

SOCIO-LEGAL ANALYSIS OF ELECTRONIC COMMERCIAL TRANSACTIONS IN NIGERIA*

Abstract

This paper explores the origin, development and growth of electronic commerce in Nigeria from a socio-legal perspective. Electronic commerce or e-commerce as it is popularly called has witnessed a tremendous increase in its adoption as a medium for commercial transactions in recent times. The paper adopts the doctrinal and analytical approach in its examination of the intricacies of this modern mode of doing business. It assesses the level of adoption of e-commerce in Nigeria for both domestic and cross border commercial transactions. The paper found that lack of the requisite and adequate telecommunication infrastructure was a major challenge to the consolidation of e-commerce in Nigeria. It further found that the legal framework for e-commerce transactions has not evolved sufficiently above its original provisions for traditional face to face commercial transactions. Socio cultural and socio economic hindrances to e-commerce transactions were also identified.

Key words: “Electronic Commerce”, “Commercial Transactions”, and “Electronic Contract”

1 Introduction

Some forty-seven years ago,¹ the Court in Nigeria took notice and stressed the importance of the computer, especially in commercial transactions when it said the law cannot be and is not ignorant of modern business methods and must not shut its eyes to the ‘mysteries’ of the computer. That was at a time in Nigeria when the laptop computer was relatively unknown, and desktop computer known to very few who were educated. Computer then existed only in the imagination of even many educated Nigerians. Handheld computer and phones which can today be found being used by a six-year old Nigerian child could never had been thought possible. No wonder the Court in the above mentioned case called it a ‘mystery.’

It is, indeed, a truism that virtually any commercial transaction can today be done and completed on these ‘mysterious’ computers which have become the commonest possession in Nigeria today. Nigeria has thus moved considerably from the old and traditional methods of buying and selling which required, in most cases, personal attendance and physical negotiation

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¹ In *Esso West Africa v Oyegbola* (1969) 1 NMLR, (Pt. 194) p. 1986.

between buyers and sellers to the virtual world, where computers and the internet hold sway as replacement for traditional market-place. Countless numbers and varieties of transactions are today being conducted online through the instrumentalities of computer within the scope of Nigeria's vast purchasing powers.

The aim in this paper is to appraise the legal concepts in electronic commercial transactions and to trace their development in order to identify some of their challenges in Nigeria, with the view to suggesting solutions to the challenges.

1.1 The Concept of Electronic Commercial Transaction

Electronic commerce refers to the carrying on of business activities based upon the processing and transacting of digitized data, including text, sound and visual images, which ultimately results to an exchange of value across telecommunications networks. It is commonly perceived as the buying and selling of products or services over electronic systems such as the internet and other computer networks. In other words, products are marketed, advertised, sold, paid for and delivered through services of a website via the internet.² There are various definitions of e-commerce as a concept but all the definitions point to the same underlining factor which is the use of information communication technology as a means of facilitating commercial activities. This is in contrast with the traditional means of physical interaction and exchange of cash for products and services.³

The United Kingdom Cabinet Office defines e-commerce as the exchange of information across electronic networks at any stage in the supply chain, whether within an organization, between businesses, between businesses and consumers, or between the public and private sectors, whether paid or unpaid.⁴ A more comprehensive definition by the European Commission sheds further light on the multi-faceted nature of e-commerce. According to the Commission:

Electronic commerce is about doing business electronically. It is based on the electronic processing and transmission of data, including text, sound and video. It encompasses many diverse activities including electronic trading of goods and services, online delivery of digital content, electronic fund transfers, electronic share trading, electronic bills of lading, commercial auctions, collaborative design and engineering, online sourcing, public procurement, direct consumer marketing, and after-sales service. It involves both products (e.g. consumer goods, specialized medical equipment) and services (e.g. information services, financial and legal services);

² S Rahman ; *Introduction to E-Commerce Technology in Business*, Munich: GRIN Verlag, 2014, Available at <https://www.grin.com/document/280494>

³ *Ibid.*

⁴ United Kingdom Cabinet Office, 1999

traditional activities (e.g. healthcare, education) and new activities (e.g. virtual malls).⁵

From the above definition, we can see that e-commerce involves the utilization of information and communication technology to facilitate business transactions, occasioned by the fast pace of technological advancement especially in the later part of the 20th Century. Increasing globalization has made it possible for people residing or doing business in different countries to trade with one another. These cross border transactions take place within the framework of contracts entered into by the parties, and their contractual rights, obligations and remedies are ascertained from the terms of their contract and various substantive and procedural laws that apply by virtue of the parties' choice of governing law as well as relevant mandatory provisions enacted to regulate business transactions in various jurisdictions. Disputes between the contracting parties are also settled by reference to these contractual provisions and applicable laws.⁶ However, e-commerce requires confidence and trust. One needs to be satisfied that transmitted orders or invoices have not been altered and that they emanate from whoever they appear to be from. There is need for a guaranteed level of privacy/confidentiality with respect to information.

In an electronic transaction (not being paper-based), the original of a data message is almost indistinguishable from a copy and bears no handwritten signature. This increases the incidence of fraud due to the relative ease in distorting or altering electronic information without being detected. There is also the evidential issue as to the admissibility of such electronic information in a court, although sections 34 & 84 of the Evidence Act⁷ seem to provide a good working framework in this regards. Many businesses and consumers are wary of conducting extensive business over the internet sequel to the lack of a predictable legal environment governing electronic transactions in Nigeria. This is particularly so for international commercial activities where concerns about enforcement of contracts, data protection, privacy, security and other matters have lingered on, resulting to a consequent decline in large scale electronic business transactions.⁸

To this extent, our existing legal framework must work with such adaptations as to give due effect and recognition to the rather new concepts of data messages, digital signature, authentication, amongst other terms associated with electronic transactions in Nigeria. The absence of the traditional physical medium in e-commerce necessitates the adaptation of our

⁵ European Commission. (1997). 'A European Initiative in Electronic Commerce', Communication from the Commission to the Council, The European Parliament, The Economic and Social Committee and the Committee of the Regions - Brussels, 16th April 1997, COM(97) 157 final. Also note the definition by the Electronic Commerce *Ad-hoc* Working Group (ECAWG) of the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT). See on this, 'Electronic Commerce: Need For a Global Facilitation Approach', 4 December 1997 (CEFACT/ECAWG/97N003) <http://www.unece.org/trade/unttdid/download/eca97003.pdf> accessed 8 December 2010: 'The sharing of structured or unstructured business information by any electronic means with suppliers, customers and other partners to conduct and execute trade transactions in business-to-business and business-to-consumer activities, without regard to business sectors, size of the enterprises concerned or the value of the transaction.'

⁶ N Ewelukwa; 'Is Africa Ready for Electronic Commerce? A Critical Appraisal of the Legal Framework for Ecommerce in Africa', 2009. Retrieved from www.google.com/search

⁷ Evidence Act, CAP E14, LFN 2004 as re-enacted in 2011. These sections relate to the authenticity & admissibility of electronic evidence.

⁸ *Ibid.*

existing legal framework to satisfy the requirements of known legal concepts as “instruments”, “signature”, and “delivery” that are predicated on the use of a tangible (paper-based) medium and geographical location.⁹

2 Development of E-Commerce in Nigeria

The E-commerce industry in Nigeria began in the mid-nineties when the internet and telecommunications industry started becoming popular.¹⁰ Its growth was slow until the advent of internet banking at the beginning of the 21st century. This is because an e-commerce service is dependent on people’s ability to make use of this new innovation technology. Nigerian businesses are facing expansion gradually, as e-commerce creates global advantages to open new profitable market for local goods and services at far and at close distance.

Online shopping systems give consumers a much greater choice with regard to their desired products and services, and offer much more in terms of ease and convenience, as against overseas travels for shopping purposes.¹¹ Some Nigerian researchers suggest that in order to improve on e-commerce adoption in Nigeria, the Central Bank of Nigeria (CBN) should consolidate a few banks on unprincipled, potentially counterfeit on business practices and the scope. Introduction of this policy by CBN will reduce fraud and improve the confidence of the consumer on internet transaction.¹² Hundreds of thousands of young people can access the internet from their wireless application protocol (WAP)-enabled mobile phones, Smartphone and from their PCs using their phones as a modem. That is mainly owing to the introduction of general packet radio service (GPRS) connectivity by the global system of mobile communications operators.¹³

In Nigeria, the introduction of Global System for Mobile Communications (GSM) brought about telecommunication explosion. The GSM revolution began in August, 2001 and changed the face of information and communications technology in Nigeria. Since the GSM launch, mobile telephony has rapidly become the most popular method of business contact communication in Nigeria. Growth has been so rapid that Nigeria has been rightly described in various quarters as one of the fastest growing GSM markets in the world.¹⁴ In addition, a

⁹ *Ibid.*

¹⁰ M Martin., and A Ernst, ‘Strategic Challenges for E-Commerce Promotion in Central Africa’, No. 30, Social Science Research Network. Cited in S. Oluyinka, A. Shamsuddin., E. Wahab, M.A. Ajagbe, and W.I. Enegbuma, 2014, *op.cit.* p. 297.

¹¹ D Park; J Lee; & I Han; ‘The Effect of On-Line Consumer Review on Consumer Purchasing Intention: the Moderating Role of Involvement.’ *International Journal of Electronic Commerce*, . (2007). Vol. 11, No. 4. pp. 125-140. Cited in S Oluyinka; A Shamsuddin; E Wahab; M A Ajagbe; and W I Enegbuma, *op.cit.* p. 297.

¹² B C Adeleye ; F Annansingh; & N M Baptista, “Risk Management Practices in is Outsourcing: An Investigation into Commercial Banks in Nigeria.” *International Journal on Information Management*, 2004, Vol. 24, No.2 pp. 167-180. Cited in S Oluyinka, A Shamsuddin., W Egbewole, M A Ajagbe, and W I Enegbuma, *op.cit.* p. 297.

¹³ C Peersman, “The Global System for Mobile Communications Short Message Service.” *Personal Communications*, 2000, Vol. 7, No. 3 pp. 15-23. Cited in S Oluyinka., A Shamsuddin., E Wahab., M A Ajagbe, and W I Enegbuma, *W I op.cit.* p. 297.

¹⁴ T Adeyinka, ‘Stakeholders Perception of the Impact of the Global System for Mobile Communications on Nigeria Rural Economy: Implications for an Emerging Communications Industry.’ *The Journal of Community Informatics*, 2008, Vol. 3, No. 4. pp. 365-379.

country's information technology policy add value to human resources development and reliable infrastructure is the key instrument and means of assessment, planning, change management and development to achieve sustainable growth. A developing nation like Nigeria that aspires to participate effectively and become a key player in the emerging information technology era needs to have in place, a highly efficient information technology system driven by a vibrant national Information Technology (IT) policy.¹⁵

3 Formation of Contracts in E-Commerce

The rules governing formation of traditional contracts are well settled and are no longer subjects of controversies. However, the same cannot be said of contracts that are formed through the internet with their special and peculiar idiosyncrasies. Formation of contract is as important and central to the issue of e-commerce as it is to other forms of contract. However, the peculiarity of contracts in e-commerce and internet trading brings about a more fundamental issue due to the fact that parties to such contract may reside wide apart where different laws are applicable.

A pertinent question as raised by a learned and erudite author is 'at what point can it be said that an electronic contract has come into existence?'¹⁶ This in our view is the central issue to the formation of contracts in e-commerce. It has further been observed that the workings of the internet must govern any analysis of contract formation and without a basic understanding of the internet; all such analysis would be fundamentally flawed.¹⁷ The complexity involved in electronic contract was succinctly captured by Lord Denning in *Thorton v Shoe Lane Parking*¹⁸ where he reasoned thus:

The customer pays his money and gets a ticket. He cannot refuse it. He cannot get his money back. He may protest to the machine, even swear at it. But it will remain unmoved. He is committed beyond recall. He was committed at the very moment, he put his money into the machine.

The contractual issues relating to e-commerce have been summarised by an author. The issues are the following;¹⁹

- i. What are the requirements for a binding contract to be made over the internet?
- ii. When is a contract formed over the internet made?
- iii. How can digital forms of payment be used to bind parties to agreements?
- iv. What types of contract should be used to provide digital information over the internet?
- v. Which country's court will have jurisdiction to resolve the disputes arising out of an online contract?

¹⁵ *Ibid.*

¹⁶ T I Akomolede ; 'Legal Analysis of Formation of Consumer Contracts in E-Commerce', *Ikeja Bar Review*, 2006. Vol.1 Parts 1 & 2, September 2006-March 2007, Pp. 225-240 at p. 225.

¹⁷ I Davies. 'Contract Formation on the Internet: Shattering a Few Myths' in *Laws and the Internet*, (Oxford:Hart Publishing, 1997) p.97, in Akomolede, T.I. *op.cit.*

¹⁸ [1971]2 QB 163

¹⁹ C Gringas, *The Laws of the Internet*,(Oxford: Butterworths ,1997). p.13.

- vi. Which country's laws will be applicable to an internet contract?

The determination of the moment when a contract is formed on the internet, metamorphosing into existence of rights and corresponding duties is central and key to e-commerce contracts. This is unlike the case in traditional commercial transactions with little or insignificant problems due to plethora statutory and common law rules regulating such transactions. The special nature of internet contracts has made most of the common law rules applicable to commercial contracts inapplicable to such contracts. Websites which constitute e-commerce market are structured and designed in such a way as to constitute an invitation to make an offer. They do not constitute situations of real offers by the website owners. However, in sales over the internet, both the display and the actual sale are often fused in the same chain of process.²⁰

It is important to note here that one cannot diffuse totally the formalities or elements of traditional contract from that of e-commerce contracts. Under the English law as made applicable in Nigeria in plethora of cases including *Orient Bank v Bilante International*,²¹ there are four key and essential traditional requirements for a contract to be validly made which are offer, acceptance, consideration and intention to enter into legal relations. Apart from these formal requirements, usages, statutes, and laws may further affect the general content and form of any agreement made between parties. It is important to note the above intricacies involved in contract formation, which may with modifications, be applicable to e-commerce contracts.²²

3.1 Electronic Offer

Offers in electronic commerce are made electronically. It is notable that some forms of electronic communication are instantaneous while some are not and could defer till a later time for reply. For example, e-mails are not as instantaneous as faxes and telephone calls. An e-mail message is sent to a service provider who in turn delivers it to the box of the receiver. E-mails may be wrongly addressed or delayed by any server on the way, problems with the data service provider may equally affect delivery and even where such mails are delivered, they may not be collected or read for quite a time after their delivery due to many reasons. These problems make e-commerce contracts special one with peculiar challenges as it becomes difficult to know when an e-mail was delivered or was actually read, translating to the difficulty in ascertaining when an offer was made or acceptance communicated.²³ According to Gringas,²⁴ the best practice legally is to make any offer by e-mail subject to a date on which the offer will lapse. An objective date

²⁰ T I Akomolede; 'Contemporary Legal Issues in Electronic Commerce in Nigeria' *Potchefstroomse Elektroniese Regsblad* (Online Version ISSN 1727-3781) Vol.11, n.3, Jan 2008. See also the case of *Harvela Investments v Royal Trust Company of Canada* [1986] A.C 207

²¹ [1997] 8 N.W.L.R (Pt. 515) 37.

²² T I Akomolede. *op.cit*

²³ *Ibid.*

²⁴ Gringas, *op cit.*

and time must be specified. If no intention is shown as to the lifespan of the offer, the courts would imply that the offer lapses after a reasonable time.²⁵

3.2 Electronic Acceptance

The general rules applicable to the acceptance of offers are also applicable to the acceptance of offers made on the internet. It is vital that an acceptance must express assent to all the terms of the offer even though it does not have to be in writing or by other means of communication except where a specific medium is required in the terms of the offer. However, where the offer is through e-mail, the receipt of such mail by the website owner will not constitute the acceptance of the terms of such an offer. It has also been held that e-mail message sent in reply to an e-mailed offer stating the recipient's intention to reply in due course will not be an acceptance.²⁶ It is equally notable that acceptance of an offer cannot be by silence except in very exceptional circumstances.²⁷ The rule protects the offeror from being bound by a contract without knowing that the offer is accepted.

In e-commerce, the onus is on the owner of the website to state categorically what would constitute acceptance. Since it is the web owner who is the supplier that generally accepts an offer made by a consumer (offeror) who has responded to the advertisement or information on the website as an invitation to treat, such assumptions that were made by the court in *Felthouse v Bindley*²⁸ may easily be reversed such that silence or inaction may not constitute acceptance.²⁹ Where he fails to specify the method of acceptance and also does not reply to a submitted offer, he risks the possibility of being bound by numerous contracts that he has not approved or consented to.³⁰

3.3 Contractual Intention in E-Commerce.

Contractual intention is also essential to entering into internet or web-based contracts. The presence of a contractual intention is even more important in e-commerce, because more often than not only one human being is involved in the communication, with programmed computers or machines at the other side. It is settled that contracts can be made with machines, and it is of no legal consequence that a machine physically completed the contract. However, in most cases the courts look objectively into the circumstances of each case to determine whether a contract has been made or not. Thus, in determining the requisite intention the court applies an objective test as against a subjective one.³¹

In summarising the formation of electronic contracts conclusively, the two most common ways of entering into e-contract on the world-wide web are by exchange of e-mail or by what is known as Web-Click whereby a shopper visits the website of an e-merchant and selects the item(s) or

²⁵ *Chanco Leasing SPA v Rediffusion* [1987] 1 FTLR 207

²⁶ *DTM v Hydranautics* [1981] 2 Lloyds Report 2211

²⁷ *Allied Marine Transport Ltd. v Vale S.A* (1985) 1 WLR 925 at 927.

²⁸ (1862) 11 CBNS 869

²⁹ T I Akomolede, *op. cit.*

³⁰ *Ibid.*

³¹ *Ibid.*

orders the service that he is after complying with the basic elements of contract as enumerated above.³²

3.4 Electronic Consideration

The law is trite that consideration is an indispensable element for an agreement to be binding and enforceable as between parties to it. Consideration, defined as something of value in the eye of the law, a detriment to the promise, the price for which a promise is bought,³³ is the main ingredient that turns promises into contracts.

A contractual situation that is often peculiar to the internet is the consideration needed to assail a web-based contract. The use of digital cash in exchange for goods or services raises issues not of consideration but of performance of a contract in a web-wrap contract which is an agreement at the front of a website which purports to bind the browsers to a contract should they proceed to browse the site. Promises to pay over the internet are enough to form the consideration to create a contract; in the same way as such promises would lead to enforceable contracts in normal commercial transactions.³⁴

4 Barriers to Adoption of Electronic Commercial Transactions in Nigeria.

The revolution in the information technology has a direct relationship with the way businesses are conducted. One of the most notable and momentary development has been the introduction of electronic commerce. As at December 2011, over two billion people had access to the internet globally. World usage of internet has increased by over 580% between 2000 and 2011.³⁵ Gibbs and Dedrick³⁶ define e-commerce as the use of the internet to buy, sell or supports and services. Grandon and Pearson³⁷ sees e-commerce as business carried out through electronic data transmission over the internet and World Wide Web. E-commerce enables high customisation and allows organisations to improve customer service.³⁸

A vital benefit of e-commerce is access to global markets which enables businesses to expand their reach. The internet allows increase in awareness, visibility and opportunity for organisations to promote its products and services.³⁹ E-commerce acceptance is at initial adoption stage in Nigeria. The acceptance of e-commerce is noticeably growing in the country

³² See G Bamodu, Information Communications Technology and E-Commerce: Challenges and Opportunities for the Nigerian Legal System and Judiciary. *Journal of Information Law and Technology (JILT)* (2004). Accessed from < http://www2.warwick.ac.uk/fac/soc/law2/elj/jilt/2004_2/bamodu/ > on 30th March, 2016.

³³ See *Curie v Misa* (1865) L.R. 10 Exch.153 at 162

³⁴ T I Akomolede, *op. cit.*

³⁵ Miniwatts Marketing Group, *World Internet Users Statistics Usage and World Population Statistic*, Reported 30 June 2012.

³⁶ J Gibbs, and J Dedrick, 'Environment and Policy Factors Shaping Global E-Commerce Diffusion: a Cross Country Comparison: the Information Society', *Journal of Global Information Management*, 2003, Vol. 14, No. 1, pp.23–46.

³⁷ E Grandon, and M J Pearson, 'E-Commerce Adoption: Perceptions of Managers/Owners of Small and Medium Sized Firms in Chile', *Communications of the Association for Information Systems*, 2004, Vol. 13, No. 2, pp.81–102.

³⁸ S Choi, and A Winston, 'Benefits and Requirements for in Electronic Market Place', *Technology in Society*, 2000, Vol. 22, No. 1, pp.33–44.

³⁹ J Senn, 'Business-to-Business E-Commerce', *Information Systems Management*, 2000, Vol. 7, No. 2, pp.57–63.

particularly among the large number of educated people. In retrospect, small and medium enterprises are still struggling to provide internet services at their own expenses due to limited government support. Access to the web in developing countries was primarily restricted to e-mail communication. E-commerce in developing countries especially Nigeria has not been sufficiently researched.⁴⁰ Limited research in e-commerce activity exists in developing countries, thus inappropriate to relate results from research conducted in developed countries applicability to developing ones. Invariably, the findings from developed countries are not directly transferable to developing countries.⁴¹

The identification of factors hindering e-commerce adoption, aids government and businesses to overcome factors that later would create a positive environment that will encourage e-commerce. Research on information and communication technologies (ICTs) and particularly e-commerce has focused on developed countries. The primary route by which e-commerce affects the economy at large is through its impact on productivity and inflation. Consumers in developed countries using e-commerce have the benefit of reduction in costs in term of the time and effort required to reach for goods and services and to complete transactions.⁴² Several studies have noted factors that influence individuals and firms to adopt e-commerce.⁴³ These factors are technological characteristics, social characteristics, and environmental characteristics, time, relative advantage of e-commerce, IT knowledge, and e-commerce compatibility. The various factors hindering the adoption of e-commerce among Nigerians, considering four important dimensions such as; infrastructure barriers, socio-cultural barriers, socio-economic barriers and government policy and support are discussed hereunder.

4.1 Infrastructural Barriers

One of the key infrastructural factors hindering e-commerce adoption is telecommunication. Connecting to the internet in most developing countries like Nigeria is not easily achieved because of poor telephone connections and irregular electric power supply. Most developing countries are not prepared for e-commerce, due to lack of network infrastructure, especially among individual users and business entities. E-commerce accomplishment depends heavily on a number of infrastructures. It was found out that in most developing countries like Kenya, Nigeria and Togo that are embracing outdated telephone cords and unreliable extension wires; this may result to the low performance many providers of internet services encounter.⁴⁴

⁴⁰A Molla, 'E-Commerce Adoption in Developing Countries: a Model and Instrument', *Information & Management*, 2005, Vol. 42, No. 2, pp.877–899.

⁴¹A Molla, and R Duncombe, 'E-Commerce Development in Developing Countries: Profiling Change Agents for SMEs', *International Journal of Entrepreneurship and Innovation*, (2006) Vol. 7, No. 3, pp.185–196; S. Dewan, and

K L Kraemer, 'Information Technology and Productivity: Preliminary Evidence from Country-level Data', *Management Science*, 2000, Vol. 46, No. 4, pp.548–562.

⁴²P Craig, and M King, 'Small-firm Computing: Motivators and Inhibitors', *MIS Quarterly*, 1993, Vol. 17, No. 1, pp.4760.

⁴³A I Rodríguez., A A Meseguer, and R J Vilaseca, 'Factors Influencing the Evolution of Electronic Commerce: an Empirical Analysis in a Developed Market Economy', *Journal of Theoretical and Applied Electronic Commerce Research*, 2008, Vol. 3, No. 2, pp.18–29; S Kurnia, S. (2006) 'E-commerce Adoption in Developing Countries: an Indonesian Study', *San Diego International Systems Conference People. Communications of the IBIMA*, Vol. 5, 2008.

⁴⁴J E Lawrence and A T Usman, 'Barriers to e-commerce in developing countries' *Information, Society and Justice*,

A poor telecommunication infrastructure may cause a concentration of the technology in urban areas, which makes the participation of rural users more difficult.⁴⁵ In addition, broadband connection is a key element in the development of ICT adoption and use. It accelerates the contribution of ICT to economic growth, facilitates innovation and enhances efficiency. Broadband market development, supply arrangements, effective innovation and effective use of broadband services require policies that promote effective competition and continued emphasis on the liberalisation of trade in services, network infrastructure, and technological applications across different platform.⁴⁶ It has been stated that, even with access to the necessary equipment; individual users and enterprises may not become active e-commerce participants unless with reasonable and adequate internet infrastructure.⁴⁷

4.2 Socio-Cultural Barriers

It has been argued that adoption of e-commerce may be hindered by individual consumers who believe that counterfeit products are sold online.⁴⁸ Lack of transactional trust between parties is a major problem. It has equally been affirmed that trusts in developed countries have ways to expand the basis of confidence by applying the law impartially and to adapt to new technological environment. This is the basis of trust that underpins e-commerce in the developed world.⁴⁹ In Nigeria, legal and judicial institutions are underdeveloped, individual consumers and enterprises lack confidence and trust to engage on internet transactions.⁵⁰ The authors affirmed that reluctance to adopt e-commerce in developing countries could be traced to limitation on personal contact. In most developing countries, e-commerce initiative versus traditional commerce may require time to adapt to such technology for those who are used to face-to-face transactions.

Other authors⁵¹ found that consumers in developing countries prefer traditional commerce in order to ascertain the quality of the product. In developing countries, there is a perception that technology is to destroy their culture and way of life. However, the issue related to language is important because it is a gateway of information and knowledge transfer in the digital world. English is a primary language used in many western countries where new technologies are originated. It is the main language for development of IT and e-commerce.

2010, Vol. 3, No. 1, pp.23–35.

⁴⁵ *Ibid.*

⁴⁶ O Oyelaran, and N Adeya, 'Internet Access in Africa: Empirical Evidence from Kenya and Nigeria *Telematics and Informatics*, 2004, Vol. 21, No. 1, pp.67–81.

⁴⁷ J Oxley, and B Yeung, 'E-Commerce Readiness: Institutional, Environment and International Competitiveness', Palgrave Macmillan, 2001, Vol. 32, No. 4, pp.705–723.

⁴⁸ A M Efendioglu, and V F Yip, (2004). 'Chinese Culture and e-Commerce: An Exploratory Study', *Interacting With Computers*, Vol. 16, No. 1, pp.45–62.

⁴⁹ Torre, J.L., Hamna, A., Mearl, C. and Faiza, F.M. (2006) 'E-Transaction Law and Online Dispute Resolution: A Necessity in the Middle East', *Arab Law Quarterly*, Vol. 20, No. 1, pp.43-76.

⁵⁰ Lawrence, J.E. and Usman, A.T. (2010). *Op.cit.*

⁵¹ Lawrence, J.E. (2011) 'The Growth of e-Commerce in Developing Countries: an Exploratory Study of Opportunities and Challenges for SMEs', *International Journal of ICT Research*, Vol. 2, No. 1, pp.15–28; Poon, S. and Swatman, No. 1, pp.9–18.

P.M.C. (1999) 'An Exploratory Study of Small Business Internet Commerce', *Information & Management*, Vol. 35,

4.3 Socio-Economic Barriers

Lawrence and Usman⁵² found that some socio-economic characteristics may pose significant challenges on the e-commerce adoption. They indicated that economic conditions are one of the socio-economic characteristics hindering adoption of e-commerce in developing countries. Kshetri and Dholekia⁵³ stated that, economic conditions in developing countries are widely recognized as a major hindrance to e-commerce adoption. Lawrence⁵⁴ argued that, gross domestic product and per capita income are common indicators for the economic conditions of a country. Lu et al.⁵⁵ affirmed that access charges relative to income and earning affects internet use. Similarly, Mbarika⁵⁶ stated that many developing countries with unfavourable economic conditions are not likely to be involved in e-commerce.

The common pattern found across developing countries is the contradiction between the urban and rural areas in terms of income distribution.⁵⁷ DiMaggio⁵⁸ stated that, inequalities in income distribution mean the internet is expensive for a large proportion of the population in rural areas. Maguire⁵⁹ found that, lack of ICT skills and business skills are widespread impediments to effective adoption of e-commerce. Lawrence and Usman⁶⁰ affirmed that inappropriate IT education is apparent to be a reason why the potential value of computers and the internet as a means to participate in e-commerce is not valued. There is a need for early computer education to enable people become computer literate from school. Most schools in developing countries do not embrace computer education.⁶¹ Lawrence and Usman⁶² concluded that, for online transaction to be more attractive in developing countries, educational system should focus primarily on the needs and problems of the majority of populations, namely, populace who are traditionally deprived of education.

Franklin et al.⁶³ found that full efficiency and realization of the benefits of e-commerce depend on rapid authorization, payments, and settlement of accounts. Eichengreen⁶⁴ affirmed that many developing countries do not have financial institutions or a central bank payments

⁵² J.E Lawrence, and A.T Usman, (2010). *Op.cit*

⁵³ N.Kshetri, and N.Dholakia, 'Determinants of the Global Diffusion of B2B e-Commerce', *Electronic Markets*, 2002, Vol. 12, No. 2, pp.120–129.

⁵⁴ J.E Lawrence, (2011). *Op.cit*.

⁵⁵ Y Lu, Z Deng, and B Wang, 'Exploring Factors Affecting Chinese Consumers' Usage of Short Message Service for Personal Communication', *Information Systems Journal*, 2010, Vol. 20, No. 2, pp.183–208.

⁵⁶ V W A Mbarika, 'A Framework for Assessing e-Commerce in Sub-Saharan Africa', *Journal of Association for Information Systems*, 2003, Vol. 6, No. 5, pp.130–170.

⁵⁷ L Beneria; 'Conceptualizing the Labour Force: the Underestimation of Women's Economic Activities', *The Journal of Development Studies*, Vol. 17, No. 3 (1981)., pp.10–28 .

⁵⁸ H.DiMaggio; 'Social implications of the internet', *The Journal of Information Management*, Vol. 27, No.3, (2001). pp.112–127.

⁵⁹ S Maguire; 'Competitive Advantage Through Information and Communication Technology (ICT) Enabled Supply Chain Management', *Serbian Journal of Management*, Vol. 6, No. 2. 2007. pp.145–154.

⁶⁰ *Op.cit*.

⁶¹ M.O Yusuf; 'Information and Communication Technology and Education: Analyzing the Nigerian National Policy for Information Technology', *International Education Journal*, 2005, Vol. 6, No. 3, pp.316–321.

⁶² *Op.cit*.

⁶³ A Franklin., M James, and S Philip, 'E-Finance: an Introduction', *Journal of Finance Service Research*, 2002, Vol. 22, Nos. 1/2, pp.5–27.

⁶⁴ B Eichengreen ; 'Capital Account Liberalization: What do Cross-country Studies Tell Us?', *World Bank Economic Review*, 2001, Vol. 15, No. 3, pp.341–365.

mechanism that is up to the task. Logistic (speed and timeliness of delivery) could hamper the acceptances of e-commerce in developing countries.

E-commerce relies on efficient logistic infrastructures within a country. In most developing countries, logistical changes need to occur in order to create an appropriate environment for the effective participation in e-commerce.⁶⁵ Inefficiencies in essential services such as postal service along with delivery required in an international transaction can frustrate the success of online transaction. The distribution and delivery mechanism are important ingredients in building electronic commerce. It is also necessary for an enterprise to have in place the distribution and delivery channels capable of meeting customer expectations. Lawrence⁶⁶ established that, burdensome customs procedures may also further hinder the seamless fulfilment of a cross border e-commerce transaction.

4.4 Political and Governmental Barriers

Lawrence and Usman⁶⁷ found that, political and government policies may pose some significant challenges to e-commerce adoption in developing countries. He established that, active government intention in marketplace and monetary policy is the best method of ensuring country's growth and political stability. Government initiatives are important in the adoption of e-commerce, information technology and other communications in general. Government initiative can be in terms of promotion of ICT usage, education and the establishment of adequate regulatory framework for e-commerce.

ISPs are a key area where government policy can make a difference in access and adoption of e-commerce.⁶⁸ It is very important for public policy makers in developing countries to ensure an open and competitive telecommunication markets that offer a range of inter-operable technological options and network services.⁶⁹

In addition, political conditions have been an issue hindering e-commerce adoption in developing countries and most researches focus on global problems of modern society, socio-political development, social dynamics, structure and stratification of the society.⁷⁰ Ogunsola and Aboiyade⁷¹ found that the removal of tax and deregulation of tariff on telecommunication systems may increase the flow of information and an expanded use of ICT usage. Lawrence⁷² suggested that, the commitment and participation from the government in the provision of

⁶⁵J E Lawrence and A T Usman, (2010). *Op.cit.*

⁶⁶J E Lawrence. (2011). *Op.cit.*

⁶⁷ *Op.cit.*

⁶⁸F M E. Uzoka., S G Geoffrey, and K. Joseph, 'E -commerce Adoption in Developing Countries: a Case Analysis of Environmental and Organizational Inhibitors', *International Journal of Information Systems and Change Management*, 2007, Vol. 2, No. 3, pp.232–260.

⁶⁹O Oyelaran, and N Adeya, N. 'Internet Access in Africa: Empirical Evidence from Kenya and Nigeria', *Telematics and Informatics*, 2004, Vol. 21, No. 1, pp.67–81.

⁷⁰N Kshetri, 'Barriers to e-Commerce and Competitive Business Models in Developing Countries', *Electronic Commerce Research and Applications*, 2008, Vol. 6, No. 5, pp.443–452.

⁷¹L A Ogunsola, and WA Aboiyade, 'Information and Communication Technology in Nigeria: Revolution or Evolution', *Journal of Social Science*, (2005) Vol. 11, No. 1, pp.7–14.

⁷² *Ibid.*

internet service and the reduction of customs duties on imports may lead to lower costs and make equipment more affordable and encourage connection to the internet.

5 Manifestations and Forms of Electronic Commercial Transactions in Nigeria.

E-commerce activities in Nigeria have been shown to be on the increase over the years. A 2014 study⁷³ showed a tremendous growth in the state of digital media and user's online behaviour in the area of internet usage, social media participation and e-commerce. The comparative study shows growth patterns from 2013 to 2014, with focus on mobile phone and internet usage, broadband penetration, Mobile Number Portability (MNP) and Mobile money. Interesting to note were the insights presented for e-commerce which showed that there had been a 15 per cent increase in users' purchases online from results in 2013. By end of June 2014, 63 per cent of Nigerian internet users had bought at least one item online. 60 per cent of these buyers claimed to have used their mobile phones for these purchases. Increase in internet penetration through mobile phone usage, increase in data bundle purchases and online activities such as search, social media interaction, downloads and emails, within the period were considered by the study to have influenced the remarkable increase in e-commerce activities.⁷⁴ Some of the areas where e-commerce manifests and are formed in Nigeria are; electronic banking (E-Banking), global system mobile (GSM) telecommunication system, cable television system/subscription and online shopping.

6 Summary of Findings

It has been shown in this paper that in Nigeria today, there is a gradual and consistent move from the old and traditional way of buying and selling of goods and services, which requires personal attendance and physical negotiation between buyers and sellers to electronic transactions where the computer and internet hold sway as replacement for the traditional market place. This has been made possible by the advent of electronic means of communication and information transfer. Government, businesses and individuals have, therefore, taken advantage of these electronic technologies to derive the cost benefits derived therefrom. This development has paved the way for the increase in the number of transactions, accomplished and effected through various 'electronic commerce' channels.

It has equally been discovered that the emergence of electronic commerce as a result of the internet has brought with it, a number of legal and socio-economic issues such as the lack of clear and fixed geographic lines of transit traditionally characterising physical trade of goods and services. This problem has developed into a hydra-headed issue of jurisdiction or choice of laws where there are disputes between parties to such transactions in different countries, where different laws are applicable to similar issues. It is very easy to identify this problem since one of the features or characteristics of e-commerce is globalisation of the market place.

It was also discovered that, though, it appears there is no specific statute regulating e-commerce and its attendant challenges in Nigeria, yet there are pockets of existing rules and regulations, by which legal issues relating to e-commerce are regulated either directly or indirectly. Electronic commerce is still emerging in most developing nations and Nigeria is not an exception.

⁷³ *Ibid.*

⁷⁴ *Ibid*; See also The Vanguard (August 6, 2014). Accessed from <http://www.vanguardngr.com/2014/08/study-shows-high-growth-e-commerce-nigeria/> on 17/12/2016

However, there is not yet any elaborate legal and regulatory framework for electronic commerce in Nigeria presently. The fact should, however, be mentioned that as e-commerce is a specie of commercial transactions, though a special one, there are pockets of commercial legislation and decided cases that directly or indirectly affect it in Nigeria.

It was discovered in this paper that e-commerce is a global industry, patronized by all classes of business and transactions because of its wide coverage and the latent revenue which may be a gold mine to a developing economy like Nigeria. Apart from its continuous growth in size and the prospective revenue therefrom, it can also be considered a source of foreign income to the economy.

7 Concluding Remarks and Recommendations

The advent of Information Communication Technology and the Internet has led to gradual and consistent move from the old and traditional way of buying and selling of goods and services, which requires personal attendance and physical negotiation between buyers and sellers to electronic transactions where the computer and internet hold sway as replacement for the traditional market place. As a result, the whole world has become a global market place where distance no longer constitutes a barrier to trading across the world.

In the light of the findings made in this paper, it is important by way of recommendation;

- i. That the government enact laws to regulate e-commerce in Nigeria in order to overcome the identified challenges and gaps stated in the summary of findings. As it stands in Nigeria, laws which were hitherto applicable to the old style of traditional market place are being stretched to regulate e-commerce. This is grossly inadequate, bearing in mind the enormity of the challenges and how these challenges have been overcome in other jurisdictions.
- ii. Government must improve on provision of basic social amenities that will facilitate the continuous growth of electronic commerce in Nigeria. These include improving on electricity supply, lower tariffs on computer machines and accessories, and support for internet service providers to make it available at cheaper rate since these are the key basic drivers for e-commerce activities.
- iii. There is equal need for public enlightenment, encouragement and awareness of various ways of conducting transactions without having to go on a long distance journey to acquire things which are available at the click of a button.
- iv. The e-payment system is just evolving, so further efforts are still required to build powerful electronic payments structure and platform that will facilitate smooth e-commerce transactions; the Nigeria Electricity and Energy supply is erratic and this will not make e-commerce transactions function well especially in major parts of the country where there is no electricity facility.