constitute a valid sign off of a contract by emails and be binding? Many of these issues are still not quite settled even in the UK although some decisions incline favourably towards interpreting electronic signatures or marks in emails as satisfying the traditional requirement of writing and due execution. This was the decision in *Pereira Fernandes SA v Mehta* [2006] 1 WLR 1543 @ para. 29 per the judgment of Pelling J.\(^\text{11}\)

For contracts concluded via the internet by consumers, one of the issues is whether online advertisement constitutes an invitation to treat as opposed to an offer. If it is the former, then the offer is made by the consumer who selects the product advertised and seeks to pay for it, and it is accepted by the supplier who delivers/ships the product to the consumer. In that case the term “order” by a consumer is actually an offer that is made to the supplier who advertised his products online. On the other hand, the issue of a confirmation of an order placed online by a consumer may mean an “acceptance” of the offer made by a supplier\(^\text{12}\). The determination of the nature of such confirmation is guided by the EU inspired EC Directive Regulations 2002 SI 2002/2003, particularly Regulations 11 and 12. The issue of what constitutes an offer and what constitutes an acceptance in those circumstances is very important as it may assist in determining which terms and conditions are applicable when there is a dispute between the parties as to the quality of the product supplied and when the terms on the buyer’s order conflict with the terms of the seller’s delivery notes.

It is well established that to form a contract there must be acceptance of an offer. Both take effect when they are communicated to the other party. For instantaneous methods of communication, such as speaking in the presence of each other or on the telephone, words are spoken and heard at the same instant. When the terms of an offer are modified, it becomes a new offer. When no more change is made, the finalised offer may be accepted and the new contract is formed.

The next ingredient is the consideration. Something of value in the eyes of the law must be given by both sides. Some exceptional contracts do not require consideration. Examples include a deed of gift and a contract under seal. In the latter case, it is the formality of the language which establishes the contract.

Thirdly, both parties must have an intention to create legal relationship. In domestic and social discussions, there is a presumption against such an intention. This can be rebutted if

---

\(^\text{10}\) Anthony Idigbe SAN, Legal and Institutional Framework for E-commerce in Nigeria. Paper delivered at Bankers House, PC 19 Adeola Hopewell ST, V/I, Lagos

\(^\text{11}\) ICLR Report [2006] EWHC 813 (Ch)

\(^\text{12}\) Idigbe *ibid* at 9 p 10
both parties formalise their understanding with a contract prepared by a lawyer. In business discussions, there is a presumption that both parties do have such an intention, unless they take steps against binding each other by creating a gentleman's agreement.

**Developing a Regulatory Framework and Enforcement Process**

Commerce is a constantly evolving medium of business in the world. Even though there is no elaborate legal and regulatory framework presently, certain enactments have indirectly governed certain transactions that border on e-commerce\(^{13}\).

In the institution of the appropriate regulatory framework, international best practices have to be complied with in order to keep the Nigerian model in line with International treaties like the UNCITRAL Model Law on Electronic Commerce\(^{14}\). A cardinal aim of the Model Law was to ensure that the practices of Member States in the area of electronic commerce, as an emerging practice in commercial transactions, should be uniform and of acceptable standard. International best practices recommend self-regulation by industry practitioners with industry regulator exercising supervisory control\(^{15}\).

In Nigeria, significant efforts on the regulation of e-commerce-related activities are still at the stage of Draft Bills before the National Assembly, one example is the Nigerian Bill on Cyber Crimes and the Electronic Transactions Bill, which is modelled on the UNCITRAL Model Law on e-commerce\(^{16}\). The Electronic Transactions Bill provides for the validity of contracts, matters of evidence, electronic signatures and payment systems, amongst other issues. The Draft Bill on Cyber Crimes provides the legal and institutional framework for combating cybercrime in Nigeria and ensuring cyber security. Provisions are also made for payment of compensation to victims of cybercrimes. The Bill also makes provisions for the establishment of a Cyber Crime and Cyber Security Agency which is given wide powers to investigate, arrest and prosecute cybercrimes\(^{17}\).

Several relevant bills currently before the National Assembly include:

1. *Cyber security & Information Protection Bill of 2010;*
2. *Electronic Transactions Protection Bill of 2010;*
4. *Security Communications Interception and Monitoring Bill of 2009;*


\(^{14}\)United Nations Commission for International Trade Law is an arm of the UN Organization and has a mandate to harmonize and promote International Trade Law. The Model Law on Electronic Commerce was adopted on 12 June 1996.

\(^{15}\)Idigbe SAN *ibid*

\(^{16}\)*ibid*

\(^{17}\)*ibid*
5. Critical Infrastructure Protection Bill of 2009;
7. Electric Commerce (Provision of Legal Recognition) Bill of 2008;
8. Electronic Fraud (Prohibition) Bill of 2008;
10. Cyber security and Data Protection Agency (Establishment) Bill of 2008;
11. National Information Technology Development Agency Bill of 2005 (now
passed into law)

The governments of New Zealand and Britain have taken the initiative to establish practice
codes that would ensure fair business practices, privacy principles, customer dispute
resolution processes etc. The Nigerian government has tried to tow this line. The National
Information Technology Development Agency (NITDA), has a mandate which includes the
establishment of a National Electronic Commerce Council (NECC) to govern all electronic
commerce affairs in Nigeria and to facilitate international trade through an e-commerce
infrastructure and the implementation of the Nigerian National Policy on Information
Technology (IT).

With the foregoing policies and legislative strides taken by the Nigerian Government
towards the regulation of e-Commerce it is obvious that the challenges facing it may soon
be properly dealt with from the legal framework. Even then the more daunting work of
enforcement of codes and standards would need to be pursued.

CONCLUSION & RECOMMENDATIONS

The whole world is getting smaller as a result of the internet which has sky-rocketed the
effect of globalization. Electronic commerce is an area that we have only recently started
exploring in Nigeria. As such, we are also gradually learning about the technicalities
involved. Nigeria being a developing country with a low level of technological awareness
and expertise is still struggling with its numerous problems which have left consumers in
e-commerce transactions crying out for protection.

We are more dependent on the internet presently than we did in the past, and the speed at
which it has influenced commercial transactions in Nigeria starting from banking and
telecommunications; major influence from online retail with the advent of websites like
Jumia.com and Konga.com etc, emphasizes the urgent need to address the legal issues and
problems presently confronting e-commerce in Nigeria. It is in the best interest of the ever

18 Idigbe SAN ibid
20 The Nigerian IT policy was developed in 2005 in Nigeria and has a myriad of objectives which include the development
and sustainability of electronic commerce in Nigeria.
increasing population of the Nigerian consumers that these problems are addressed directly and expeditiously.

To achieve this, the National Assembly should be pressurized into making bills concerning electronic commerce a top priority to be enacted into law. When this happens, the country will enjoy immensely the benefit of a secure and regulated online commercial environment. 

TOKUNBO ORIMOBI LP is a full-fledged commercial law firm with offices in Lagos, Ibadan and Abuja