



Session Title:

Hello Regulator? Regulatory Authorities' Information and Communication Practices

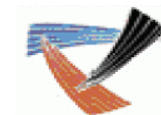
Through the Looking Glass: Consumer Issues
An African Regulatory Experience

Monica Kerretts-Makau (PhD)

Research ICT Africa

November 2007

Research supported by IDRC



Abstract

Discussions between telecommunications policy-makers, regulators and the private sector worldwide have gleaned several clusters of issues that would directly benefit from further research. Recently, there have been two notable shifts. First, the acceptance that the model and approach that regulators adopt in addressing consumer issues impacts on the achievement of information society goals. Second, the realization that the level of knowledge and understanding of one's rights as a consumer in turn impacts on the role that regulators play. This overview discusses current approaches and challenges faced by the Kenyan regulator in not only implementing frameworks for dealing with consumer issues, but also in addressing the more challenging role of getting consumers to know and understand their own roles and obligations.

1.0 Introduction

Taking a case study approach and using Kenya as the focus, this overview evaluates the role that the telecom regulator is playing to ensure that it represents the consumer. Specifically, the question asked is: What is the regulator doing to address consumer issues? The topic therefore spans two main GK3 categories. It is about better-informed constituents who should know what the regulator's role is and what avenues they have to address their concerns, and it is about using emerging technologies and approaches to better inform constituents. It should be stated at the outset that the point of this overview is not to tarnish the reputation of the regulator, but rather to laud its efforts in trying to set the pace not only for the telecom industry in Kenya, but also other industries in Africa that have little or no representation on consumer issues. Moreover, this overview provides a starting measure that in later years can be utilized to trace the developments, merits and demerits of approaches used to address consumer concerns within regulatory bodies in Africa. In this same series, my colleague Alice Munyua furthers the discussion raised in this overview by looking at what regulators within the African continent *should be doing*. While this paper draws on the voice of the regulator, Munyua's paper draws on the voices of the consumer and is a complimentary read to this overview.

2.0 The telecom environment in Africa

Your phone has not been working for the last month. Every so often you send an SMS and your friends tell you they did not receive it. You call the operator's line a number of times, but usually you get no response there either (this is your fifth try). You talk to your friends about it, and this is what you often hear: "It's this government, just like the other one, not concerned about us and our problems, bringing in new technology owned by foreigners who don't care about us. Anyway, at least be glad we now have phones! This is Africa my friend! Welcome to the real world."

The above example is true of many sectors in Africa. There is a generally accepted and unspoken notion that if a service of some kind is not working well, then you blame it on the 'Government'. The Government thus becomes a blanket institution without any real face, and problems are usually attributed to those in power at the time. Citizens are left to keep heaping blame without any knowledge of who to talk to and what they can do to change the scenario. Citizens' rights are relegated as a subject only discussed at election time.

In Kenya, like the rest of Africa, the problem is aggravated by the fact that the first few years of telecom regulation have been used primarily to create a market-based competition environment. Concerns about consumer issues have only been a relatively recent development. The balancing act that regulators must play between looking after the interests of operators (in ensuring that they get a fair playing field) and the interests of consumers (in ensuring that they get lower prices and better services) is therefore a challenge.

Although competition has now progressively improved, with mobile operators taking the lead in terms of coverage and ISPs slowly making headway on the continent, these services are still limited to a minority in Africa. Coupled with this is the fact that many

people with access to mobile service are still not able to read and write. Thus the challenge for regulators in Africa, unlike those in the West, is how to represent consumers who do not understand their own rights as citizens, nor the role of the regulator either. Using the Communications Commission of Kenya as the focus of the case study, the remainder of this overview looks at the key efforts made by the Kenyan regulator to deal with consumer concerns within this context.

2.1 Creating a legal framework to address consumer concerns

In creating a legal framework to safeguard consumer rights, Southwood et al. (2006) note that four elements are needed: telecom law, internet law, consumer rights law, and competition law. While it can be argued that this legislation is in place in Kenya, this has been a protracted process involving several initiatives led by the regulator, which are summarized below.

Kenya joined the World Trade Organization (WTO) in 1995, leading to a broad telecom reform program which resulted in the creation of the Communications Commission of Kenya (CCK), followed later by the enactment of the Kenya Communications Act (KCA) in 1998. The consequent change in the telecom landscape was reflected in the rapid growth in the telecom and internet sectors, from one ISP in 1995 to 900 in 2005 (CCK, 2005) and one mobile operator in 1997 to three licensed operators as at 2007 (CCK, 2007). A summary of the country's telecom sector is provided in Table 1.

Table 1 – Telecom consumers in Kenya

Total population	31.5 million (2002)
Mobile subscribers	7 million (2007)
Fixed-line subscribers	286,000 (2006)
Operators	Safaricom, Celtel, Telkom Kenya
Internet subscribers (dial-up and other accounts)	46,000 (2003)
Cybercafés and telecenters	900 (2004)
Teledensity: fixed lines per 100 pop.	0.88 (2006)
Teledensity: mobile lines per 100 pop.	14.4 (2006)

Source: CCK.

In framing the legislation of the CCK, only two main sections of the KCA specifically mention its obligations to consumers. Section 23 states that “it will protect the interests of all users of telecommunications services in Kenya with respect to the prices charged for and the quality and variety of such services.” Nonetheless, as noted above, the competing role of first establishing a favorable environment for competition meant that the consumer was often not the main priority for the regulator. This is evidenced by the fact that no specific consumer department was put in place, and instead consumer complaints were channeled through various departments within the CCK rather than being formally dealt with through a unified system.

It was not until 2006 that a formal department was established and named the Consumer Protection and Service Quality Unit. The creation of the department saw the employment of an Assistant Director for Consumer Affairs flanked by two staff members. Still lacking was a detailed framework that addressed the roles and responsibilities not

only of the regulator but also the consumer. Thus the CCK, through the newly created Consumer Protection Unit, created a Customer Service Charter, which was adopted in 2006 after several consultations with stakeholders. As aptly summed up in the charter itself, it “sets out to the public the service experience that can be expected in dealing with the Commission and its staff. It is a demonstration of our commitment to you and a reflection of our dedication to excellence, fairness in licensing and regulating the ICT industry. The Customer Service Charter outlines your rights and responsibilities and the procedure to follow if our service standards are not met. It also sets out our feedback process, so that you can tell us how well we are performing and how we can improve our service to you.” Thus the charter allows consumers to hold the regulator accountable, as it can now be called to task for failing to meet its obligations.

However, even with the above charter in place, Kenya has more than 132 statutes that touch on the concerns of the consumer. This creates logistical nightmares for any lawyer handling a consumer case. In trying to resolve this and following several debates, a parliamentary committee was set up to look into the legal framework of consumer issues. The CCK has been a key stakeholder in this committee, which has now produced the Consumer Protection Bill 2007 that has yet to be passed in parliament. A key milestone here is that the bill tries to pull together the 132 statutes dealing with consumer issues spread across other laws into one law focused on the consumer.

While the regulator’s role in creating a legal framework is a milestone for many countries in Africa, laws about consumers are scattered in various regulatory bodies dealing with consumer protection. Proposals to this effect thus continue to be ongoing in many African countries. Nonetheless, the greater challenge will be the actual implementation of these laws. Like many other countries, Kenya’s legal framework is constantly accused of not having an independent judiciary free from the executive. The test terrain for Kenya’s telecom legal framework is therefore still open to scrutiny as competition law and consumer law are put in practice.

2.2 Facilitating a process for the consumer to know about the policies in place and the regulator’s roles and obligations

In addition to a relatively new framework for consumer rights and a legal framework that has yet to be tabled before parliament, most consumers are not aware of what rights they have and the channels through which they can make their complaints, as reflected by the scenario in the introduction to this section. The CCK has taken up several avenues to address this matter.

2.2.1 A website as a source of information

In its first years the CCK website did not have a section clearly dedicated to consumers. It was the establishment of the Consumer Protection Unit that finally led to the creation of a separate section for the consumer. This section provides, among other information, a summary of the laws in place and a comparative tariff rating for all operators, which is usually updated every six months. The website serves as an information gateway to the general public, consumers, operators, investors and other stakeholders and interested parties, and was rated among the top five in Africa by a study done through LIRNE.NET (Mahan 2005).

Nonetheless, the website still has more work to be done when compared to other international regulatory websites that have focused on the consumer. As noted by Mahan (2005), websites can be used to serve as an instrument for transparency and accountability objectives, and demonstrate the extent and facility with which the regulator uses the technologies and services it regulates. Moreover, an effectively run website with useful, up-to-date information and functionality can be an effective communication tool that not only speeds up communication, but decreases time and costs incurred for regulatory compliance.

2.2.2 Consumer rights awareness campaigns

Even with a website in place, the commission still faces the added challenge that its website's reach is small. This has mainly been due to a lack of internet access across the country. The capital city has the highest internet access rating, but even this is only through corporate organizations rather than individual home use penetration (CCK, 2006). The challenge has therefore been to use non-conventional methods to reach out to the population without access to the internet. One way in which the regulator is creating awareness is through a consumer rights awareness campaign. While implementation of the campaign is still ongoing, its key elements include:

- The use of voluntary consumer representatives in all regions across Kenya who will be trained on consumer issues. This is a concept that has been borrowed from Zambia, where the voluntary representatives are not employees of the regulator but are the interface between the regulator and the constituents. The voluntary representatives are provided with incentives such as airtime, training and funding for the production of surveys and reports. This is done on a continuous basis through the education program run by the Zambian regulator.
- Training on telecom issues such as safe mobile use, basic technology terms, responsible internet use focused on child protection, buyer awareness obligations and responsibilities, premium rates services and what they are, and what the consumer's own obligations are.
- Using the media to publicize what the regulator is doing and key developments in the sector.

Indeed, Mahan (2005) notes that resources within the regulator in Africa will always be a challenge when trying to meet the varied programs that need to be implemented. Thus, the idea of voluntary consumer representatives acts as a balancing mechanism for resource issues. In Tanzania, the establishment of Multi-Sectoral Consumer Consultative Councils (affiliated to regulatory bodies) is aimed at representing the interests of consumers and disseminating information on consumer-related matters. In addition, the Tanzania Communications Regulatory Authority (TCRA) has articulated a comprehensive advocacy program aimed at reaching out to the end-consumer. To do so they have organized 12 seminars across the country dealing with consumer issues. The TCRA has also used the media by publishing outcomes, resolutions, and recommendations from workshops in local daily newspapers.

2.2.3 The creation of a customer complaints system

Because the handling of consumers' complaints by was not a coordinated affair, the Consumer Protection Unit has now created a formal complaints system. While the system is not IT driven, it provides a flow chart of how complaints should be handled within the CCK. The IT aspect of the complaints system is currently being put in place, in conjunction with ISO 9001 certification. This will reinforce the promises the commission has made in the Customer Service Charter, and also provide a measurement tool for evaluation.

The distribution of complaints received by the Consumer Protection Unit is summarized in Table 2. The actual number of complaints in 2006 was 12, and in 2005 it was 27. Given the large number of consumers of communications services in Kenya, as illustrated in Table 1, the number of complaints received over the years is significantly low. These results can be attributed to the lack of a concerted consumer protection effort, reflected by the lack of a consumer protection policy, awareness raising programs and internal management systems. These mechanisms have now been put in place over the past year.

Table 2 – Distribution of complaints received

Type of complaint	Number	Percentage
Billing	0	0%
Tariffs	2	17%
Service provisioning delays	3	25%
Maintenance delays	2	17%
Service interruption	1	8%
Quality of service	1	8%
Other	3	25%
Total	12	

Source: CCK interview data

In addition, the CCK has further implemented a Quality of Service (QoS) monitoring system. According to ITU-T Recommendation G.1000, the QoS delivered by a provider is “a statement of the level of the *actual* quality achieved and delivered to the customer.”¹ This is usually stated within the operator's contracts or license and service level agreements (SLAs). However, in the case of Kenya, this was previously not possible to monitor. Thus while the operators would provide the CCK with returns based on the QoS agreements, there was no means for the commission to monitor these agreements, and it was therefore assumed that the operators had complied with them.

In 2006, the CCK invested approximately EUR 55,000 to buy the necessary equipment for monitoring QoS. This was a major investment and is no doubt a stumbling block to many African regulators. A pilot project was recently concluded throughout the country with the results now being analyzed. The commission intends to make the results of the

¹ <www.itu.int/rec/T-REC-G.1000-200111-l/en> Accessed 7 November 2007.

monitoring system available to the public in the future, but as yet it is still subject to discussions with the key stakeholders involved. The main areas that the CCK can now monitor are outlined in Table 3.

Table 3 – Parameters for monitoring complaints

Quality of Service Monitoring System (QSMS) Parameters	Customer Complaints
1. Call drop rate	
2. Call block rate	1. Service availability
3. Call set-up time	2. Network availability
4. Network availability	3. Dropped calls
5. Call set-up success rate	4. Billing
6. Speech quality	5. Pricing
7. Handover success rate	6. Network outage repairs
Signal quality and signal strength received by mobile handset	

Source: CCK interview data.

While the above parameters are useful in monitoring complaints and ensuring service quality, a successful complaints system still requires that one is able to read and write. As stated on the CCK website, “If a complaint is not resolved even after the complaints procedure has been followed, the consumer may lodge a complaint with the commission and attach as much relevant correspondence and facts as possible...All written complaints should be addressed to the Director General.” For those not able to do this, therefore, there is currently no support in place. Lodging calls is still an implementation problem for the commission as this would require dedicated resources to monitor and address the complaints. Thus while a call centre would be the ideal solution for African regulators like Kenya’s, the issue of resources continues to be a stumbling block in meeting one of its core objectives.

No doubt, the commission’s success will in future be ranked by its ability to resolve the complaints received in a fair and open manner. This also means that the commission has to ensure it is viewed as a credible body that will address and resolve complaints. To gain wider public acceptance as an open and fair regulator, the commission recently conducted a customer satisfaction survey with a population sample of 1,153, including licensees, key stakeholders and end-consumers. While the details of the survey are still under evaluation, it has yielded the following key findings:

- The commission was rated highly in terms of performance of its functions and credibility.
- Consumers learned about the regulator through the media and did not relate their awareness to any deliberate effort to reach them.

Indeed, these findings provide a significant measure of the extent to which the Kenyan telecom regulator has achieved its objectives over the short period of its activity within

the telecom sector. Judging by the mechanisms implemented so far, it could be argued that the telecom sector is set to reform the entire way in which consumer issues are addressed across other sectors. According to Southwood et al. (2006), "If consumer organizations can demonstrate that they can make a difference in a service-aware sector like telecoms and the internet, then it will encourage a wider level of consumer rights awareness in other fields."

3.0 Conclusion

As has been shown through the Kenyan case study above, the creation of a Consumer Protection Unit has come with several challenges for the commission, the key of which is that consumer affairs remains a relatively uncharted and undeveloped discipline not only in Kenya but in the rest of Africa. While many regulatory agencies worldwide have established special mechanisms or created specific organizations to represent consumer interests, there are as yet very few cross studies on what kinds of mechanisms are most effective at assessing or improving consumers interests. Indeed, with the exception of the work done by Mahan (2005) and Southwood et al. (2006), the issue of consumer affairs in Africa remains an unexplored terrain.

Similarly, the lack of strong consumer lobby organizations within the sector in Kenya has made it difficult for the commission to adequately address issues of consumer concern within the telecom industry. Moreover, the lack of strong lobby groups means that the commission is not challenged to improve or 'kept on its toes' to ensure that it is serving the best interests of consumers. In Kenya, there is only one consumer group, known as the Consumer Information Network, and it is not very active. According to the survey done by Southwood et al (2006), most of the consumer organizations in the 30 countries studied were relatively new and not very active. Only four of the 30 countries surveyed had consumer organizations specifically focused on the telecom sector. Indeed, as shown through the dismal number of complaints put in by end-users in Kenya, the consumer's voice is not heard.

Also facing the African telecom sector is the issue of cultural apathy towards complaining or voicing opinions. While some may blame this on illiteracy, a key issue that merits further research is the idea of high tolerance levels as a cultural aspect evidenced in many African countries such as Kenya. Maina Kia, the head of the Kenya Human Rights Commission, commented at the release of the 2007 national corruption index that Kenyans were far too tolerant. He also attributed the rise in corruption in several sectors of the economy to a population that did not speak up.

Finally, no one questions the challenging role of the regulator in creating a favorable environment and enforcing rules. However, this raises the question of whether regulators should deal directly with consumers, or allow them to first follow a process and therefore go to the regulator as a 'point of last resort'. In the Kenyan case, the regulator has set itself as a point of last resort, and therefore consumers only go to the regulator once they have tried all other alternatives. What approach is best and which delivers the best possible solution in favor of the consumer is an open debate that would be aided by discussion and evaluation. No doubt, the challenges facing the regulator in addressing consumer issues can be mitigated by best practice examples being brought to the fore (as is being done in this GK3 forum), as well as through constant investment and training. For Africa, it is hoped that as consumer issues become a hot topic, these discussions will be used, more importantly, to influence policy and regulatory decisions.

4.0 References

International Telecommunication Union (ITU), Telecommunication Standardization Sector (ITU-T)
<http://www.itu.int/ITU-T/studygroups/com12/sg12-q15.html>

Mahan, Amy (2005). "Benchmarking African NRA Websites". In Mahan, A.K. and Melody, W.H. (Eds.), *Stimulating Investment in Network Development: Roles for Regulators*. World Dialogue on Regulation for Network Economies (WDR).
<http://www.regulateonline.org/content/view/435/65/>

Southwood, R., Nguo, J., Sagna, O. and C. Lewis (2006) "Assessing consumer activity in the telecoms and Internet sectors in Africa".
http://www.regulateonline.org/old/index.php?option=com_docman&task=docclick&Itemid=27&bid=203&limitstart=0&limit=5

Questionnaires administered via email to the Communications Commission of Kenya (CCK), Tanzania Communications Regulatory Authority (TCRA) and Uganda Communications Commission (UCC) on 16 October 2007.

Interviews conducted with Consumer Protection and Service Quality Unit officials at the CCK offices on 1 November 2007.