AN APPRAISAL OF LAW No 2011/012 OF 6 MAY 2011 ON THE FRAMEWORK ON CONSUMER PROTECTION IN CAMEROON

Introduction

All received foreign laws in application in Cameroon are meant to remain in force until such a time that parliament adopts national laws. Since independence and re-unification, parliament has progressively enacted national laws in many areas hitherto regulated by either received English or French Law. In furtherance of this objective, the National Assembly in its statutory ordinary session of March 2011, adopted a bill on a framework law on consumer protection, tabled before it by government. This adopted bill was enacted into law by the President of the Republic on May 6th 2011, as law No 2011/012 of 6th May 2011 on the Framework on Consumer Protection in Cameroon.

This is the first piece of legislation entirely consecrated to consumer protection in Cameroon. Up till now, consumer protection was regulated by Part IV of the 1990 law on commercial activity in Cameroon. The mere twelve sections in this part of the law consecrated to consumer protection albeit indicative of government’s effort to regulate consumer protection, has been heavily criticized inter alia for failing to address important particulars and concepts in consumer protection.

This paper explores the provisions of this novel law on consumer protection in Cameroon. It is organized into two parts. Part one dwells on the first four chapters of the law bearing on: general provisions; consumer protection principles; protection of consumers’ economic and technological interest and physical safety and environmental protection. Part two treats on the

---


2 Section 16 of the Constitution provides that parliament shall meet in ordinary session lasting not more than 30 days, three times each year in the months of March, June and November

3 Law No 90/031 of 10th August 1990 on commercial activity in Cameroon

last four chapters of the law, which centre respectively on: consumer education and participation in decision making; compensation for damage suffered by consumers; penal provisions and final provisions. The last part concludes.

1. General Provisions; Consumer Protection Principles; Protection of Consumers’ Economic and Technological Interest; and Physical Safety and Environmental Protection of Consumers

1.1 General Provisions

The law is titled a ‘Framework on Consumer Protection in Cameroon’ and the first sub-section of its opening section states that, it ‘lays down the general framework of consumer protection’. Etymologically, the term, ‘framework law’ is taking from the French word, ‘loi-cadre’. Conceptually its meaning is grounded in civil law. A loi-cadre is a law:

Qui se borne à poser des principes généraux et laisse au gouvernement le soin de les développer en utilisant son pouvoir réglementaire.\(^5\)

By this it is to be understood that a so-called framework law, is not a comprehensive piece of legislation. It sets out general principles in a given domain, the details of which are defined in regulations issued by the executive. Cameroon’s procedure of law-making is modelled on the French system whereby legislative competence is shared between parliament and the executive. In this dispensation, the details of a law are defined in a regulation. Such regulations are termed implementation instruments\(^6\) or texts of application because they complete the law. In several instances a law although enacted is inapplicable until the regulations fixing its details are issued.

\(^5\) Raymond Guillien et al, Lexique des Termes Juridiques, 13\(^{\text{th}}\) ed. (Paris, Dalloz, 2001) at page 344

\(^6\) This phraseology is used in section 2 of the law
Furthermore, the constitution ascribes to parliament a limited list of areas where it is competent to make laws.\textsuperscript{7} Any area not listed in section 26 of the constitution falls ‘under the jurisdiction of the authority empowered to issue rules and regulations.’\textsuperscript{8} These authorities are the President of the Republic, the Prime Minister or government ministers who have received delegation to issue rules and regulations.\textsuperscript{9}

The framework law on consumer protect therefore in itself provides that, the conditions for its application, ‘shall as and when necessary, be laid down by regulation.’\textsuperscript{10} In addition the details of certain specific areas addressed in the text have been referred to regulations. These include advertising intended for consumers, the organization and functioning of the national consumer council and the criminal penalties applicable to corporate bodies whose executives are found guilty of any offence defined in the framework law.\textsuperscript{11}

The types of transactions which constitute consumer transactions have been exhaustively set in the framework law.\textsuperscript{12} They are transactions relating to supply, distribution, sale and exchange of technology, goods and services notably in the areas of health, pharmacy, food, water, housing, education, financial services, banking, transport, energy, and communications sectors. These are the usual areas in which persons acquire property or services primarily for personal, family or household purpose. Mindful of the proliferation of transactions in technology, the legislator has expressly listed technology alongside goods and services among the areas of consumer law in Cameroon. This is a welcome development which is indicative of government’s commitment to check abuses and malpractices perpetrated through the use of technology to the detriment of many a consumer. Consumer protection in

\textsuperscript{7} Section 26 of the Constitution of Cameroon
\textsuperscript{8} Section 27 of the Constitution of Cameroon
\textsuperscript{9} See sections 8 (8), 12 (3), 10 (2) and 12 (5) of the Constitution
\textsuperscript{10} Section 38 of law no 2011/012 of 6 May 2011 on the framework on consumer protection in Cameroon
\textsuperscript{11} Ibid sections 14, 25 (3) and 36
\textsuperscript{12} Ibid section 1 (2) and (3)
Cameroon in the area of technology is strengthened by the recent laws of December 2010 on electronic commerce in Cameroon and that on cyber security and cyber criminality in Cameroon.\textsuperscript{13}

Section 2 of the law provides a list of conceptual definitions which apply under the law and its eventual implementation instruments. Herein there terms, consumer, restrictive business practice, unfair business practice, abusive clause and consumer contract are defined. A consumer in this section is defined as:

‘Any person who uses products to meet his own needs and those of his dependents rather than to resell, process or use them within the context of his profession, or any person enjoying the services provided’.

This statutory definition of a consumer which excludes persons who acquire goods or services for business or professional purposes is evocative of the definition of a consumer under the English 1987 Consumer Protection Act.\textsuperscript{14} Equally the above definition like that in the English statute cited above, distinguishes between a consumer of goods and a consumer of services.\textsuperscript{15}

A contract concluded between a consumer and a supplier of a good or service provider for the supply of a good, technology or service excluding lease contracts and contracts of employment is a consumer contract under the framework law. The exclusion of lease and employment contracts is explained by the fact that these are on the one hand business and professional transactions which do not square up with the definition of a consumer.

To guarantee consumers’ adequate protection against unfair trade and credit practices in consumer goods and services as well as against faulty and dangerous goods, restrictive business practices, unfair business practices and

\textsuperscript{13} Law no 2010/021 of 21 December 2010 on Electronic Commerce in Cameroon and Law no 2010/012 of 21 December 2010 on cyber security and cyber criminality in Cameroon
\textsuperscript{14} See section 10 (7) and 20 (6) of the Consumer Protection Act 1987
\textsuperscript{15} Ibid section 20 (6)
abusive clauses have been unequivocally defined. The definition of these terms is particularly relevant because the framework law expressly proscribes their inclusion in all contracts and transactions governed by the framework law. Section 4 of the law stipulates that:

‘Unfair, restrictive or anticompetitive business practices, as well as abusive terms in consumer contracts shall be regulated and monitored and, as much as possible, prohibited in all contracts and transactions governed by this law’.

Under the framework law, a restrictive business practice is one which requires the consumer to buy, lease or purchase any technology, good or service as a condition or precondition to buy, rent or obtain any other technology, good or service.\(^\text{16}\) Whilst any business practices that, within the framework of the promotion of the sale, use or supply of a good, service or technology, adopts a method, including an oral or written declaration or a visual representation that compromises fairness in a transaction is an unfair business practice.\(^\text{17}\) An abusive clause is any clause that is or that seems to be imposed on the consumer by a supplier or service provider having a better economic situation compared to the consumer, giving the first an unfair, unreasonable or excessive advantage over the latter.\(^\text{18}\)

The definition and attendant prohibition of restrictive and unfair business practices and abusive clauses which are manifestly prejudicial to the consumer tally with the fundamental mission of a state to secure the welfare of its citizens. The pursuit of this mission qualifies a state as a welfare state. The essence of a welfare state, as Jeremy Bentham wrote many centuries ago, is to promote ‘the greatest happiness of the greatest number’ of its citizens.\(^\text{19}\) To this end a government should amongst other things provide legal protection to its citizens.

\(^{16}\) Section 2 of law no 2011/012 of 6 May 2011 on the framework on consumer protection in Cameroon

\(^{17}\) Ibid

\(^{18}\) Ibid

For as one writer has observed, the nature and extent of consumer protection regulation in a modern society, says a great deal about that society, about its social and legal values, about its sense of justice, about its political sophistication and maturity, about its system of government, politics and policy making and priority setting.\textsuperscript{20}

\textit{1.2 Consumer Protection Principles}

The spirit underlying the 6\textsuperscript{th} May 2011 framework law on consumer protection is highly protective of the consumer. This law incorporates by reference consumer rights contained in applicable treaties, laws and regulations and in addition, sets out six principles which encapsulate fundamental consumer rights.\textsuperscript{21} The first of this principles is that of protection according to which consumers have the right to the preservation of life, health, safety and environment in the consumption of technology, goods or services. Secondly, there is the principle of satisfaction according to which consumers have the right to satisfy their basic or essential needs in the health, food, water, housing, education, energy, transport, communication and any other domains mentioned in the framework law.

Thirdly, the principle of information guarantees to consumers the right to access to information to enable them make an informed choice during any transaction concerning the supply of technology, goods and services. Furthermore there is the principle of equity according to which consumers have the right to fair, non-discriminatory treatment by suppliers of technology, goods and services;

Also there is the principle of redress according to which consumers have the right to full compensation for the wrongs or losses suffered which,

\textsuperscript{20} See Benedict Bakwah Kanyip, Consumer Protection in Nigeria: Law, theory and Policy (Lagos, Reckon Books Ltd, 2005) at pages 3 - 4

\textsuperscript{21} Section 3 of law no 2011/012 of 6 May 2011 on the framework on consumer protection in Cameroon
according to the framework law or other regulations, shall be attributable to suppliers or providers. Lastly there is the principle of participation according to which consumers have the right and freedom to form voluntary autonomous and independent consumer associations or organizations to promote and protect or participate in the promotion and protection of the rights provided for under this law.

The definition and recognition of these rights is most salutary. The most that can be hoped is that Cameroonian consumers will adequately avail themselves of these statutory rights, and bring actions against providers of technologies, goods and services who transgress these rights so that the courts will have opportunity to interpret the framework law and fill its lacunae.

1.3 Protection of Consumer’s Economic and Technological Interest

To guarantee to consumers a maximum protection, the framework law has put in place restrictions and sanctions on the providers of consumer technologies, goods and services. It is to be recalled that one of the functions of consumer law is to put in place preventive measures aimed at averting injury to consumers.

The law therefore prohibits unfair, restrictive or anticompetitive practices and abusive clauses.\textsuperscript{22} In particular, restrictive and unfair trade practices that may impinge on consumers' rights, notably accords, mergers, abuse of dominant position, market sharing, false, deceptive or abusive advertising, and business practices that limit or may limit a competitor's access to the market are be strictly prohibited.\textsuperscript{23} Furthermore, the sale or purchase of a technology, good or

\textsuperscript{22} Section 4 of law no 2011/012 of 6 May 2011 on the framework on consumer protection in Cameroon

\textsuperscript{23} Ibid, Section 8
service that is conditional on the purchase by the same consumer of another technology, good or service is be prohibited and punishable.\textsuperscript{24}

In addition to these prohibitions, the following contractual clauses are sanctioned with absolute nullity:

- Contractual clauses which exempt, exclude, reduce or limit the liability of suppliers or service providers for defects, deficiencies or shortages of any kind in technology, the good supplied or service rendered;
- Contractual clauses which imply the loss of rights and freedoms guaranteed consumers or limit the exercise thereof;
- Contractual clauses which create unjust, unreasonable, unfair or repressive contractual terms or conditions, or that transfer liability for defects, deficiencies or shortages not immediately obvious to the consumer;
- Contractual clauses which impose a unilateral arbitration clause;

The nullity of any such contractual clause can be pronounced \textit{suo moto} by a court of competent jurisdiction.

The law has addressed the common albeit malicious practice for providers of goods and service providers, to prepare agreements and contracts especially the essential provisions thereof in very small characters which most consumers only discover to their detriment when they start making claims against the defective technology, good or service. This practice is a common technique via which providers of goods and services surreptitiously exculpate themselves from liability for defects in the goods sold or services provided.

To check on this unfair practice, the framework law makes it mandatory for all standard agreements or adhesion contracts to be drafted in English and in French which are the official languages of Cameroon, in characters that are visible and legible at first glance by anyone with normal vision.\textsuperscript{25} More so, the terms of the agreement or contract should be clear and easy for the public to

\textsuperscript{24} \textit{Ibid}, section 12 (1)
\textsuperscript{25} \textit{Ibid} section 6 (1)
understand without making any reference to other contracts, rules, practices, instruments and documents unknown to the public or not put at the disposal of the public before or during the execution of such contracts.\textsuperscript{26}

In the same vein each technology, good or service supplier or provider must provide the consumer with correct, adequate, clear and legible information, in English and French, concerning the goods and services offered to enable him make appropriate and rational choices before concluding a contract.\textsuperscript{27}

Furthermore, agreements and contracts must contain terms and conditions that are clear and easy for the public to understand, without making reference to any other contracts, rules, practices, instruments and documents unknown to the public or not put at its disposal before or during the execution of such contracts and the consumer must have a copy of the contract or agreement which must contain evidence of the transaction. Even more, the consumer as well as any other party to the agreement or contract shall receive and keep a copy of the instruments or documents containing or providing evidence for the transaction.

Within 14 days of signature or execution of the contract or agreement or the consumer has the right to withdraw from receiving a technology, good or service when the contract is concluded irrespective of the venue, on the initiative of the supplier, vendor or his employees, agents or servants.\textsuperscript{28}

Concerning the granting of loans to consumers for the supply of technology, goods and services, the supplier or service provider must inform the consumer in writing about the cash price, interest amount, annual interest rate, interest rate on arrears, number of instalments, frequency and periodicity of such instalments and total amount payable.

The requirements of sustainability enunciated in section 10 of the law relate to sustainability, utilization and reliability and legitimate satisfaction of the consumer. The said section 10 reads:

\textsuperscript{26} Ibid section 6 (2)  
\textsuperscript{27} Ibid, section 13  
\textsuperscript{28} Ibid section 7
(1) The vendor, supplier or provider of a technology should provide or deliver to the consumer a product, technology, good or service that meets the minimum requirements of sustainability, utilization and reliability and guarantees his legitimate satisfaction.

(2) The technology, good or service provided or delivered must be accompanied by a manual, receipt or any other document containing, inter alia, information on technical features, mode of operation, utilization and warranty.

(3) An after-sales service must be provided to consumers for transactions relating to durables.

This standard of merchantability is not only realistic but suited to our context. Indeed it has been succinctly pointed out that there is no such thing as ‘absolute safety when dealing with products as safety can only be judged against a certain background.29 The requirements of sustainability, utilization and reliability and legitimate satisfaction provide more certainty and stronger protection to the consumer than the limited requirement of fitness for purpose under the formerly applicable Sale of Goods Act of 1893.

The requirements of merchantability are strengthened by the provision that, where defective, used, reconditioned or repaired goods are sold to consumers, mention must be expressly, clearly and distinctly made thereof on invoices, receipts, vouchers or accounting documents. This will have the merit of warning the consumer on the exact risks of a potentially dangerous product and how such risk may be avoided or reduced.

1.4 Physical Safety and Environmental Protection of Consumers

The right to physical safety and that to a healthy environment are constitutionally guaranteed in Cameroon.\(^\text{30}\) To ensure the exercise of these rights, consumer goods and services posing a risk either to human or animal health or to the environment must include a user manual in English and in French, comprising readily visible warnings to allow normal use under maximum security conditions.\(^\text{31}\) In case of failure to do so, the producer or supplier of the technology, good or service will be held liable for damages where it is established that the consumer was not adequately informed about the risk posed by the technology, good or service.\(^\text{32}\)

Any locally produced or imported technology or good must be inspected, tested and measured by the relevant authorities to ensure that it is safe for consumption and complies with national and international environmental, health and safety standards.\(^\text{33}\) The packaging of any product sold must comply with the standard on the labelling of pre-packaged foods in Cameroon. Any technology or product that constitutes a potential hazard should, upon ascertaining that state, be immediately withdrawn from the market and returned for testing at the supplier's or vendor's expense, without prejudice to other penalties provided for by the laws and regulations in force.\(^\text{34}\)

The sale of a technology or good that has not initially complied with national environmental, health and safety standards as well as the sale of unpackaged foods is prohibited.\(^\text{35}\)

The granting of patents, trademarks, copyrights, brands, licenses, permits or any other document issued by the competent authorities to producers or

\(^{30}\) See the Preamble of the Constitution
\(^{31}\) Section 18 (1) of law no 2011/012 of 6 May 2011 on the framework on consumer protection in Cameroon
\(^{32}\) Ibid section 18 (2)
\(^{33}\) Ibid section 16 (1)
\(^{34}\) Ibid section 16 (3)
\(^{35}\) Ibid section 16 (2) and 19 (1)
suppliers of goods, technology or services shall not exempt beneficiaries thereof from liability for harm effectively caused to customers attributable to them or others in the hazardous goods distribution chain.

2. Consumer Education and Participation in Decision-making; Compensation for Damage Suffered by Consumers; Penal Provisions; and Final Provisions

2.1 Consumer Education and Participation in Decision-making

Chapter five of the framework law dwells on the education and participation of consumers in decision making by the Cameroonian executive and legislative authorities. It should be noted that for consumers to enjoy the protection given them by law, the knowledge of these laws is very vital. Thus the framework law has emphasized the role of education and participation of consumers especially as associations in these processes.

Section 21 of the framework law grants the right and freedom to consumers to form autonomous and independent consumer rights protection associations. The framework law however restricts the activities of such associations to purely consumer rights education, protection and redress activities.

The framework law further enunciates the educational activities of consumer rights protection associations. In its section 24, such education must border around or on health, nutrition, prevention of water and food borne diseases, food sanitation, environmental health, safety and hazards protection, the laws protecting consumers and all consumer related information. This emphasis no doubt shows the importance of educating the consumer.

With regard to the participation of consumers and consumer rights protection associations in decision making, the framework law in its section 25
establishes a National Consumer Council. This council shall promote the exchange of ideas between the public authorities and the consumers so as to give its opinion on all draft laws on consumer protection. Note that this framework law today examined is a precursor to future laws, decrees and regulations on consumer protection in Cameroon.

2.2 Compensation for Damage Suffered by Consumers

Chapter six of the framework law deals with the compensation of damages suffered by consumers in Cameroon. In the event where a consumer suffers damages or loss from any defective product or poor service, such a consumer or his successors can file claims in the competent courts or arbitration bodies still to be created. As per section 26 (2) of the framework law, such actions could either be preventive or remedial and could be initiated individually or collectively. Preventive actions seek to remove the threat of infringement of consumers’ rights. These maybe lodged only by consumer protection organizations or associations. Remedial actions are aimed at compensating consumers whose rights have been infringed.

In the event of a trail proceeding between a consumer or consumer rights protection association and any manufacturer or supplier, as per section 28 of the framework law, the burden of proof to the contrary of the allegations shall lie on the manufacturer, vendor, supplier or service provider.

The benefits of favourable decisions resulting from such proceedings are vast. Section 29 of the framework law does not limit the benefits only to the parties, but extends same to other consumers and consumer rights protection associations who might invoke these decisions at any time in their favour.

Not only law courts maybe seized for reparation or compensation or complaints. The framework law in it section 30 creates appeals committees in every sub-division of Cameroon charged with public arbitration services in
disputes related to consumer protection. The consumer is also given the latitude in section 31 of the framework law to cancel without prejudice to the right to compensation for damages suffered any contracts in which hidden defects are later on discovered. In the event where the manufacturer or supplier desires to repair the goods, a replacement or alternative must be given to the consumer.

2.3 Penal Provisions

Chapter seven of the framework law dwells on the penal provisions of the enforceability of the protection of the rights of the consumer. The repressive component of criminal law is very vital in every piece of legislation especially a law on the fundamental rights of consumer. This is so because any sanction that deprives a person of his liberty helps to give meaning to a law and deters us from falling prey to the sanctions.

Section 32 of the framework law punishes with a fine of 200,000fcfa to 1,000,000fcfa or with an imprisonment of six months to two years or with both fine and imprisonment anybody who gives false information on the quality of a technology, goods or services supplied to consumers. The criminal liability provided for in this section extends to corporate bodies and their employees and executives. Other penalties provided for by the Penal Code are not exempted. These however do not stop a claimant from claiming general damages for loss suffered.

2.4 Final Provisions

Chapter eight is the last and miscellaneous chapter of the framework law. It is however not the least of the chapters of the law. It adds to the advantages already given to the consumer who is the weaker party in any relationship with the manufacturer or vendor. Section 37 out rightly states that consumer contracts shall be interpreted to preserve the rights of consumers.
Criticisms and Conclusions

Generally speaking, it would be unfair and too critical to deny the merits of the framework law no 2011/12 of 06 May, 2011 on consumer protection in Cameroon. Judging from the spirit and principles of the law as mentioned in chapter 2, the law seeks to a large extent to put the consumer in a favourable position vis-à-vis the manufacturer or vendor. This is largely achieved in some of the following instances:

- Allowing consumers structured in associations to participate in decision making via the National Consumer council.
- Emphasizing on the education and information of consumers.
- Providing for means of claiming compensation by the injured party or successors through individual and collective actions.
- Putting the burden of proof on the manufacturer to prove the contrary to any allegations raised by the consumer to any defects on a product or poor service.
- Taking the complaint receiving body closer to the consumer as every sub division of the land shall be endowed with an appeal committee to arbitrate disputes relating to consumer protection.
- The penal sanctions are desuasive.
- The English version of the law is readily available for the information and education of English speaking Cameroonians.

The framework law is not without some shortcomings we would have loved to see rectified at it inception. The very fact that all laws remain words or ink on paper unless applied immediately, is not an exception to this law. We look forward to its immediate implementation especially as some other decrees and regulations are to be enacted for the functioning of the appeals committee in every sub-division or the National Consumer Council. We fear that these take
forever to come to reality like certain provisions of the 1996 constitution still to be applied\textsuperscript{36}.

The framework law also provides for a possibility of the consumer claiming damages in our law courts against manufacturers or vendors. When we consider the difficulties litigants face in our court due to the delays and cost, we fear that the consumer will still remain in a weak position. The initiative of an appeal committee in every sub-division is laudable but such a committee should be empowered to render binding decisions.

The law limits the initiation of preventive actions only to consumer protection associations as per section 27 (3). There is no good reason to think that an individual cannot or should not initiate a preventive action. Consumer rights are still to be well known by the general public so to form powerful associations shall take more time than to have certain enlightened individuals who can initiate such actions for the benefit of the majority uninformed populace.

The framework law happens to be the very first piece of comprehensive legislation on consumer protection in Cameroon. Before this, Cameroonian sought protection from other laws\textsuperscript{i} related to consumer activities. With the advent of new information technologies and easy communication, trading activities have been enhanced and so the need to develop or improve on consumer protection laws. No wonder the use of the word “technology” countless times in the present law.

\textbf{ATANGA LAW OFFICE.}

\textsuperscript{i}1990 law on Commercial activities in Cameroon and other advertisement legislation.

\textsuperscript{36}Section 66 of the 1996 constitution on the declaration of assets of some public officials.