PRICE MECHANISM, COMPETITION AND CONSUMER PROTECTION LAW IN NIGERIA

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Abstract

Everything has a price. Generally, price is the amount of money charged for a product or service. More specifically, price is the sum of all the values that the Consumer surrenders to acquire the benefit of having a product. Does this benefit meet the Consumer’s expectation? Or could this expectation be shrouded in the perception where anti-competition (monopoly) is involved? Price is critical to both the Consumer and Producer because price must not only be reasonable and valuable to the Consumer, it must be fair to the Producer, at all times. This paper shall therefore attempt to examine the process of finding the right pricing strategy, otherwise known as price mechanism, against the backdrop of anti-competition and consumer protection law.

Keywords: Price, anti-competition, consumer protection, law

Introduction

Price is the money or its equivalent at which a thing is valued. In modern times such as these, commercial transactions are predominantly carried out by exchanging goods and services with money; and in few instances, there are “mixed transactions partly for money; partly in exchange of goods and money or what can be referred to as a trade-in, (Agbebaku, 1999). Generally, Producers of goods and services that require very large capital outlay, with their resultant economies of scale, have the undue competitive advantage of dictating the price at which these goods are sold in anti-competition situation or monopoly that does not allow for the interplay of market forces of demand and supply which is the fulcrum of a free market economy.

However, not only that there is no country that leaves its economy entirely to market forces, serious governments always embark upon national development planning with clear ideas on, and projects about, where they want their country to be over specific periods, (Ayida,2003). Producers often use cost as a basis for setting price. They develop elaborate cost accounting systems to measure production costs (including materials, labour and overhead) and add in some margin of profit to come up with a price. In the long run, the market – (not the Producer)- determines what the price will be. Pricing should take into account, costs but it should also include the expected costs of product update, the objectives for each product and competitor prices, (Nickels,2005).

The problem that arises then is whether prices ought to be fixed or controlled in order to discourage anti-competition or left entirely to the vagaries of demand and supply. Should the poor, unenlightened and unsuspecting Consumer be protected against the exploitation of Producers with stronger bargaining power? This paper examines price mechanism vis-à-vis anti-competition in an attempt to identify whether the Consumer is sufficiently protected by the law in Nigeria. Or better still, whether prices should be left to market forces or regulated for such prices to be reasonable and equitable in the eyes of the Consumer. Further examined are anti-competition and consumer protection law.

Price mechanism and its objectives

Price is an important ingredient in consumer evaluation of a product. The goal of every business transaction is profit, emanating from price. Price is so important to marketing and the development of total product that it has been singled out as one the four ‘Ps’ in the marketing mix, along with product, place and promotion. Consequently, price has become a critical ingredient in consumer evaluation of product, (Nickles and McHugh, 2005).

A firm may have several objectives in mind when setting a pricing strategy. It may decide to set the price high and use the right promotion to achieve a certain profit objective or return on investment, or simply to give an image of exclusivity and status. Conversely, price could be set lower than its competitors so that the poor and elderly people in society can afford to buy the product, thereby introducing social or ethical goals. Low pricing may also discourage competition because the profit potential may be less. A low price may help to capture a larger share of the market. The point is that a firm may have several pricing objectives over time and it must formulate these objectives clearly before developing an overall pricing strategy. How a consumer perceives a price (as high or low or even fair) has a strong influence on both purchase intentions and purchase satisfaction. Price fairness, for example indicates evidence that consumers do pay attention to the prices paid by other customers, (Schiffman and Kanuk, 2009). No one is happy knowing he or she paid
twice as much for an airline ticket or bus fare as the person in the next seat. Perceptions of price unfairness affect consumers’ perceptions of products value and ultimately, their willingness to patronize a product or service.

A firm may have several pricing objectives but it must formulate these objectives clearly before developing an overall pricing strategy. Naturally, the long term pricing objective of most firms is to optimize profit, (Kenana, 2003). It is the practice of some firms to advertise certain products below the cost of production in order to attract customers. The long term effect of this practice is to make profit by following short term objective of building a viable customer base and clientele. One way to capture a larger part of the market is to offer low finance rates e.g. zero-percent financing. But this could back fire because it could eat into the profit margin. Similarly, a firm may price a product low so that people with little money or senior citizens can afford the product, (McHugh, 2005). This is especially in the area of basic needs like, milk, bread and other essentials.

At the other extreme of this method is an attempt to create an image. Certain products, especially loud and visible products like perfumes, watches, etc, could be priced high to give them an impression and image of exclusivity, class and status, whereas, in actual fact, such products could be worth less than the quality it is intended to portray.

**Price, the law and equity**

Obviously, price is paid when a transaction in a contract of sales, whether oral or written, is concluded. While it is the duty of the buyer to pay the price, he/she is not entitled to claim possession of the goods, unless he/she is willing to pay the agreed price. Hence, price is defined in law as the money consideration for the transfer of the general property in the goods, from the seller to the buyer (Sales of Goods Act, 1958). Where there has been no payment of the price, the seller may sue for the recovery of the goods, since non-payment of the price would amount to a total failure of consideration. Thus under the Sale of Goods Act, Price may be:

- Fixed by the contract; or
- Left to be fixed in a manner agreed upon by the parties; or
- Determined in the course of dealing between the parties.

Where the price is not determined in accordance with the above provisions, the buyer must pay a reasonable price. And a reasonable price is a question of fact dependent upon the circumstances of each case. (Sales of Goods Act, 1958).

What then constitutes a reasonable price where the price has not been fixed or left to be fixed at a future date? In practice, not only is resort made to the general principles of contract for such resolution, the Courts must also be looked upon for guidance, even though they (Courts) are always slow to hold a contract agreement invalid on grounds of uncertainty, (Greater London Council Vs Connelly, 1917). That is why, where there is any disagreement between parties to a written agreement on any particular point, the authoritative and legal source of information for the purpose of resolving that disagreement or dispute is the written contract executed by the parties (Lamine Vs Data Processing, 2006). Be that as it may, the absence of a definite price in respect of the transaction is a useful pointer to the fact that there is lack of a concluded agreement between the parties. In the case of May & Baker Vs The King (1929), parties had agreed on a price to be determined by the parties while all disputes are to be resolved by arbitration. A price was eventually not agreed upon. The House of Lords of England held that since there was no price agreed upon there was no effective contract. Also in Foley Vs. Classique Coaches (1934) price was to be agreed upon in writing and from time to time, and all disputes are to be settled by arbitration. The English Court of Appeal held that defendants could not ignore this agreement, for there was a binding contract between the parties which they had acted upon as a clear indication that their intention to refer any question of price to arbitration that would eventually fix a reasonable price according to the trade practice. Also, where a plaintiff arranged the motor yacht for $30,000, “subject to contract” when the survey was not satisfactory.

Conversely, where there is agreement to sell goods on terms that the price is to be fixed by the valuation of a third party, the goods or part of the agreement would be void if valuation falls to take place. If the goods or part of them have been delivered to, and appropriated by the buyer, he must pay a reasonable price (sec. 9 Sales of Goods Act, 1894), else, “it would be obviously unfair for a buyer to keep goods without paying for them. And this clearly explains why in the case of an executed contract, the court can be called upon to fix a reasonable price for the goods” (Agbebakuk, 1999). But the issue is whether prices should be left to the vagaries of the market forces or regulated, for such prices to be reasonable? This question is better answered in the context of consumerism and competition.

**Anti-competition and the international challenge**

Anti-competition or monopoly is the elimination of all effective competition. It arises where one person or firm buys up or wins control of the entire supply of a needed product. The nature and extent of consumer protection in a modern society says a good deal about...
the society, its economic development, its legal values sense of justice, its politics and system of government (MacBride, 1990). During and after the middle ages in the United Kingdom, competition was always the guiding principle of business activity. Most business activities were conducted within the framework of legalized monopolies controlled by the Royal Franchise, granting exclusive rights to conduct trade and commerce in particular geographical areas. Sales outside the prescribed areas were generally prohibited. Invariably, there was little competition possible. (Dodson, 1989). By late 18th Century, competition came to be accepted as a desirable means of regulating business activity. With the general acceptance of the economic philosophy of laissez-faire, freedom of economic activity blossomed while competition became the guiding principle of commercial life (Dodson, 1989)

The United States marketers have learnt through experience that the secret to success in today’s rapidly changing environment is to bring out high-quality new products and dispose them out quickly. This is especially true in the light of the rapid development processes occurring in other countries. Successful new product development is an interactive process whereby customers present their needs and new-product designs are prepared to meet those needs. Changes are made over time to make sure that the product exactly meets the customer’s needs. The focus then shifts from the internal product development to external customer responsiveness. This development is particularly important when trying to meet the needs of people in other countries. How does price or the producer respond to such customers. It is discriminate pricing.

At present in the United States which is an epitome of free trade, a firm may fix the price of its product as it chooses but not artificially in agreement or in conspiracy with other firms. That would be a violation of anti-Trust law (The Clayton Act, 1914). The Anti-Trust Law is a distinctive American means for assuring that competition thrives in all facets of business, politics and government. The general objective of the anti-trust laws is promotion of competition in the open market. “Most Americans have long recognized that opportunity for market access and fostering of market rivalry are basic tenets for our faith in competition…” (Dodson, 1989).

In a laissez-faire economic system, the way in which production is affected by demand is not through regulation by law (except to stop fraud or sale of dangerous goods and the like) but by the flow of consumer expenditure, activated by a series of voluntary choices, bringing pressure to bear at various points, (Harvey and Parry, 2000). Until recently, monopoly or anti-competition in most sectors of the Nigerian economy was the order of the day. For instance, only The Nigerian Telecommunications Plc (NETEL) issued telephone lines to the public while only The Nigerian National Petroleum Corporation (NNPC) had the monopoly of refining and selling petroleum products and gas to oil companies registered in Nigeria. Similarly, the former Nigerian Electric Power Authority, (NEPA) was the only company saddled with providing electricity to the nation. But, what we see happening in Nigeria today, in telecommunications and petroleum downstream sectors are very clear indications of the breaking down of the anti-competition syndrome that hitherto mystified the owning of a telephone sets by the ordinary Nigerian. This is also the case with the availability of petroleum products at petrol stations.

The consumer and consumer protection

Generally, consumer protection is all about the consumer. “The Moloney Committee” (1966) of the United Kingdom on consumer protection regarded a consumer as one who purchases (or hire-purchases) goods for private use or consummation. But more recently, this definition of a consumer has been broadened to include anyone who consumes goods or services at the end of the chain of production, thus catching the otherwise excluded plaintiff in Donoghue Vs Stevenson, (1907) who consumed a bottle of contaminated ginger beer bought by her friend. The plaintiff became sick as a result of a decayed snail contained in the bottle. The House of Lords held that the defendant manufacturer had breached his duty of care to the plaintiff.

Similarly, in the United States of America, a consumer is defined as a person other than an organization who purchases goods and services or borrows money primarily for personal, family or household purpose, (Uniform Commercial Code, 1985). Accordingly, in the words of Badaiki (1999), modern consumer legislations cover all products, services credit facilities and a wide range of activities including manufacture…storage…use, misuse and abuse which are all areas of potential injury to the consumer.

Although some Nigerian Legislations have used the word ‘consumer’, The consumer Protection Council Act. (1992), is clear in its definition of the word consumer. The Statute defines a consumer as “an individual who purchases, uses, maintains or disposes of products or services”.

Different States in Nigeria have for a long time evolved ways of protecting the Nigerian consumer but these measures have been in the form of regulations, such as the Price Control Act, (1990) which was an attempt at fixing prices enacted at a time when there was gross shortage of supply of consumable household essential commodities. The Hire-Purchase Act (1990) was passed to curb abuses and excesses which had become prevalent in the hire-purchase business…(Ovieghara, 2005). In other words, the Hire-Purchase Act had been of great importance as an Act deliberately
designed with freedom of contract in order to redress the imbalance in favour of the individual consumer dealing with an owner using a Standard Form Contract (Erhomosele, 1996). Other laws are the Food and Drugs Act (1990), Weights and Measures Act (1990), Advertising Practitioners Regulation Act (1990), Counterfeit and Fake Drugs Act etc.

Invariably, these regulations are generally desired to promote competition while discouraging anti-competition as a way of doing clear and legitimate business. Without such anti-competition regulations, the economy would be replete with the dominance of the producer group over the consumer group, a situation Kanyip, (1999) has chosen to describe as ‘producer hegemony’. Kanyip argues that the protection of the under-privileged in the power relations helps to keep free enterprise acceptable to democratic majorities. Again, Stritton and Orchard (1998), assert that government regulations protect honest enterprises against dishonest competitors by providing protection against fraud and deception, espionage, sabotage, anti-competition, unsafe and defective products etc. Mention must be made of the Trade Malpractices (Miscellaneous Offences) (Act 1992) which protects the public by restricting false and misleading advertisements, exaggerated or deceptive claims, improperly labeled goods and incorrect weights and measures. For example, it is an offence to publish any advertisement of products in a manner that is false or misleading or likely to create impression as to quality, character, brand name and composition. Misleading advertisement could be misrepresentation which is an untrue statement made by one party (to a contract) to the other, before or at the time of contracting with regard to some existing facts or some past events which is one of the causes fraud, (Sagay, 1993). Thus, consumers usually learn from the experience of misleading advertisements and vow never again to patronize such products or enter into transactions with that business. Therefore, consumers are ultimately guarded by the fact that if a product or business offers unattractive terms to them, other competitors will come along with better terms and products.

**Conclusion**

Price is the money or money equivalent at which a product or service may be acquired from an open market. Under ordinary circumstances, parties to a contractual transaction may agree on any price acceptable to them but the court may be called upon to fix a reasonable price where parties fail to agree and a dispute arises. With the general acceptance of economical philosophy of *laissez faire*, free competition (as against anti-competition) has become the guiding principle of economic life in modern economies. But in a depressed economy, government may see the need to fix prices of essential commodities for the good of the whole.

Deregulation in terms of admitting new players into hitherto regulated and legalized monopolies, is beginning to open new frontiers for the consumer to *pick and choose* from several choices (varieties) of business. Indeed, the consumer needs to be protected, not only against the *producer hegemony* but also, against unwholesome prices and harmful products and fraudulent practices.

An organized market economy and vibrant private sector could keep all participants on the alert in order to break new frontiers and create challenging concepts. This is why the United States Anti-Competition Laws have become the global economic model to emulate.

**Recommendations**

In spite of the emphasis placed on price in microeconomics theory, marketers often compete on product attributes other than price. Therefore, marketers tend to stress product images and consumer benefits such as comfort, style, convenience and durability.

The proposition to protect the consumer against fraudulent practices and unwholesome products has an appropriate answer in our criminal jurisprudence but the more controversial aspect of inequality of bargaining power between producer and consumer is an important consumer protection measure which is lacking. For example, any manufacturer with large resources that translates into superior skills, economies of scale and organizational capabilities can create brand loyalty by means of sophisticated advertising techniques, thereby increasing its competitive edge in the market place. What advertising does, is to help in perpetrating monopoly power (anti-competition). In the process, price of production goes up which is passed on to the eventual consumer. Besides, misleading and exaggerated advertisements are capable of making consumers buy unwanted products. Laws to prohibit such practices must be in put in place to sanction such perpetrators.

Where a country allows goods to be ‘dumped’ at unreasonable prices from other countries, anti-competition is elevated. In real terms, ‘dumping’ is the export and/or marketing of goods from a country with more advanced technological industries and products which do not meet the specifications as to quality, safety or characteristics of the exporting country (Harvey and Parry, 2000). This phenomenon is further accentuated by the existence of sophisticated marketing and strategies of the advertisers aimed at distorting the configuration of the *status quo* of less advanced countries. The influx of foreign cigarettes, alcohol and clothing (including second-hand apparels) have empowered the foreign competitors to carry on business as usual in Nigeria thereby paralyzing some local manufacturers. As at today, our Textile manufacturing companies have been rendered coma-tose.
It is advocated that trade practices as well as tariffs, and not price should be regulated. What we need are basic infrastructures, such as power, roads, water, railways, transportation, security, etc. to encourage local producers. The current deregulation and liberalization processes of government must be sustained and designed to elevate competition by allowing new entrants into new businesses and supplies of goods and services from which consumers can benefit, somewhat, from choices and ultimately reduced prices.

A completely unregulated laissez-faire system is unacceptable just as a centrally directed monopolistic one. In its stead, a pragmatic compromise is preferable to balancing the inequalities of the consumer against exploitation and excessive prices through competition between producers. Competition also helps to admit new entrants as well as empowering the consumer’s disposable income.

Furthermore, loans should be made available to individuals to enable them establish small and medium scale enterprises (SMEs) to enable them grow in a competitive economic environment. As it were, Small and Medium Scale Enterprises (SMEs) are the engine blocks of all advanced economies.

References


