

Analysis of Electronic Transactions Bill in Nigeria: Issues and Prospects

Aliyu Sanni Abubakar

*National Institute for Legislative Studies (NILS), National Assembly, Abuja-Nigeria
Email: alisani78@yahoo.com Tel: +2348032712006*

Francis Ojo Adebayo

*Fiscal Policy Analysis Centre, Abuja-Nigeria
Email: francisadebayo31@yahoo.com Tel: +234-803-240-0062.*

Doi:10.5901/mjss.2014.v5n2p215

Abstract

This paper is an attempt to analyse the Electronic Transaction Bill, 2011 sponsored by Hon. Uzoma Nekem-Abonta of the National Assembly. The Bill is designed to facilitate electronic transactions in Nigeria. Issues raised in the Act are something that needs to be discussed because for Nigeria to become active players in e-commerce, the enabling legal environment to enable electronic transactions need to be created in order to ensure equal opportunities, equality and economic development. It will further allow for the implementation of e-government services, improving the quality of services and reducing the cost of services, and increasing transparency and efficiency in the procurement and sale of goods and services. Therefore, the paper aims to promote public confidence on the Bill as well as enhance competitiveness in e-commerce.

Keywords: E-commerce, electronic transaction, bill

1. Statement of the Problem

Electronic transaction is relatively a new phenomenon in Nigeria. Electronic transaction has been a key component in the trend towards globalization and the creation of the "e-society" as one of the driving forces transforming society worldwide. Some view electronic transaction as a source of problems, others realized that it also offers many opportunities to fulfil their role more effectively and meet the increased expectations of effective transactions. Some of the benefits of electronic transactions are prevented from being realized because of lack of legislative enactment.

The rapid development of information technology had brought unprecedented influence on the life of millions of people around the globe. Various activities were handled electronically through the adoption of ICT in the workplace or at home, for example, e-mail, e-commerce and e-government. The internet had become a significant part of daily life for both consumers and business enterprises especially in developed countries¹

Despite a rather late start, available statistics indicate that information and communication technology (ICT) is rapidly gaining ground in Nigeria. Due to its many possibilities, ICTs constitute veritable tools for socio-economic development, which makes the legal and regulatory environment for their application in developing countries critical. ICTs have brought about significant changes in business practices with respect to banking transactions and, to some extent, the buying and selling of goods and services, through the possibilities of the medium to promote trade and commerce through wider access to prospective customers from anywhere on the globe for products and services.²

There is a growing interest and awareness of e-business coupled with a proliferation of websites especially by Nigerian banks, which was facilitated by advances in telecommunications and information technology. Already a number of Nigerian banks' websites have the capability of supporting and actually permitting the conduct of e-banking and e-commerce. This is inevitable if the banks are to be able to compete at the global financial landscape. Electronic commerce in Nigeria presents major challenges not only the regulatory authorities and government agencies but also the operators. These include amongst others:- the need to have in place certain basic infrastructural facilities such as effective and efficient electricity supply and telecommunications, Skilled manpower to use and maintain internet resources, a legal and regulatory framework that will guide the conduct of electronic commerce in Nigeria.

¹ Guriting and Nubisi, (2006)

² Oyewunmi, (2012)

The non-existence of an enacted law on Electronic Transaction in Nigeria has created an unpredictable legal environment for e-commerce. The rights and obligations of the transacting parties, legal aspects of electronic contracts, use of specified security procedures (including digital signatures) and concerns for authentication and non-repudiation is still a source of concern. It has denied businesses and community confidence in electronic transactions, and to use electronic communication in their transactions with government. Reducing uncertainty about the legal effect of electronic information and communications, and the time and place of dispatch and receipt of electronic communications are some of the problems the bill seeks to address.

Governments around the world are waking up to the fact that the Internet and e-commerce need to be regulated. For example, the Indian Parliament has recently passed an Information Technology Act, which lays down the framework for electronic commerce in India. Therefore, given our level of development, Nigeria should draw from the experience of best practices by introducing some form of regulation for e-commerce to guide the conduct of participants and to protect the consumers. Towards achieving this objective, there is the need for close co-operation and co-ordination between the National Assembly, the relevant regulatory authorities and Government agencies as well as the private sector in order to facilitate the development of robust legal and regulatory framework for electronic commerce³ in Nigeria.

Customer satisfaction has a positive influence on the use of electronic transaction. In addition, the quality of the service is crucial in acquiring customers in e-transaction organizations. According to the essence of service quality is the ability to deliver what the customer needs and expects⁴. To explore the determinants of users' adoption momentum of electronic transaction in Nigeria, a Malaysia scholar indicated that privacy and security are the major sources of dissatisfaction, which have momentarily impacted users' satisfaction⁵. Moreover, other scholars found that high electronic service quality in web-based services had an important role in building overall customer trust for the service provider⁶. However, a customer is most important in designing, providing and evaluating the level of service quality⁷.

In order for beneficiary countries to facilitate innovation, the existing legal impediments that prevent the use electronic communications to communicate legally significant information must be removed thereby creating a more secure legal environment for ecommerce operation. In establishing a legislative framework for electronic commerce, the legislation must be neutral in relation to technology and must not be restricted to specific technological solutions. The legislation must be flexible and adapted to developments which should be in harmony with international rules and guidelines. Furthermore, the fundamental principles of law creating electronic transactions should remain uncompromised and the legislation should contribute to establishing confidence in electronic commerce in order to providing protection and privacy for consumers.⁸

The paper seeks to analyse the Electronic Transaction Bill, 2011 sponsored by Hon. Uzoma Nekem-Abonta on facilitating the use of electronic technology and attempt to remove impediments to e-transaction. In effect, it allows some legal requirements to be satisfied by electronic means and gives most electronic transactions and information the same legal effect as paper-based equivalents. It merely provides rules for those who choose to use, provide or accept information in an electronic form. However, the paper aims to give individuals, businesses and community confidence when transacting online bringing Nigeria into line with most developed countries. Against this backdrop, this paper is organised into six sections: Statement of the problem is in Section 1. Section 2 and Section 3 reviewed cross country comparisons and relationship with existing laws. Section 4 provided analytics comprising of major issues: comments, significance, challenges of the Bill, and cost benefit analysis while Section 5 concludes the study, respectively.

2. Provisions/Summary of Electronic Transaction Bill, 2011

The Bill is made up of twenty four (24) sections. Each section is further subdivided into subsections. Section 1-2 provides for the objective and application of the Act. Section 3-7 focuses on non-discrimination against electronic information, writing requirements, prescribed forms and signature requirements. Section 8-10 deals with keeping written documents, integrity of information and recognition of foreign electronic documents and signatures. Section 11-17 focuses on government uses, exemptions, certain other laws not affected, consent, contracts,

³ Usman, (2002)

⁴ Minocha et al., (2003)

⁵ Poon (2008)

⁶ Fassnacht and Kose (2007)

⁷ Jean-Michel (2003)

⁸ ITU, 2011

automated contracts and mistakes in partly automated contracts.
Section 18-24 cites the expression of will, time and place of sending and receiving electronic information, attribution of electronic communications, consumer protection, regulation, interpretation and short title.

3. Cross-Country Comparison

In Singapore, the Electronic Transactions Act (ETA) (Cap 88) was first enacted in July 1998 to provide a legal foundation for electronic signatures, and to give predictability and certainty to contracts formed electronically. In July 2010, the ETA was repealed and re-enacted to provide for the continuing security and use of electronic transactions. Singapore was one of the first countries in the world to enact a law that addresses issues that arise in the context of electronic contracts and digital signatures, and continues this trend by being amongst the first to implement the United Nations Convention on the Use of Electronic Communications in International Contracts, adopted by the General Assembly of the United Nations on 23rd November 2005 (the UN Convention). The Electronic Transactions Bill was introduced in Parliament on 26 April 2010, and passed on 19 May 2010. The re-enacted Act came into force on 1 July 2010⁹.

In the summer of 1999, the National Conference of Commissioners on Uniform State Laws (NCCUSL)¹⁰ promulgated the Uniform Electronic Transactions Act (UETA) in the United States of America. The Act was intended to be adopted quickly by the various states in the United States. As of December 2000, twenty-three states have adopted UETA, and it has been introduced in the legislatures of six other states. The UETA was drafted as a response to the need for the domestic law of the United States to conform to the growing amount of transactions that are done electronically. The purpose of the UETA is to create the legal recognition of electronic records, electronic signatures, and electronic contracts: "the fundamental premise of this Act: namely, that the medium in which a record, signature, or contract is created, presented or retained does not affect its legal significance.

Enacting the Commonwealth Electronic Transactions Act 1999 in Australia was a major step towards supporting and encouraging the development of electronic commerce. The Electronic Transactions Act allows any of the following requirements or permissions under Commonwealth law to be fulfilled in electronic form: giving information in writing, providing a handwritten signature, producing a document in material form, and recording or retaining information. The implementation of the Electronic Transactions Act was in two stages. Before 1st July 2001 it only applied to those laws of the Commonwealth that were specified in the Electronic Transactions Regulations 2000. On or after 1 July 2001 it applied to all laws of the Commonwealth unless they were specifically exempted from application of the Act by the Electronic Transactions Regulations. On 3rd April, 2000, the uniform Bill was closely modeled on the Commonwealth's Electronic Transactions Act and mirrors the substantive provisions of the Commonwealth's Act¹¹.

In New Zealand, the Electronic Transactions Act 2002 (Act) and the Electronic Transactions Regulations 2003 (Regulations) finally came into force on Friday 21 November, 2003. The Act is designed to facilitate the use of electronic technology by addressing uncertainties surrounding the legal status of electronic transactions and documents. The Act provides that an electronic signature is just as valid as a written one if it sufficiently identifies the person and their approval of the information, and its use is appropriately reliable in the circumstances. Also, the Act provides that a legal requirement to retain, provide, produce or provide access to information may be met by electronic means provided that the information's integrity is maintained and the information is readily accessible so as to be useable for subsequent reference¹². Although, the Act has many similarities with the Australian Act, a noticeable difference is that the Australian Act requires government departments to accept electronic communications where there is a statutory requirement as to form. By contrast, New Zealand government departments must first consent to the use of electronic communications before the provisions of the Act will apply in these circumstances¹³.

⁹See <http://www.ida.gov.sg/Policies%20and%20Regulation/20060420164343.aspx> Legislation is reproduced on this website with the permission of the Government of Singapore. Acts of Parliament are available without charge, and updated monthly, at the Singapore Government Statutes Online website.

¹⁰ 1 NCCUSL was created in 1892, and consists of representatives (Commissioners) from each state, the District of Columbia, Puerto Rico, and the United States Virgin Islands. NCCUSL is a natural outgrowth of the non-federal nature of most of the private law in the United States. Its purpose is to determine what areas of private state law might benefit from uniformity among the states, to prepare statutes or "uniform acts" to carry that object forward, and then to have those statutes enacted in each state. The Commissioners are appointed by their respective states, either by the state's governor or by its legislature. The work of the Conference is done through Drafting Committees, on which many of the Commissioners serve, and through an eight-day Annual Meeting each summer.

¹¹see <http://www.ag.gov.au/ECommerce/Pages/Australiaslegalframeworkonelectroniccommerce.aspx>

¹² Tanya Drummond 2004

¹³ See <http://www.chapmantripp.com/publications/Pages/The-Electronic-Transactions-Act-what-it-means-for-your-business.aspx>

In South America, Colombia passed the Electronic Commerce Law 527 in 1999, based on the 1996 UNCITRAL model law. It establishes the validity and admissibility for "data messages," as well as the enforceability of contracts that contain data messages. Additionally, it provides for the validity of digital signatures and delineates standards for the licensure of certification entities and for the issuance of certificates.

In Asia, Thailand also passed its own Electronic Commerce Law in 1999. It addresses electronic signatures along with all electronic communications. In the Americas, Bermuda enacted the Electronic Transactions Act in 1999 to address the legal validity and enforceability of electronic signatures and records as well as their admissibility as evidence in any legal proceeding.

Others countries such as Colombia, Thailand, Bermuda and Tunisia have used the UNCITRAL¹⁴ Model E-commerce Law as the basis for establishing national e-commerce legislation¹⁵.

In Africa, Tunisia enacted the Electronic Exchanges and Electronic Commerce Law in 2000. Although the law addresses the general organization of electronic exchanges it also governs electronic contracts including the validity and execution liability that may arise from that form of contract.

3.1 Relationship with Existing Laws

The paper notes that the proposed Bill has a relationship with existing law as provided in Section 37 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) that "the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected"¹⁶. This provision is certainly not adequate when compared to having a separate law that governs protection of personal data which takes into consideration the enormous issues and complexities of processing personal data.

Also, various Sections of the Evidence Act¹⁷ have been explored with a view to determining whether any of them could accommodate the admissibility of computer-generated evidence as an exception to the hearsay rule. These Sections include Sections 33(b), 38, 39 and 91. These Sections have been found to be grossly inadequate for the admissibility of computer generated evidence, despite the expression of willingness by the courts to interpret the relevant provisions of the Evidence Act liberally¹⁸.

Furthermore, Section 6 Sub Section 1 of the Bill provides for the use of electronic signature. This is contrary to the Sections 100 to 108 of the Evidence Act¹⁹ which does not recognise electronic signatures and the issue of execution of contracts online. The Sections deal with proof of execution of documents on the premise of same being done on a tangible medium as opposed to being a secured set of information data uniquely allocated to one individual.

4. Analytics

The important step in enacting any bill is to understand and articulate major issues, significance, challenges and cost benefit analysis. Understanding these towards the enactment of electronic transaction Bill, 2011 cannot be over-emphasised. Some of these issues are briefly examined below:

4.1 Major Issues: Comments

The Bill provides for the legal recognition of electronic commercial transactions where parties have, either expressly or by conduct, accepted to contract through electronic means.²⁰ It also provides that the requirements of writing, signature and prescribed form are deemed to be complied with when done electronically.²¹ Where there is such consent, the Bill provides that in the formation of contracts, the communication, acceptance and operation of a contract may be expressed in electronic form or in electronic communications, such as touching or clicking on an appropriate icons or other place on

¹⁴ The United Nations Commission on International Trade Law (UNCITRAL) was established by the United Nations General Assembly by its Resolution 2205 (XXI) of 17 December 1966 "to promote the progressive harmonization and unification of international trade law".

¹⁵ ITU 2011

¹⁶ 199 Constitution as amended

¹⁷ Evidence Act, Cap. E14 LFN 2004

¹⁸ See the judgment of the Supreme Court in *Yesufu v ACB* [1976] 4 SC 1, 16, *Anyebosi v RT Briscoe* [1987] 3 NWLR 84.

¹⁹ See also Evidence Act, Cap. E14 LFN 2004

²⁰ Sections 1-2, Electronic Transaction Bill 2011

²¹ Sections 3-7, Electronic Transaction Bill 2011

a computer screen or by speaking.²² This is a laudable provision which gives legal backing to the use of ICT for commercial transactions. However, to further adapt the law to the level of awareness and development in Nigeria, the below comments has to be addressed.

4.1.1 Comments

- In Nigeria, we do have Copyright and trademark laws [no competition law yet] but there has been no instance of adjudication thereon in regard to domain name registration mainly because no attention has been paid to this yet in Nigeria.
- Emphasis should be placed on creating a Registration Authority for the assignment and management of domain names within the country code top-level domain because Nigeria has none. Such a Registration Authority should also manage, regulate, and maintain the database of registered domain names.
- Promoting privacy and personal information is essential. Nigeria has absolutely no privacy and personal information laws. Different countries have laws that restrict release of personal information. International best practice recommends self-regulation by industry practitioners, with industry regulator exercising supervisory control. For example, New Zealand is taking the initiative at the instance of Government to establish practice codes that would ensure fair business practices, advertising and marketing practices, disclosure of identity of business, disclosure of terms and conditions of contract, mechanism for conclusion of contracts, customer dispute resolution processes and privacy principles.

4.2 Significance and Challenges of the Bill

The significance and challenges of the Bill is summarised below for clarity purposes.

4.2.1 Significance of the Bill

- It will minimise errors in business and community transaction
- It will create transaction database, stores transaction information in database for as long as you want.
- It will minimize fraud through address verification system (AVS) and eliminates the chance of shipping to someone using a stolen credit card, saving you from a charge back
- It will encourage quicker transactions and enhance productivity
- It will eliminate the use of equipment and multiple register
- It will bring about lower transaction costs and encourage faster billing system in the economy
- It will encourage better and quicker customer service. Online customer service makes customers happier

4.2.2 Challenges of the Bill

- Electronic transactions are resistant to forgery, the keys are vulnerable to attack
- Security continues to be a problem for electronic transaction because customers don't have confident about the integrity of the payment process
- The bill does currently exclude some areas where it would be inappropriate to make use of such legislation, i.e. communications relating to the health profession
- The danger of hackers accessing files and corrupting accounts questions the integrity of the electronic transaction bill
- Data protection and the integrity of the system that handles the data are of serious concerns.

4.3 Cost Benefit Analysis

The cost of this bill is the initial financial resources that would be committed to the procurement of electronic infrastructure. However, it is obvious that the benefits derived from electronic processing are faster and less expensive than paper processing, improvement in information sharing between parties and promote quick deliveries among others cannot be over emphasized.

²² Sections 11-17, *Electronic Transaction Bill 2011*

5. Conclusions

Nigeria has the potentials for electronic transactions, but for the many challenges which has been identified. The need to address these challenges cannot be minimised. In fact, if successfully addressed, the worrisome gap that has become impediment in transactions will be reduced. The paper neither attempts to nor succeeds in setting out all the rules that are necessary to effectual electronic transaction in Nigeria. What the paper does achieve is a legal mechanism to facilitate electronic transactions which is still in its embryonic stage in Nigeria. However, this will provide confidence to businesses and communities as to the reliability and enforceability of their electronic dealings. It will further accelerate achieving economic growth by ensuring timeliness and accuracy of contractual and financial transactions, among others.

References

- Akomole T.I (2008), Contemporary Legal Issues in Electronic Commerce In Nigeria. PER/PELJ 2008 Volume 11 No 3. ISSN 1727-3781.
- Ahasanul H., Arun K.T., Sabbir R., & Md Abdur R. (2009), Electronic transaction of internet banking and its perception of Malaysian online customers. African Journal of Business Management Vol.3 (6), pp. 248-259, June Available online at <http://www.academicjournals.org/AJBM> DOI: 10.5897/AJBM09.036 ISSN 1993-8233 © 2009 Academic Journals.
- Electronic Transaction Savings Opportunities for Physician Practices. Prepared by Milliman Technology and Operations Solutions. Revised: January 2006 in <http://www.emdeon.com/resourcepdfs/MillimanEDIBenefits.pdf>
- Electronic Commerce and Telecommunications In Nigeria. A paper delivered by Shamsudeen Usman on 23rd septemrer 2002, At the golden gate restaurant, Ikoyi. Lagos. Retrieved 22nd March, 2013... <http://www.gosodipo.com/Seminars2.htm>
- Fassnacht M, Kose I (2007). "Consequences of web-based service quality: uncovering a multi-faceted chain of effects", J. Interact. Mark. 21(3): 35-54.
- Guriting P, Ndubisi NO (2006). "Borneo online banking: evaluating customer perceptions and behavioural intention" Manage. Res. News, 29(1/2) : 6-15
- Ikemelu, C. R. (2012), Electronic Commerce in Nigeria: Concept and Effective Implementation. Journal of Research and Development, Volume 4 No. 1. Retrieved March 21, 2013...
- Jean-Michel S (2003). Enhance Internet Banking Service Quality with Quality Function Deployment Approach. J. Int. Bank Com. 8 (2): 176- 182.
- Minocha et al. (2003), "Integrating Customer Relationship Management Strategies in (B2C) E-Commerce Environments", Department of Computing, Open University, Milton Keynes, MK7 6AA, UK BTextact Technologies, Adastral Park, Martlesham Heath, Ipswich IP5 3RE, UK
- Oyewunmi, A.O. (2012), The ICT Revolution and Commercial Sectors in Nigeria: Impacts and Legal Interventions. *British Journal of Arts and Social Sciences* ISSN: 2046-9578, Vol.5 No.2 (2012)
- Poon WC (2008), "Users' adoption of e-banking services: the Malaysian perspective" J. Bus. Indust. Mark. 23 (1): 59-69.
- Tanya Drummond (2004), New Zealand Update: Electronic Transactions Act. Australian and New Zealand Institute of Insurance and Finance Journal. Volume 27 Number 1 February/March 2004.
- ITU(2011). Establishment of Harmonized Policies for the ICT Market in the ACP Countries, Electronic Transactions: Assessment Report. Geneva, 2012. Retrieved 22nd March, 2013...http://www.itu.int/ITU_D/projects/ITU_EC_ACP/hipcar/reports/wg2/docs/HIPCAR_2-2-A_Assessment_Report_Interconnection-and-Access.pdf