

A CRITICAL ANALYSIS OF CONSUMER PROTECTION LAWS WITHIN THE FRAMEWORK OF MOBILE MONEY TRANSACTIONS IN CAMEROON

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ABSTRACT

In today's digitally advanced era, mobile network operator (MNOs) hold a significant part in a mobile money payment systems mechanism. Although the legal framework regulating the mobile money services in Cameroon guarantees minimum protection to consumers, the degree of protection is insufficient. In this vein, we assume that the contract between MNO and consumers of mobile money services is of adhesion. That is, they are placed on an unequal scale in face of a weak regulatory system and therefore a wide range of customer's rights are violated. The main aim of this work is to investigate whether the legal and regulatory standards on consumer protection adequately protects consumer's rights of mobile money services as well as examining some emerging challenges faced in Cameroon. The methodology employed in this article is purely doctrinal which is based on both primary and secondary data which enable us to discover that mobile money consumers in Cameroon are facing a wide range of problems which need to be redress. The paper concludes with some robust recommendations which if effectively implemented and enforced will go a long way to remedied these obstacles in the mobile money sector particularly in Cameroon and the world at large.

Keywords: Critical, Consumer, Protection, Mobile Money, Law, Transactions, Cameroon

INTRODUCTION

Digital technologies and the appearance of Information and Communication Technology (ICT) had made great evolutionary development in finance, economics, and other major sectors in the world.ⁱ The global proliferation of the internet and its rapid use over the years had contributed much in facilitating electronic commerce in global business environment,ⁱⁱ as transactions among business partners continue to proffer on the e-commerce platform, replacing the traditional cash-based payment systems.ⁱⁱⁱ In today's digitally advanced era, mobile network operator (MNOs) hold a significant part in a payment systems mechanism in that they no longer act solely as providers of telecommunication services but also as providers and operators of mobile payment system ("*m-payment*"). ITU (2013)^{iv} revealed that fewer numbers of people in developing countries, particularly in Africa, hold formal bank account.^v This is because, Progress in technology has contributed to the development of a new kind of payment instrument rightly known as electronic money (E-money or mobile money). Interesting to note is that, E- Money is defines as:

“Monetary value stored in electronic form and purchased with funds of equal value; e-money may be used to make payments to people other than the issuer without involving bank accounts in the transaction”.^{vi}

It should be recalled that mobile money services have spread rapidly in many developing countries. African countries, specifically Sub-Saharan have showed a great and rapid advancement in mobile money services. The first mobile money service was launched in South Africa in the year 2000. In 2007, Safaricom, a Kenyan mobile communication operator launched the first successful mobile money service.^{vii} In 2012, there were only four countries in which mobile money account exceeded bank account but it increased by 55.6% to the end of 2013. Nine countries - Cameroon, the Democratic Republic of Congo, Gabon, Kenya, Madagascar, Tanzania, Uganda, Zambia and Zimbabwe evidenced to have more mobile money accounts than bank accounts,^{viii} in which Cameroon is now taking advantage of the huge advances of mobile phone services in the world.

In this vein, the cellular phone is no longer used just to make phone calls as it facilitates financial exchange and trade. Beyond the usual communication tools that now connect people from the four corners of the Earth, cellular phone service providers have just made a big splash in the profitable remittance sector and are now claiming a part of a rapidly growing market

that accounts for 80% of the money sent among Cameroon, Europe, the Americas and Asia and 75% of domestic financial trading by creating new specialized modules for telephone messaging.

In light of its profitability, the Orange group created Orange Mobile Money and MTN created MTN Mobile Money.^{ix} Mobile Money is a modern means of transferring money via a cellular phone.^x The device has become a sort of electronic wallet which enables customers to do various types of financial transactions using their cellular phones. Mobile Money has about more than 30 million customers today.

It should be noted that, according to Media Intelligence's tracked data on the Cameroon Remittance Market, Mobile money was introduced in 2008, by Express Union.^{xi} After the launch of Express Union Mobile, MTN Cameroon launched MTN Mobile Money in 2010.^{xii} MTN introduces mobile money in Cameroon, through a partnership with Afri-land Bank. A year later, Orange Cameroun joined the digital market with Orange Money in 2011. Société Générale du Cameroun (SGC) later launched Monifone in 2012. As of now, there were about 6.8 million Mobile money subscribers and close to 1.5 million active users in Cameroon. MTN Mobile Money by the end of June 2021 registered 6.4 million subscribers with about 420, 000 active users whereas by December 2021, Orange Money registered 2.2 million subscribers and 300, 000 active users. These numbers will grow substantially for the fact that Mobile money is now imposing itself as the faster and secured mean of online payments within the CEMAC sub region.

Against this backdrop, consumer protection is an essential component of any economic system. It is all about making sure that the consumers' rights are protected by providing mechanisms for reparation of damages in case of infringement, be it in the provision of services or products such as mobile money services.^{xiii}

CLARIFICATION ON KEY CONCEPTS

These definitions involved the following:

Mobile Money

The definition of "mobile money" varies across the telecommunication industry as it covers a wide scope of overlapping applications.^{xiv} In general, mobile money is a term describing

electronic financial services performed via a mobile phone. There are three major mobile money services: “mobile banking”, “mobile payments” and “mobile transfers”.^{xv} It is worth nothing that the term “mobile banking” is often confused and used interchangeably with the overall category of “mobile money” in research and literature. However, mobile banking is one type of mobile money services which allows customers of a financial institution who possess a formal bank account to access their accounts and to perform transfers and payments.

Mobile payment (also known as “m-commerce”) is a service allowing unbanked people to purchase or sell goods and services at a merchant shop/store (or remotely) using their mobile wallet through their mobile phone, instead of cash.^{xvi}

Mobile transfer (also known as money transfer “person-to-person” - “P2P”- or “mobile remittances”) is a service that allows unbanked people to send or receive small sums of money to/from any other mobile phone user (even if they are subscribed to different telephone service providers) across the country, from urban to remote rural areas, and across international borders.

More generally, Mobile-Money exists when the mobile phone with or without the help of a Mobile Network Operator acts either as an E-money access device or as the hardware on which e-monetary value is stored (i.e. it acts as a Stored Value Card). A complete definition for Mobile Money would be services that connect consumers financially through mobile phones. Mobile-Money allows for any mobile phone subscriber whether banked or un-banked to deposit value into their mobile account, send value via a simple handset to another mobile subscriber and allow the recipient to turn that value back into cash easily and cheaply.^{xvii} The financial institution or partner bank issues electronic money through an account in its books that holds the scriptural equivalence of all virtual money in circulation.

Consumer

Worthy of note is that, there is no universally accepted definition of the term ‘consumer.’ As Kennedy has stated, ‘consumerism is just as concerned with the supply of services as with goods. The consumer merely becomes the client, or patient, or whatever rather than the shopper.’^{xviii} In this regard, a consumer can be defined as a private individual acting otherwise than in a course of a business.^{xix} Another definition of the consumer is that consumers are those who act outside their profession, trade, business for private purposes. That is:

The term 'consumer' generally refers to a natural person, regardless of nationality, acting primarily for personal, family or household purposes, while recognizing that Member States may adopt differing definitions to address specific domestic needs.^{xx}

The law on consumer protection of 2011 defines a consumer 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.^{xxi} First, in relation to any goods, a consumer means any person who might wish to be supplied with the goods for his own private use or consumption; secondly, in relation to any services or facilities, a consumer means any person who might wish to be provided with the services or facilities otherwise than for the purposes of any business of his; and thirdly, in relation to any accommodation, a consumer means any person who might wish to occupy the accommodation otherwise than for the purposes of any business of his.^{xxii}

Furthermore, the Molony committee on the consumer protection defines the consumer as one who purchases goods for private use or consumption. This definition includes anyone who consumes goods or services at the end of the chain of production.^{xxiii} Customers are thus the end users who credit and debit mobile money accounts across the network of distributors, and are able to carry out mobile money transactions. Also, the Mobile Telephone Operator is responsible for developing the mobile money network, providing SIM cards to customers, and generally managing the mobile money platform.

Since the framework law on consumer protection is that every consumer has the right to safe and good quality of service.^{xxiv} The worry of this paper is to investigate whether the legal and regulatory standards on consumer protection adequately protects consumer's rights of mobile money services as well as emerging challenges faced in Cameroon. Worthy of note is that, this study will help the various stakeholders: Mobile Network Operators and other policy makers in Cameroon and elsewhere to understand the impact of Mobile Money services on the socioeconomic status of inhabitants in general and customers in particular.

THE LEGAL AND INSTITUTIONAL STANDARDS FOR THE PROTECTION OF CONSUMERS OF MOBILE MONEY SERVICES IN CAMEROON

The protection of consumer has been recognized universally by United Nations with the united nation guideline for consumer protection adopted by the General Assembly on 09th April 1985 which was amended in 1999.

The legal standards for the protection of consumers of mobile money services in Cameroon

There is a wide arsenal of international instruments on consumer protection. These instruments include the following:

At the sub regional level, the legal framework^{xxv} governing the licensing of the activity of issuing electronic money defines the conditions required for the issue and withdrawal of the license as a well as the aims and scope of the initiative. This directive^{xxvi} establishes an obligation for telecommunication service providers to ensure the availability of vital communications opportunities to the greater majority. The essence of this legislation is to ensure that mobile telecommunication operators do not deprive the consumers of the vital communication needs. Also, there is Directive n°08/UEAC/133/CM/18 related to interconnection and to ease access to the networks and services of telecommunication operators within CEMAC. This directive seeks to maintain fairness, equity, avoid unfair competition and abuse of consumer's rights.

At the national or domestic level, there is the 2010 law^{xxvii} on cyber criminality and cyber security in Cameroon. This law focuses primarily on security and cyber security essentially regulation of electronic security, electronic signature and certification, the protection of electronic communication networks, rules on privacy. This law governs the security framework of electronic communications network and information systems, defines and punishes offences related to the use of information and communication technologies in Cameroon.

Also, the 2011, Framework^{xxviii} on consumer protection in Cameroon is of great imperative. This law handles chapter IV physical safety and environmental protection, protection of consumer's economic and technological interests, consumer education, participation in decision-making, compensation for damage suffered by consumers and penal provisions.

Moreover, Decree 2012/1640/PM of June 14, 2012, fixing the conditions for interconnection, access to electronic communication network open to the public and the common use is of utmost important. This decree provides that telecommunication service providers open to the public must be transparent and non-discriminating to their customers when providing universal services and offer equal or fair treatment to all their customers.

These legislations are a model which can help governments to follow and draft their legislation and policies at their respective national level. Also, they recognize a number of protections to the consumer like the right to satisfaction of basic needs, right to safety, right to choice, right to information, right to consumer education, right to redress, right to representation and right to healthy environment.

Institutional standards on consumer protection on mobile money services in Cameroon

The function of consumer of mobile money services protection falls within the purview of both public and private institutions and may be conferred by specific laws or assumed by them through virtue of their status. The following institutions play a role in consumer protection.

Government Agencies

In Cameroon, government agencies responsible for regulation of mobile money services are the Telecommunication authorities, the commerce authorities and the banking authorities.

The telecommunication authorities who are responsible of protection of consumers of mobile money services are the Ministry of post and telecommunications and the Telecommunications Regulatory Agency (TRA). The telecommunications sector in Cameroon, liberalized by the law of July 1998 allowed the entry of two private mobile operators alongside the incumbent fixed telephony. The Ministry of Posts and Telecommunications (MINPOSTEL) is responsible for the development and implementation of government policy on posts, telecommunications and information technology and communication.

Within the banking institution, the architecture of mobile money in CEMAC is based on a model called bank centered. Where commercial banks are the issuers of electronic money and mobile network operators are the technical partners in charge of the distribution. This system is different from the non-banking system where it is possible for an entity other than a bank (a mobile network operator) to issue electronic money. However, it should be noted that whatever

system is adopted, it is always a central bank that is in charge of the legal guardianship of the mobile money activity in CEMAC which is BEAC.

Consumers Protection Associations

The national movement of consumers is very active in promoting consumers interest in the country.^{xxix} Consumers shall have the right and freedom to form voluntary, autonomous and independent consumer associations or organizations with well-defined domains and areas of intervention.^{xxx}

Consumer associations can also provide consumers with independent and objective advice on products and services based on tests and surveys they have conducted. These are groups that seek to protect people from corporate abuse like unsafe products, false advertising and pollution. Consumer's protection organizations activities are lobbying, campaign, protest, negotiation or even litigation with the aim of enforcing consumer's rights which are violated by businesses.

Consumer's rights violation in the domain of telecommunication is a certainty. Mobile telecommunication operator in Cameroon continue to abuse consumer's rights, this is why a number of groups made themselves as association to promote, protect and enforce consumer's rights. Hence, vulnerable customers of electronic money services may be helped by consumer's protection associations like: Ligue Camerounaise des consommateurs (LCC), Bureau national pour la protection des consommateurs (BNPC), Organization for consumer sovereignty (OCOSO) among others.

LEGAL REDRESS OF DISPUTES CONCERNING CONSUMERS OF MOBILE MONEY SERVICES

Legal redress may be non-judicial as well as judicial measures, with the aim of protecting consumers of mobile money services in Cameroon.

Non Judicial Redress Mechanisms

Consumers may choose to voice their complaints to service providers. To monitor the progress and use of his account, a secret code is assigned to the bearer. In practice, the operator allows to modify the secret code, to consult the balance and check the last transaction. For

Complaints, loss, breakdowns and cyber-attacks, the bearer must contact the customer service. This service is competent when the customer faces operational, reputational and legal risks. At one hand, for MTN customers, they can contact MTN via call (7120, 123, 124, 7125, 126, 127), Fax ((+ 237), Email (carelinemtncameroon.net). On the other hand, for Orange customers, they can contact Orange by calling from their mobile the customer service at (950). Also by calling a dedicated line: the 955 from Orange mobile phone or (+ 237 233 41 00 00).

Judicial method of protection

Judicial mean is one method of protecting consumer of mobile money services. The principle of redress seeks that consumers have the right to full compensation for the wrongs or losses suffered which, according to this law or other regulations, shall be attributable to suppliers or providers.^{xxxi} There exist under this umbrella different grounds on which a consumer alone or group/association of consumers may choose to claim through litigation (court action) or alternative dispute resolution.

Action in Court

In court, a consumer or association of consumers may bring a civil or penal action. A group of consumers or a consumer alone may claim depending of the amount of the demand. He can bring his action before the Court of first instance or the high court. The Court of first instance shall have jurisdiction: In criminal matters: To hear matters where the amount of damages claimed does not exceed ten million francs. In civil matters, it shall have jurisdiction: To hear matters where the amount of damages claimed does not exceed ten million francs; to recover by way of simplified recovery procedure, all claim where the amount does not exceed ten million francs.

The High Court shall have jurisdiction: In civil and commercial matters: To hear matters where the amount of damages claimed is exceed ten million. To recover by way of simplified recovery procedure, all claim where the amount exceeds ten million francs.

Legal actions against MNO for irregularities in the management of the mobile money account are usually sought to redress against mistakes in entries and management of the mobile money account. Both consumers and agents are affected by fraud in key mobile financial services markets.

A criminal action is another suitable mean of protecting consumer of mobile money services when there exist a gross violation of his rights. The possible grounds for an action in crime may be divided dually namely the offences by commission and by omission.

The Cameroonian penal Code^{xxxii} with regard to theft, misappropriation and false pretence provides: “Whoever causes loss to another: a) by theft, that is removing his property or, b) by misappropriation, that is by destruction, waste or conversion of any property capable of being removed entrusted to him for the purpose of custody, return, accounting or any particular manner of dealing ; c) by false pretence, that is by influencing him deceitfully by tricks or by misappropriation or concealment of any matter of fact ; shall be punished with imprisonment from five (05) to 10 years and with fine of from CFAF 100, 000 (one hundred thousand) to CFAF 1, 000, 000 (one million)”.

It should be noted that when a customer opens a mobile money account with a MNO, a contract is created between both parties. In an action of breach of contract, the innocent party is entitled to recover damages from the breaching party.

Alternative Disputes Resolution Mechanism

Consumers of mobile money services may bring their claims before Alternative Dispute Resolution (ADR) whose features are different from that of litigation. ADR options are also called «Out of court mechanisms for resolving disputes».^{xxxiii} The most commonly available ADR processes include: mediation,^{xxxiv} negotiation^{xxxv} and arbitration.^{xxxvi}

CHALLENGES FACED BY CONSUMERS OF MOBILE MONEY SERVICES IN CAMEROON

Consumers of mobile money services are confronted with enormous challenges among them include the following:

Risks of money laundering and terrorism financing

As mobile telephone operators move towards issuing electronic money through VISA-type payment cards to settle transactions and withdraw cash from bank automated distribution machines (ATMs), this may open the door to international transfers intended to launder money and finance terrorism.

Money laundering and terrorism financing

Transactions can also be used to transfer funds between accomplices, or to transfer them to other countries with less stringent laws, where the funds can be used to finance other criminal activities. This process is accompanied by cash withdrawal of the amounts to be used or transferred by other methods.

Fraudulent conducts of mobile money retailers

Retailers (withdrawals and depositors) may receive substantial amounts in the form of payments and include them as legitimate proceeds of their business. Retailers may be criminals themselves, swindling their customers, or use their business as a frontline for laundering the proceeds of their accomplices' activities, who pass themselves off as customers.

Risks linked to agents, intermediaries and retail partners

These stakeholders occupy a strategic position in the mobile money services payment cycle: loading cards via cash payments, operating purchase or withdrawal points, and also selling telephones that may be used for transactions. These people are therefore able to falsify their records. This poses hurdles to consumers of mobile money services in Cameroon.

Lack of authenticity of identity documents

The risk of money laundering and terrorism financing is increased in the sub-region in that individuals can easily use false identity documents or another person's identity card. The lack of an effective mechanism for mobile telephone operators to verify the authenticity of identity documents is a major obstacle to the prevention of these risks, especially because for many mobile money operators, mobile money can be used after the customer is identified, not after the authenticity of the identity document has been verified.

Registration difficulties

The registration of numerous SIM cards under a false name/ID card render transactions anonymous, to a certain extent, as there is no connection between the person officially linked to the SIM card and to the individual carrying out the transaction. Personal observation revealed numerous instances where the mobile phone agent used either his own ID card or that of a random person he had lying around to register a customer's SIM card.

Float difficulties

Problems with float, for example, influence user perceptions of digital financial services. Some agents frequently run out of float or cash with which to complete transactions, forcing customers to search for another agent or return later. This tarnishes the reputation of digital financial services providers as a whole, and not just that of the single agent in question. This is because; users of mobile money highlighted certain complaints concerning the agents providing the services. Agents play a key role in promoting mobile money services, keeping the customer informed about how services work and removing worries when things go wrong.

Internet Scams

Scamming refers to irrelevant or unsolicited messages sent over internet, typically to a large number of users, for the purposes of receiving money from consumers fraudulently or phishing, spreading malware, etc. Firstly, fraudsters call or text messages to dupe customers under the pretext of delivering goods from abroad. Also, some fraudsters call and ask for specified amounts to be deposited into a mobile money account, in exchange for goods from relatives or friends from abroad. Fraudsters sometimes send messages to handsets of customers to authorize cash out transactions by confirming their passwords with the claim of winning mobile money promotion. Spamming which is sending unsolicited messages, especially advertising, directed at the text messaging or other communications services of mobile phones. Also, there is the practice of provider impersonation by fraudsters who call consumers purporting to represent the provider and may then induce them to reveal their PIN or other personal information about their mobile money accounts, which can be used to defraud the customer. There is also loss of money from erroneous transfers to unintended recipients who refuse to refund the money. This is why mobile network operators (MNOs) always send messages to customers to not give their PIN to any agent.

Technical fault, delay and other challenges faced by consumers of Mobile Money services

This difficulty occurs when the service is unavailable for a while. As a result, this can result in delays in effecting cash in/cash out transactions, which denies customers to access to their own money. There is also the recent problem of sky rocked tax system introduced by the government on all withdrawal and transfer of money through mobile money services. Prosecution and enforcement difficulties constitute another challenge facing customers of mobile money services. This concerns consumers who suffer from scam attacked and

fraudsters. This is as a result of the complex procedure to prosecute someone you don't know or seen but who you mistakenly send money through mobile money services.

CONCLUSION AND RECOMMENDATIONS

The safety of mobile money relative to cash is often cited as one of the key benefits of mobile money for customers. Safeguarding customer funds held as electronically stored value and reducing opportunities for agent fraud and other harmful actions have both been analyzed in previous sections.

However, in addition to this, customers can be given even more protection through greater transparency, customer recourse processes, insurance protection, and privacy and data security measures. Mobile money must strike a balance between creating innovative forms of financial access and offering an acceptable level of consumer protection. Also, we opine that tailored guidance from the regulator can help mobile money providers to improve transparency in their relationships with customers and prevent third party fraud. Furthermore, promotes transparency or sensitization against fraud is imperative.

Moreover, customers should register with a trusted agent. Whether customers are Orange Mobile Money or MTN Mobile Money users in Cameroon, they can be at risk if they don't register or do transactions with a safe, trusted and an accredited agent. The best option for a customer is to register at his or her nearest mobile money operator's branch office. Once registered, the customer can learn how to transfer and receive money in Cameroon and avoid giving his mobile phone to agents or friends when transferring or receiving money.

Above all, a reliable mobile network: A reliable mobile network is a critical component of a mobile payment service, as customers have much less patience for transmission problems when they impact financial transactions. Therefore, access to a reliable network, either an organization's own or a partner's is critical, particularly as reliability among mobile networks in emerging markets can vary considerably.

Nevertheless, customers should choose a strong pass words or PIN for their mobile phones. Some people feel really uncomfortable setting up passwords to lock their phone or tablet. However, the best protection against somebody gaining access to in a person accounts from his phone is by using a strong password and set up a SIM card PIN so that it can't be used in

another device. Also, customers do not use the same numbers as mobile money PIN or ATM PIN. Also, laws should be reforms to guarantee effective protection of consumers of mobile money services in Cameroon.

Finally, we propose that further research should be conducted on the protection of consumers in a period of suppression of rights like in a state of emergency or socio-political crisis such as the case of Cameroon.

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- ^{xxi} Law n° 2011/012 of May 06, 2011, Framework on consumer protection in Cameroon.
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- ^{xxiv} See the law n°. 2011/012 of May 06, 2011, framework on consumer protection in Cameroon, section 3.
- ^{xxv} Regulation n° 01/11-CEMAC/UMAC/CM of September 18, 2011, setting the conditions to exercise the activity of e-money issuer, and the roles of the regulatory authorities
- ^{xxvi} Directive fixing the legal regime for universal service in electronic communication sector within the CEMA.

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^{xxviii} See Law n°. 2011/012 of May 06, 2011, Framework on consumer protection in Cameroon.

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^{xxxi} See the Framework Law on consumer protection in Cameroon, section 3 (f).

^{xxxii} See Section 318.

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^{xxxiv} An informal consensual process in which a neutral intermediary, the mediator, assists the parties in reaching a settlement based on the parties’ interests. While the mediator cannot impose a settlement, any settlement agreement has force of contract. Mediation does not preclude any subsequent court or arbitration options.

^{xxxv} Negotiation is the preeminent mode of dispute resolution which allows the parties to meet in order to settle a dispute. His main advantage is that it permits the parties themselves to control the process and the solution.

^{xxxvi} A consensual procedure in which the parties submit their dispute to one or more arbitrators of their choice for a binding and final decision (an “award”) based on the respective rights and obligations of the parties and enforceable under arbitral law. Arbitration normally forecloses any subsequent court options.