



IMAGE: A MAP OF THE STARS OF THE ORION CONSTELLATION

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London Journal of Research in Management and Business

Volume 23 | Issue 4 | Compilation 1.0



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LONDON JOURNAL RESEARCH IN MANAGEMENT AND BUSINESS

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Analytical Review and Determinants of Capital Structure of NMDC.

Dr. Ajaz Ahmad Bhat

ABSTRACT

This paper is going to highlight the most important determinants of the capital structure of the NMDC for the period of or year 2019 and 2020 separately. On based of the objectives like study of the capital structure analysis of stated variable with the help of available financial statements form the companies' portal As far as present study is concerned, the researcher has made efforts to analyze the capital structure of NMDC Ltd and the study period is taken the financial year 2019 and 2020. The analysis is will be done with the help of key ratios of capital structure, taken into consideration the financial statements of the company.

Keywords: capital structure, analysis, financial statements, debt, equity, ratios.

Classification: DDC Code: JEL: G32, G34

Language: English



Great Britain
Journals Press

LJP Copyright ID: 146431
Print ISSN: 2633-2299
Online ISSN: 2633-2302

London Journal of Research in Management and Business

Volume 23 | Issue 4 | Compilation 1.0



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Analytical Review and Determinants of Capital Structure of NMDC

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Keywords: capital structure, analysis, financial statements, debt, equity, ratios.

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I. INTRODUCTION

1.1 Capital Structure

The term capital structure is the combination of two parts viz, Capital & Structure. While starting any type of business the most crucial component of it is capital as it forms the basic foundation of a business. Capital represents that portion of funds to finance its assets and its overall operations which is raised through the combination of debt and equity sources. Debt and Equity are the two primary types of capital sources for a business.

Capital structure is defined as the combination of equity and debt that is put into use by a company in order to finance the overall operations of the company and for its growth. As far as present study is concerned, the researcher has made efforts to analyze the capital structure of NMDC

Ltd and the study period is taken the financial year 2019 and 2020. The analysis is done with the help of key ratios of capital structure, taken into consideration the financial statements of the company. The Analysis is shown below after the contents.

1.2 Review of Literature

Modigliani and Miller (1958) argue that in a perfect and complete market in which there are no personal and corporate taxes, the structure of capital (i.e., distribution of a company's debt and equity) is irrelevant to the value of the company. However, in a later study, in the context of imperfect markets,

Modigliani and Miller (1963), find that financial leverage can allow a company to increase its value by benefiting from fiscal shield through using debt. In addition, the authors propose the existence of a positive relationship between performance and leverage.

Kraus and Litzenberger (1973), through a marginal analysis for use of debt, propose the existence of an optimal leverage and recognise a non-linear relationship between leverage and performance. This is because when the firm finds this optimal leverage, it maximizes its value and has no incentives to increase its leverage, as this implies decreasing its value.

Myers (1984) and Myers and Majluf (1984), propose the pecking order theory based on asymmetrical information between managers and new investors increasing adverse selection costs (Frank & Goyal, 2009). In this theory, it is assumed there is no optimal leverage and firms choose financing following a preference order: internal finance, debt, and equity.

Myers and Majluf (1984), argue that there is information asymmetry between managers and investors, because managers have more

information than new investors and act in favor of old shareholders.

Jensen (1986), and Hart and Moore (1994), regard this conflict as an agency problem that can be controlled with an adequate capital structure allowing adequate control and minimising agency costs.

Jensen (1986), proposes that in companies with high levels of debt, managers are motivated to invest in profitable projects to generate cash flow to pay interest and capital, reducing the conflict between shareholders and administrators, but the conflict between shareholders and bondholders increases, because it can lead shareholders to invest sub optimally.

Objectives

1. To study about the analysis of NMDC
2. To point out the suggestions or recommendations for welfare of NMDC

1.3 Research methodology

Research methodology is the systematic way of understanding and solving the research problem.

Hence it can be regarded as a science that makes us understand how to carry out our research in a proper way. In this research study we dealt with the descriptive method in order to define the reality and observation of the objectives then percentile and ratios were employed by the researcher during the tenure of this research study and the research were confined to the two years only 2019- 2020.

Accounting tools

Capital ratio analysis

Data analysis and interpretation

1.4 Debt Ratio

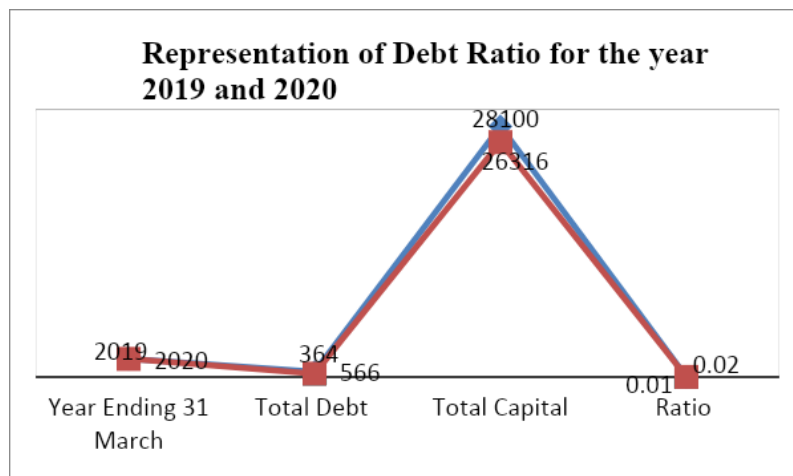
Debt ratio is used to analyze the long term solvency position of the company. This ratio is analyzed to know the portion of interest bearing debt in the capital structure of the company. Therefore, debt ratio is computed by dividing total debt to its total capital employed.

$$Debt\ Ratio = \frac{Total\ Debt}{Total\ Capital\ Employed}$$

Table 1: Debt Ratio Amount in Cr.

Year Ending 31 March	Total Debt	Total Capital	Ratio
2020	566	28100	0.02
2019	364	26316	0.01

Source: Dion Global Solutions Limited



Interpretation:

The debt ratio for the financial year 2019 and 2020 is 0.01 i.e., 1% and 0.02 i.e., 2% respectively

which means the lenders have financed the rest of the funds by their own to its net assets. To determine the overall risk of the company, debt ratio is most commonly analyzed by investors and

creditors. During the year 2019, the ratio is equal to 1% which means the company is highly leveraged because the company owns same amount of liabilities as it assets. During the year 2020, the ratio is greater than 1% i.e., 2% which means that the company is extremely leveraged and highly risky to lend and invest in.

1.5 Debt Equity Ratio

Debt equity ratio also known as risk ratio or gearing ratio is a leverage ratio that is analyzed to know the total financial liabilities or total debt against total share holder's equity holdings. If debt equity ratio is higher it would indicate a levered firm which means that the company is stable enough with significant cash flow

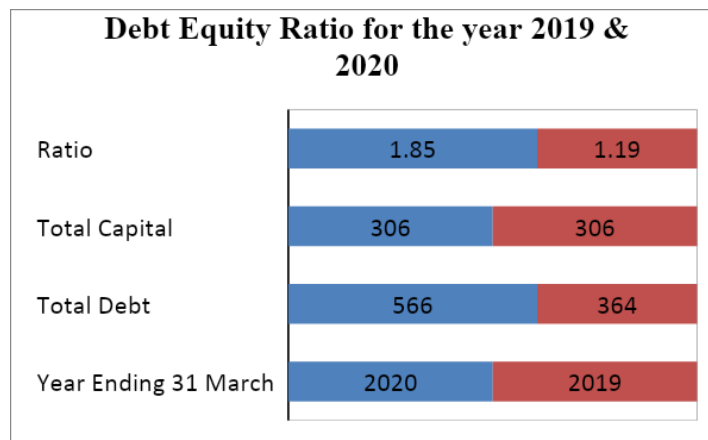
generation. In the same way, if debt equity ratio is lower, it will indicate a less levered firm and closer to being fully equity financed. If a company has high debt equity ratio, it can be good because it shows that the firm can easily meet its debt obligations through cash flow and is using the leverage to increase equity returns. If a company has too high debt equity ratio, it will indicate that the company may not easily meet its debt obligations. Also the cost of borrowings will rise to sky heights and the company's weighted average cost of capital will get extremely high and falling company's share price.

$$\text{Debt Equity Ratio} = \frac{\text{Total Debt}}{\text{Total Equity}}$$

Table 2: Debt Equity Ratio Amount in Cr.

Year Ending 31 March	Total Debt	Total Capital	Ratio
2020	566	306	1.85
2019	364	306	1.19

Source: Dion Global Solutions Limited



Interpretation:

The debt equity ratio for the financial year 2019 and 2020 is 1.19 and 1.85 respectively which means the company has maintained high debt equity ratio which indicate that the company can easily fulfill its debt obligations through the cash flows. It also indicates the increasing rate of equity returns.

1.6 Interest Coverage Ratio

The interest coverage ratio is a financial ratio which is analyzed to determine the ability of the company in paying off of interest on its debt obligations. The very ratio is commonly used by prospective investors and creditors before investing and giving credit respectively to analyze the position of the company and the risk of their investment in terms of its repayment and regular installment of its smooth returns and interest. If

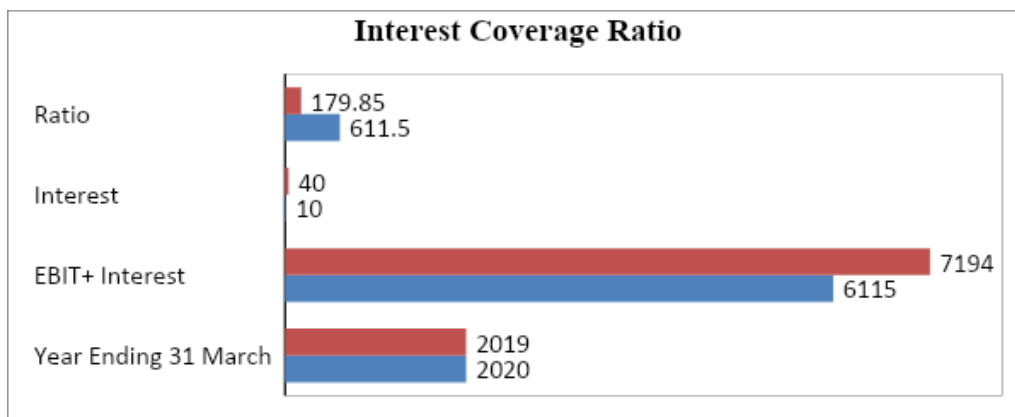
the interest coverage ratio will be lower, it indicates that there will be the greater chances of company's debt and the chances of bankruptcy. On contrarily, if the interest coverage ratio will be high, it indicates that the company's financial health and obligations in terms of interest is compatible enough.

$$\text{Interest Coverage Ratio} = \frac{\text{EBIT} + \text{Interest}}{\text{Interest}}$$

Table 3: Interest Coverage Ratio Amount in Cr.

Year Ending 31 March	EBIT Interest	Interest	Ratio
2020	6115	10	611.5
2019	7194	40	179.85

Source: Dion Global Solutions Limited



Interpretation:

The interest coverage ratio for the financial year 2019 and 2020 is 179.85 and 611.5 respectively which means the company has maintained high interest coverage ratio which indicate that the company can easily fulfill its debt obligations in terms of payment of interest. It also indicates the increasing rate of the ratio.

II. FINDINGS

- During the period of the study, it was found that the company has maintained a good debt ratio which indicates that the company is competent enough to pay off its debt obligations. It is also found that the company is extremely leveraged.
- During the period of the study, it was also found that the debt equity ratio is maintained higher that indicates a levered firm in other words, it means that the company is stable enough with significant cash flow generation

which will help it in paying off its debts obligations on time.

- During the period of the study it was also found that the company's financial health is stable. So the company seems to be competent enough to pay off its interest to its creditors.

Suggestions:

- It is suggested that the company should maintain its sufficient debt position in relation to its equity holdings as it would help the company in meeting its debt obligations on time.
- It is also suggested to the company to maintain its ability in paying off its interest when due to its debt obligations as it would help the company in improving its creditworthiness.
- It is also suggested to the company to maintain its profitability position so that the returns to its equity holders and interest on its debt obligation should be met on time.

III. CONCLUSION

The study was conducted on the analysis of capital structure of NMDC Ltd for the period of last 2 years i.e., 2019 & 2020. The study reveals that the company's financial health in terms of availability of funds and profitability was seen to be fair. After analysing the financial statements of the company during the period of the study, it comes to be known that the financial health of the company is slightly fluctuating. This is because of the Covid 19 Pandemic which has ruined the economy worldwide. Now the adversity of the Pandemic is getting low day by day so there is a lot of scope for the company to take the necessary measures to improve its overall performance.

Therefore, NMDC Ltd. should try to improve its financial performance in the coming years to maximize the shareholders wealth by increasing its operating efficiency and maintaining its sufficient debt position with respect to its net worth so that it would intern help the company in maintaining its creditworthiness which will foster investments and rise in its shareholdings.

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Hybrid Work – A Growing Trend in Developing Countries. Is it able to Replace Remote Work Post COVID-19? A Qualitative Research in Vietnam

Tran Thi Kim Nhung

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ABSTRACT

Purpose: During the COVID-19 pandemic, working from home was the only option for workers. Taking over the concept of remote work, after COVID-19 pandemic, a new working paradigm has become prominent: the hybrid work model. This study not only scrutinizes factors affecting hybrid work outcomes, but also draws a comparison between experience of both remote and hybrid workers.

Methodology: This paper adopted an in-depth interview with people who have experienced both remote work and hybrid work in Vietnam. Responses from 12 employees and 3 managers were gathered for data analysis by using qualitative research methodology.

Keywords: hybrid work, remote work, performance, well-being, management, Vietnam.

Classification: DDC Code: FoR: 1503

Language: English



Great Britain
Journals Press

LJP Copyright ID: 146432

Print ISSN: 2633-2299

Online ISSN: 2633-2302

London Journal of Research in Management and Business

Volume 23 | Issue 4 | Compilation 1.0



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Methodology: This paper adopted an in-depth interview with people who have experienced both remote work and hybrid work in Vietnam. Responses from 12 employees and 3 managers were gathered for data analysis by using qualitative research methodology.

Findings: The study identified key factors having an advantageous and adverse impact on workers' outcomes, relationships with their co-workers and families, and managerial practices. In addition, we also investigated how people find hybrid work is different from telework and how it plays a key role in a different way compared to remote work.

Implications for theory and practice: Feasible solutions and implications are proposed to arrange hybrid working models in the future such as providing intense training about doing hybrid work, applying technological application or tool to supervise the employees.

Originality and value: We found that practicing hybrid work models can resolve a host of problems related to remote work. One of the most

popular problems is communication and relationships with co-workers, which can be enhanced when doing hybrid work. Moreover, we conducted an in-depth interview with several employees and managers coming from different sectors of work, therefore, we can test the suitability of each job to practice a hybrid working model. Our study would be beneficial to the firms that are tending to implement hybrid work as a main working paradigm.

Keywords: hybrid work, remote work, performance, well-being, management, Vietnam.

I. INTRODUCTION

As information and communication technologies have been getting unprecedentedly advanced recently, people now may have a lot of choices when it comes to the working paradigm. Besides the traditional form of work which is office workers showing up at the office and doing nine-to-five jobs, several other forms of work that are on the rise in our society.

When COVID-19 took place in 2019, many employees had been forced to work from home in Vietnam and around the world. A host of them had to change their work environment from physical offices to their own houses because of the social distancing policy. However, many of them and their organizations were not well-prepared for this sudden switch because of little remote working experience before the pandemic took place in their countries. The study conducted by Kossek & Lautsch in 2018 has shown that before the COVID-19 outbreak, remote working was not

a popular form of work, even though it was originally coined in the early 1970s in the term “telecommuting” (Nilles, 1975). The phrase then has developed into several terminologies, for example, remote working (Hardill & Green, 2003). Nevertheless, during the pandemic, the term “work from home” is official and widely used by people all over the world. Undoubtedly, the COVID-19 pandemic has taken a toll on our physical health and the world’s economy, it enhanced the ability to work independently, and posed “an undeniably important aspect of the changing nature of work in the twenty-first century” (Ferreira et al., 2021). The study also suggested that working from home is quite advantageous for knowledge workers.

However, after experiencing a new form of work during the pandemic, the majority of workers came to the realization that working from home has several benefits. Working from home can reduce the carbon emissions from driving private transport to the office. Besides, workers are inclined to get rid of the time-consuming commute and not to deal with several stressful factors when commuting such as rude passengers, vehicle breakdowns, and traffic congestion (Elshaiekh et al., 2018). Plenty of remote workers also indicate that they get greater flexibility in their schedules when they get to work in the comfort of their own houses (Eddleston and Mulki, 2015). On the other hand, remote work probably poses some particular problems related to employees’ experience and performance. And the flexibility of remote work possibly has an adverse impact bearing on the workers’ well-being (Galanti et al., 2021).

Because of all those reasons mentioned above, after the pandemic’s being under control and life continued to go back to normal, many workers tend to suggest their organizations operate a new form of work instead of having them show up at the offices nine-to-five. Hybrid work is defined as combining the best of working in the office and working from home (Bloom et al., 2022). The workers will work a certain day at home and work each week due to the organization’s policy. We hypothesized that the performance of workers when they work flexibly like hybrid work would be

improved. Their mental health is also enhanced. Since hybrid work has been implemented in some developing countries, we conduct a study in Vietnam to represent those countries. In addition, we predict that hybrid work will become a game changer in the way we work in Vietnam.

II. LITERATURE REVIEW

Hybrid work is defined by Cook et al. (2020) as a combination of physical work arrangement and remote work. Grzegorzczuk (2021) has similarly determined that in a hybrid model, workers can work remotely for part of their contract work within the confines of their work arrangement, negotiated individually or collectively. It also pointed out four main hybrid models being offered to employees, including discretionary work Ruud (2012), split week (Singleton, 2020), shift work (Van de Ven, 2017), and flexible workweeks (Lyons, 2020). This means that the hybrid working model is characterized by flexibility and options, which provide employees with the opportunity to choose a working arrangement that best suits the requirements of their private and professional lives. The research of Halford (2005) has divided a hybrid workspace into an office stream and a home stream, resulting in distinctive practices, experiences, and relationships in these spaces.

2.1 Working Practices in Hybrid Work

Work Condition: Environmental conditions for work play a vital role in shaping the work experience. The physical layout of the workplace, including the furniture, noise, light, comfort, available quiet places, and private working areas,... has been noted by Ramli (2019) as having an impact on employees’ performance. Setting boundaries between work and personal life gets increasingly difficult when working and living in the same place. The research of Ahmed & Farooqi (2020) showed that some employees tend to be lazy at home, especially when working in the bedroom. Therefore, our research suggests this factor will still be a big concern for hybrid workers.

Workload: Many studies have concluded that work overload is the potential result of flexible working practices (Kelliher & Anderson, 2010) and longer working hours which are frequently unpaid (Chen & McDonald, 2015). The increase in actual work hours of remote workers can be due to their not being able to demarcate their work hours from non-work hours (Baudot & Kelly, 2020). In fact, because of the grueling working hours, many Asian countries struggle with low productivity. However, Wang et al. (2021) pointed out that employees with higher workloads will experience less procrastination during the period of remote work and, therefore, will have higher levels of performance. Accordingly, our research continues to investigate this factor in the context of hybrid work.

Job security: Job security is a notable but under-investigated factor in research on remote work. Meltz (1989) defines job security as an individual who stays with the same organization without reducing seniority, salary, or retirement rights, etc... The behavior of an employee declines as soon as job security comes into question and job insecurity can lead to a high turnover rate (Özyaman, 2007). Research by Himawan et al. (2022) showed that remote workers feel they are not fully utilizing the workplace facilities, for example, a spacious and elegant workspace, parking privileges, and other arrangements that when the work is shifted into a remote work setting, such a practice cannot be entirely accommodated. Moreover, they might also face the possibility of a loss of promotion opportunities (Linh, 2021) and the disapproval of efforts due to the absence of physical presence. For the above reasons, we suggest that hybrid workers are likely to encounter job insecurity.

Adap to a new way of work: COVID-19 has put everyone in a position where it is imperative to get used to remote work, however, many people could not accept this work model in the early days. Studies of teleworking during this time show the difficulty of adapting for individuals who prefer to avoid uncertainty (Himawan et al., 2022). To be able to adjust to such a new working model, people need to be open-minded and adaptable enough to deal with organizational change

processes (Van den Heuvel, 2010). When it comes to hybrid work, innovation and flexibility are more required, as well as the proficient use of information technology equipment for work, which can be more difficult for older workers (Awada et al., 2021).

2.2 Communication and Relationships in Hybrid Work

Communication: When employees work from home, communication issues are likely to be on the rise due to reduced communication quality, lack of visual contact, and face-to-face interaction. Especially, since the leader's image is communicated through the channels of communication, it can be challenging for leaders to develop and transmit a caring attitude with their subordinates as well as to act properly toward them. Moreover, many employees are still learning how to use collaborative communication technology, making it challenging for them to adjust to virtual work (Kock, 2004). However, with the nature of hybrid work, communication seems to be easier because people both work office-based and at home-based. Therefore, we continue to investigate this factor in the context of hybrid work.

Work-family balance: Work-family balance is described as meeting role-related expectations established and shared by a person and his or her role-related partners in the work and family domains (Grzywacz & Carlson, 2007).

Nevertheless, the result of Wang et al indicates that most remote workers have to face work-to-family interference during the COVID-19 pandemic. To be more specific, female workers seem to experience greater family-to-work (Ahmad, 2008). For example, a female; who works from home, has to deal with cooking meals for the family, doing housework tasks, and helping their children to get into morning study sessions and spend quality time with them (Galanti et al., 2021); can be distracted at their work and can not perform as well as when they work at the office under supervision.

Social isolation: During the covid 19 pandemic, social isolation is one of the main factors believed

to lead to reduced remote workers' productivity (Toscano, 2020). Moreover, the uncomfortable sense of social isolation that comes along with the notion of not having as many or as good of social connections as one would like to be known as loneliness (Peplau & Perlman, 1982), which may lead to a negative impact on mental health (Van Tilburg et al., 2021). When it comes to hybrid work, our research suggests the interaction between co-workers will be different from remote work since hybrid workers have more opportunities to meet their colleagues during the days they come to work.

2.3 Managerial Practices in Hybrid Work

Monitoring: The difficulty that managers may face up with is determining how to supervise subordinates who work in locations other than the company. Employees who are not supervised may become distracted from their tasks, resulting in a drop in performance and output quality.

Nevertheless, many remote employees report significant levels of stress and anxiety (Indiparambil, 2019), as well as negative attitudes and emotions (Shaffer & Darnold, 2020), as a result of the widespread use of work reminders provided by most electronic monitoring technologies (Allyn, 2020). The implementation of continuous and frequent monitoring has also intensified remote employees' concerns about breaches of privacy while working from home (Hern, 2020; Vatcha, 2020).

Mutual Trust: Trust is an important element in supervisor–subordinate relationships (Brower et al., 2009) Trust is believed to foster enthusiasm, ensuring the best performance from everyone (Lewis, 2007). However, while teleworking, employees may feel distrusted by their bosses if supervision is overly rigorous (Cristina Costa & Bijlsma-Frankema, 2007). For employee monitoring to lead to the appropriate outcomes, employers need to balance their own needs of wanting to control and record work activities and productivity, with employees' desire to be valued and trusted by their employers (Bernstrøm & Svare, 2017).

Job Autonomy: Dysvik (2013) stated that employees with job autonomy desire to have self-control and do not want to be supervised when working because it makes them feel limited and uncomfortable. This makes a supervisor's job easier and will be highly valued. Past research has shown that leaders value subordinates who engage in behaviors that extend beyond their normal role (Morgeson et al., 2005).

Notwithstanding, employees are expected to show a great degree of independence in making decisions and initiative when resolving issues, while managers expect them to adhere scrupulously to schedules and communication standards (Mihhailova et al., 2011).

III. METHODOLOGY/RESEARCH METHODS

The authors opt to utilize a qualitative method that involves in-depth interviews to assess if the factors and control variables are adequate. The authors used factors and findings from earlier research, mostly from studies done at foreign institutions and a small number of domestic investigations. Therefore, the author's team thinks that it is essential to conduct in-depth interviews with employees and managers at businesses in Vietnam. Employees that perform hybrid work in Vietnam have first-hand knowledge of both the workplace and personal and social lives, enabling them to make valid judgments on the suitability of various variables. The team will derive variables that are appropriate for the circumstances in Vietnam from the data gathered. The authors conducted in-depth interviews with 12 employees and 3 managers who have been doing hybrid work. We evaluated the age, sex, marital status, professional information and the division for office-based work and home-based work of the participants, which is shown in Table 1. We also questioned routine job descriptions, and factors affecting hybrid work, then asked the participants to make a comparison with those that apply to remote work.

Table 1: Profile of Respondents

Label	Gender	Age	Status	Position	Office Based – Home Based
S1	Female	20	Single	Intern	50 - 50
S2	Female	38	Married (1 child)	Marketing representative	50 - 50
S3	Female	40	Married	Finance - Banking	20 - 80
S4	Female	33	Married	Operations Executive	50 - 50
S5	Female	29	Married	Counselor at UNICEF	20 - 80
S6	Female	40	Married (3 children)	Lecturer	40 - 60
S7	Female	21	Single	Intern	70 - 30
S8	Female	22	Single	Talent acquisition	70 - 30
S9	Male	19	Single	Software engineer	30 - 70
S10	Male	79	Married	Professor	10 - 90
S11	Female	30	Single	Recruitment	50 - 50
S12	Female	29	Married (2 children)	Seniors position Recruitment	30 - 70
S13	Female	22	Single	Training specialist	10 - 90
S14	Female	20	Single	Intern	30 - 70
S15	Male	32	Married (2 children)	Senior manager	50 - 50

IV. RESULTS

Table 2: Themes Identified and Evidences

Themes	Subthemes	Evidences
Working Practices	Work Condition	<p>"When I work from home, sometimes my network is not very stable. The equipment I use is not adequate, I only have exactly 1 personal laptop with a phone, and there is nothing else like a printer. If I was at the company I could immediately print documents when I need them, but at home, if I want to print some documents, I have to go to the photocopy place, which is quite far from my place. So it is a bit inconvenient to prepare documents and use the necessary equipment." (S8)</p> <p>"At home, I can design my workspace to make it more comfortable for me. I don't have to stick to the design of the company. Besides, remote work allows me feel free to create new ideas without being afraid of others seeing or judging." (S7)</p>
	Job Security	<p>"Obviously, the more I show my abilities and experience, the more likely I am to apply for a higher position. However, in Vietnam, getting promoted sometimes depends on your relationships. When working hybrid, my networking in the organization will seem a bit disadvantaged. Of course, it is not completely impossible but it will be slower and harder to find opportunities." (S5)</p>
	Work load	<p>"During the period when I work remotely, I was overloaded because there was a lot of work. But my senior managers thought maybe that workload was not enough, so they tended to give me more. Moreover, the boundary between working time and rest time was not so clear that there were times when I was having break time but still had to get back to work." (S2)</p>
	Adapt to a new way of work	<p>"I think there's no difficulty because my job is all about coming up with new ideas and my colleagues are the ones who implement these ideas. So, all I need to do my job is a laptop with an internet connection." (S14)</p> <p>"When I work at the office, if I see it getting dark outside, I'll start getting ready to go home. Therefore I'll try to complete my mission as quickly as possible in order to go home soon. But when I work from home, I'm usually on a working circuit so I just keep working and working without noticing the time." (S5)</p> <p>"It's true that remote work makes me lose my awareness of time, I often forget break time and the time to eat and drink." (S8)</p>

Communi- -cation and Relations hips	Communic- -ation	<p>“Due to the lack of face-to-face communication, the way you express your feelings, attitudes, or voice is easy to cause people to misunderstand. For example, I didn't mean to be angry but when I texted, they wondered why I was talking in such an annoyed tone. But that may be because their mood is not good, so they will be influenced when reading my text. Therefore, I think that when I do hybrid work or office-based work, my relationship with colleagues will be better because emotions and information are transmitted more accurately. Moreover, I can have someone to directly ask, share, and discuss; I can have more ideas, and solve problems faster.” (S2)</p> <p>“Sometimes seeing my colleagues everyday will cause me a feeling of boredom or not knowing what to say to each other. When doing hybrid work, I will have more things to talk about, and communication will be more effective due to the variety of forms of communication.” (S1)</p>
	Work-family balance	<p>“If I work remotely, I will not be able to clearly distinguish between work time and rest time. This leads to the fact that the time when I should have spent for my family, I had to try to finish my work. For example, I have a small child, so I usually have to go to bed very early. But due to work overload or sometimes I have been playing all day, when it's time to go to bed, I still keep working. My husband and other family members don't sympathize with me so it can easily lead to family conflicts.” (S2)</p> <p>“Well, I think that my family will support the hybrid work model because I can spend more time with my family. And if I arrange work flexibly and do my plans well, I will be able to balance my work and life. However, if I work entirely at the office, there are times when I must handle my personal matters but I can't take advantage of the company's stipulated 8-hour working time.” (S4)</p>
	Social Isolation	<p>“For an extrovert person like me, sitting at home for a long time and not being able to see or have any physical interaction with my colleagues, who work with me 8 hours a day, 1/3 of life, will also cause me a feeling of restraint and emptiness. However, I think this feeling lessened when I work hybrid.” (S1)</p> <p>“I like to go to the company to interact with people more than I think it is the meaning of going to work. In addition to creating value for work, I also need to interact and network with people because if I stay at home too much, I feel lonely and stuck. And I find that working alone is not very motivational.” (S8)</p>

Communi- -cation and Relations hips	Social Support	<p>“When working hybrid, we have more social platforms and workspaces to work with and support each other than when just working offline or online. I feel that I both diversified my work experience and did better teamwork.” (S1)</p> <p>“We even support each other a lot during the remote working time. The support here is shown through the smooth coordination between the stages of each person following a very specific and professional plan so that the work is carried out on schedule.” (S6)</p> <p>“When I first joined the organization and worked in hybrid form, I felt very finite in receiving support from my boss and experienced colleagues. I have to find opportunities and learn by myself to adapt to the working environment and get to know people enough to feel belonging to the team. This process took me twice as much as that while working only at the office.” (S3)</p> <p>“Working hybrid creates more opportunities for me to discuss further my projects and ideas. This will be more difficult when working 100% at home because people just care about their own work. Performance can be the same but work promotion is a little bit limited.” (S12)</p> <p>“I did have a conversation with a member of my team to ask whether he wants to come to the office because I think it's not very suitable for him to work from home. The reason is because during the time he worked remotely, he mostly didn't join any meetings. So if you are an employee and you're having troubles with working from home or working at the office the entire time, just feel free to ask for help or re-arrangement.” (S11)</p>
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	Networking	<p>“My social relationships remained the same, moreover, my external relationships increased. Because working online helps me to increase my social connections from other locations, and other countries. In my opinion, this is one of the hybrid work advantages.” (S1)</p> <p>“When I do hybrid work, I still have a few days showing up to the office so I can still manage to stay connected with my colleagues. When I get to work from home entirely, I also could stay in touch with them via social media channels.” (S13)</p> <p>“I think hybrid work is very good for families. My family got closer because everybody was home and we played with the children, and did a variety of things.” (S10)</p> <p>“When we work at the office, we have lunchtime to talk to each other. But when working at home, we barely talk or text. So I guess for the most part, working online makes me feel unconnected to my colleagues which could lead to a less close relationship with my colleagues and incapability of staying updated with the progress.” (S8)</p>
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Managerial Practices	Monitoring	<p>“My company does the monitoring through a website and uses the company's email to log in. They will continuously update and announce information to everyone on that website, so I can always read my daily output. Then I will receive a review and support on those outputs to see whether it is ok or not.” (S14)</p> <p>“The reporting regime must be periodic, the plan must be made more clearly, then everything will be controlled.” (S2)</p> <p>“In this era of 5.0, I just care about the result. It means that when I give you an amount of work, I just need you to commit to the work and give out the best result. I don't care about how you do it.” (S15)</p> <p>“At the office, people meet and talk to each other everyday so there is already a connection. On the contrary, remote work limits the opportunity for interaction, so the role of the leader is needed in connecting employees. Everyone must do teamwork, must have a clear division of work, tasks, and make sure there is no contradiction to be able to strengthen the company's bond.” (S3)</p> <p>“As usual, if my team works from home, we will have a 30-minute morning meeting to talk about daily tasks, therefore, my boss or leader will get to know all the tasks of each person. It's more efficient to manage that way because when we work remotely, there are a lot of tasks to do and it's difficult to manage all these tasks.” (S9)</p> <p>“In my opinion, before implementing this new working paradigm, we need to be prepared because the trainers' competence will affect junior employees. Besides, there should be a training program about working independently so that employees can work remote effectively. We also require related skills to motivate ourselves, for example, coping with boredom and sleepiness.” (S11)</p>
	Mutual Trust	<p>“My co-workers absolutely trust me in my work and that is also my motivation. If I don't get the trust, then I will lose part of my effort.” (S6)</p> <p>“Managers still need to have forms of inspection and supervision in the process of hybrid work. In my company, employees get a lot of trusts. Having the right to choose to work hybrid is proof of the trust of managers towards employees. If firms don't trust their employees, they will absolutely be forced to work 100% at the company in order to be supervised in the best way. Efforts will be shown through work results, if the results are good, people will still recognize my efforts.” (S7)</p> <p>“Having faith in each other is crucial to work in the long term. However, only faith is not enough. We also need to draw up rules and regulations. Without checking daily reports, the employees will be easily distracted because of excessive freedom.” (S11)</p>

Managerial Practices	Job Autonomy	“When I sit in the office, the boss can look at what I do, so it will not be comfortable. But when working from home, you always can freely choose how to work, you just need to ensure that you complete the tasks given.” (S9)
	Procrastination	“When working in the office, the working time will be throughout from morning to noon, then I take lunch on break time, and then in the afternoon everyone works again so I also start working to the same rhythm. When working hybrid, the working time will be adjusted by myself, so there are times when I am intending to work but then am distracted by some external factors. As a result, my working time will be pushed back, for example, my work should be done at 3 o'clock, but at home, it takes me until 5 o'clock to finish.” (S7)

	<p style="text-align: center;">Time Arrangement</p>	<p>“Actually, I arrange the time to work remotely and at the office in a suitable and purposeful way. For example, when I need to print, exchange or sign documents, I will work at the office. And the time to work remotely can be spent on things that require creative thinking, or things that don't require too many tools and equipment only available at the office.” (S4)</p> <p>“I feel that hybrid work is more flexible because I can arrange which tasks to prioritize. If a task requires discussion with others, I will complete it at the office; if it requires intense concentration, I will complete it remotely. Therefore, I believe that even if I occasionally have to work overtime, hybrid work helps my outcome be better.” (S13)</p> <p>“Doing hybrid work with 2-3 days in the office is pretty more effective than working remotely 100%.” (S11)</p>
	<p style="text-align: center;">Individual/ Job Characteristics</p>	<p>“I think the most important factor is the personal mindset. Each person should have an independent mindset with self-discipline. When they achieve that, they can do whatever so-called hybrid work, remote work, or office work.” (S12)</p> <p>“I am quite an introverted person. When working, I don't like to be disturbed by people around, but in the office, it is difficult to avoid small chats or when someone comes over to ask a question. Then I think it's more suitable for me to work from home.” (S5)</p> <p>“In terms of people working in the service industry, I think they need to come to the office. Actually, I still strongly support hybrid work when it comes to jobs that do not require a lot of teamwork, administrative jobs, or jobs that require professional knowledge and strategy such as manager or leader because they can have their own space to work and think creatively.” (S11)</p>

3.1 Hybrid Working Outcomes

Due to a lesson acquired from the COVID-19 epidemic, many people believe that hybrid work is more likely to enhance employees' mental health than remote work. Five out of fifteen respondents come to the conclusion that working from home constantly causes back pain, eye problems, and mental health issues due to extended periods of isolation from other people. They also showed their preference for hybrid work because it satisfied their demands for direct communication, direct interaction, and sharing: “people’s basic need is to share” **(S12)**

The majority of interviewees conclude that their performance when doing hybrid work is better than remote work: “When doing remote work entirely, I have to work alone a lot. Whereas working hybrid makes me feel like I will have a certain freedom while performing better and working spirit up.” **(S7)**. To be more specific, one of the most driving factors that directly affect employees’ performance is autonomy: “I feel more comfortable arranging my work, which leads to better results and higher performance.” **(S9)**. One interviewee reported that the diversity in terms of where she works also helps stimulate work performance: “When I go to the office every

day, I always sit in a fixed position, and interact with the same people. For me, that environment is a bit restrictive. But when doing hybrid work, some days I sit at home and other days I go to the office. This will help stimulate my thinking and improve my performance.” **(S1)**.

On the contrary, some reckon that working hybrid is not a good fit for those who can't control their distractions since this is the most significant factor that directly decreases remote workers’ performance: “At home, I can grab up my phone and scroll over and over again because nobody watches me or prompts me.” **(S14)**. Additionally, it is suggested that hybrid work is only suitable for experienced employees or senior managers because they can manage their emotions efficiently and are not distracted by outside factors: “For those who lack work experience, I recommend them to come to the office to perform better.” **(S11)**.

When asked about preference for hybrid work, 14 out of 15 people expressed interest in this new working model, as well as a desire to continue doing hybrid work in the future: “I feel like this is an appropriate model for a student like me, to be able to work at my best and secure multiple jobs at the same time.” **(S1)**; “I like doing hybrid

work. This working model would probably be on trend in the future and it seems to happen now. A lot of people are seeking hybrid work after COVID-19 pandemic.” (S8); “This working paradigm is an ideal way of working for everyone. It creates an active working environment that is more autonomous compared to office work. Businesses should focus on the quality of output rather than just the presence of their employees.” (S13)

V. DISCUSSION AND IMPLICATIONS

According to the result collected, almost all interviewees reported that they perform better when working hybrid than working from home. The reason is that a number of factors have had a positive change compared to the results recorded in terms of factors that affect performance during the time doing remote work entirely during the COVID-19 pandemic. In terms of working environment, some think that because they can go to the company for a few days during the hybrid work period, they will take advantage of that time to carry out the work that cannot be done at home such as important meetings, technological equipment, teamwork projects... We also verified the fact that having a separate room for work is inclined to increase the performance of the employees (Awada et al., 2021). Other outstanding factors having a positive impact on performance in our research are communication and social support. Contrary to the unfavorable views expressed when discussing these two factors in remote work (Galati et al., 2021; Wang et al., 2021; Toscano & Zappalà, 2020), people appear to have encountered some interesting situations when working hybrid. Due to the time they spent apart, they found that the quality of their conversations with colleagues improved because they would have more topics to share without getting bored. Additionally, with the characteristic of hybrid work, they can do many jobs at the same time and thus can also expand their social network.

When adapting to this working paradigm, several workers lost track of time or skipped meals in comparison with the time they work in the office. We saw this as an intriguing factor that has not

been pointed out in previous research. It can be understood as the state of staying focused because when people are on a working circuit, they lose their awareness of time on a regular basis. As a result, it would bring benefits to the firms in order that they could greatly encourage their employees to resume working on this hybrid model. Although this situation is beneficial to the firms, it can take a toll on the employees' health. In the long term, it will wreck the companies' resources.

Our research also identified the suitability of this working model partly depends on occupational and personal characteristics. Knowledge workers, for example, those who are professionals in information technology fields, are considered to be appropriate for hybrid work. In the creative sphere, many people found that they can have a sense of originality and work better at the comfort of their homes. However, working in a fixed position, according to one respondent, is likely to backfire on their ability to be creative. Therefore, hybrid work is a perfect working paradigm, as it allows them to be comfortable while also stimulating their creativity by switching the workplace.

Another notable finding of our research is personality. Those who are introverted and independent tend to opt for working from home because they want their own working space to focus on working, which can be missing in the office due to conversations with co-workers. On the contrary, extroverted employees claim that working from home without any physical interaction with their colleagues possibly has a negative influence on their mental health, causing loneliness and restraint. This opinion has been proved in our research. However, not all of these employees are the same, but they can improve their abilities (Petric, 2019). Therefore, the hybrid working model seems to be perfect because it can meet the demands of balancing their personalities and chances to improve their abilities.

When hybrid work is practiced, time arrangement is a tricky question since working in the office from 9 to 5 is a prolonged tradition in

the workplace. There are plenty of ways to plan a weekly work schedule. Some interviewees suggested finishing the most challenging and important tasks or hosting activities that require physical interaction in the office because it is easier to connect and interact with their colleagues. Another popular idea is to spend time working in the office to print, exchange, sign documents or basically to use the office amenities which cannot be offered at home. By contrast, works and activities that need to be creative or focused can be hosted online. In conclusion, the company can let their employees opt for the most suitable way to work for them. A study conducted by Nenonen and Sankari (2022) has suggested 2 important elements that we need to focus on are time and space. Additionally, they can be fixed or flexible between home and office based on different needs of the employees.

In conclusion, practicing hybrid models can be feasible for employees and senior managers to find out which working paradigm is optimal for them. Additionally, the diversity in experience is able to result in stimulating work performance and job satisfaction for both employees and managers. Firms should practice hybrid models with several options for time frames and space for their employees and managers. However, offering several ways of working can be challenging to managers because there are a host of obstacles to handle at the same time related to monitoring, communication, and technological devices. In fact, some managers find it more difficult to practice their work than before (Parker et al., 2020). Our suggestion is to develop flexible supporting infrastructure in the direction of technology to support building a methodical work management process, remote communication tools, on-site meeting equipment, and so on. Therefore, every member of the organization can be connected and be able to do their daily tasks with ease even without being physically in the office. Furthermore, in the context of Southeast Asian countries, especially Vietnam, firms should also invest in developing appropriate hybrid work policies.

VI. CONCLUSION

In our qualitative research, the majority of factors affecting hybrid workers' performance were clearly verified such as work conditions, job security, workload, and adaptation to a new way of work... in the context of Vietnam. In terms of the working environment in developing countries, especially Southeast Asian cultures like Vietnam, the frequency of conversation between employees and managers is likely to affect the job promotion of the employees. This opinion has been stated by 3 out of 15 interviewees. Another finding in this study is that hybrid work is not suitable for new employees who are not used to the working method and organizational culture. We also explored a new interesting factor that positively affects the employees' performance, which was the diversity of experience for employees. Another new point we identified was the effect of personality on the preference for hybrid work.

Moreover, in the context of Asian countries such as Vietnam, we suggested that not only the managers should develop the technology to support the working and management process, but they also need to formulate policies to ensure the job security of their employees. This study had a limited sample size. In the next study, the authors will aim to test the hypotheses and factors explored in this study through the quantitative method.

ACKNOWLEDGMENTS

Nhung Thi Kim Tran is the first author and corresponding author; Ha Phuong Nguyen, Hoang Huy Pham, Trang Thuy Nguyen, Vi Le Ha Duong are corresponding authors.

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Salome Sulaberidze & Murman Tsetskhladze

Rustaveli State University

ANNOTATION

Agro Tourism is a field where the products of the tourism industry and agriculture are jointly presented. In labor examines the modern trends in the development of tea-making in Georgia and the world, outlines the prospects for its development in the Guria region, and offers the possibilities of providing the tourist product - "Tea Road" to visitors. All this will contribute to the replacement of imported tea with local tea, the interest of the visitor in the activities of the "Tea Road". This will increase the incomes of the population and reduce migration processes.

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Classification: DDC Code: LCC: HD 1917 .A2

Language: English



Great Britain
Journals Press

LJP Copyright ID: 146433

Print ISSN: 2633-2299

Online ISSN: 2633-2302

London Journal of Research in Management and Business

Volume 23 | Issue 4 | Compilation 1.0



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Salome Sulaberidze^α & Murman Tsetskhladze^σ

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Agro Tourism is a field where the products of the tourism industry and agriculture are jointly presented. In labor examines the modern trends in the development of tea-making in Georgia and the world, outlines the prospects for its development in the Guria region, and offers the possibilities of providing the tourist product - "Tea Road" to visitors. All this will contribute to the replacement of imported tea with local tea, the interest of the visitor in the activities of the "Tea Road". This will increase the incomes of the population and reduce migration processes.

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I. INTRODUCTION

"Tea Road" is one of the important tourist products, both from the point of view of travel and consumption. It allows the host to diversify tourism services by involving tourists in tea production, and tourists are allowed to taste tea, Get to know the cultural traditions of tea drinking characteristic of a certain group of people, At the same time, the economic well-being of residents improves. (Jolliffe...:2022).

From this point of view, Georgia, in particular one of its regions, Guria, has very good resources. Region location, Soil, and climatic conditions, In particular, the air of the mountain and the sea helps to cheer up and spread the tea culture:

- Gives a soft and pleasant aroma;

- No need to add poisonous chemicals and pesticides;
- It is naturally clean and pleasant to drink.

That is why it attracts many visitors and other users. In addition, tea production may play a decisive role in the economic recovery of the region. lay the foundation for the success of agriculture and tourism. To achieve the mentioned success, in the article we will discuss the production of "Tea" in the Guria region and its role in the development of Agro Tourism.

II. METHODOLOGY

In the paper, based on the conceptual analysis of foreign and Georgian literature, We used the qualitative research method - documentary analysis. We carried out a synthetic analysis of the obtained results. In the paper, based on the conceptual analysis of foreign and Georgian literature, We used the qualitative research method - documentary analysis. We carried out a synthetic analysis of the obtained results.

We also used systematic approaches and comparative analysis.

To obtain data, we surveyed by filling out a questionnaire.

We chose this way of a survey because there are no statistical data on tourism and Agro Tourism in the Guria region. Local farmers and merchants took part in the survey, it was revealed that most of them are involved in Agro Tourism activities. A total of 18 tea-producing (small) entrepreneur-farmers were recorded. 13 of them in Ozurgeti municipality, 2 in Chokhatauri, and 3 in Lanchkhuti.

Scientific works of Georgian and foreign researchers-scientists in the field of Agro

Tourism, collections of scientific-practical conferences, and data from the service of the National Statistics Agency and the "National Tourism Agency of Georgia" were used in the research process. Also the data of tourism services of Ozurgeti, Chokhatauri, and Lanchkhuti municipalities of Guria region.

III. RESULTS AND DISCUSSION

3.1 *Healing Properties of Tea*

Many hundreds of years ago, before the chemical composition of tea was known, people discovered its medicinal and nutritional properties. Tea is one of the most common beverages in the world after drinking water and is consumed by more than half of the world's population. It is an international drink. The popularity of tea drinks is irreplaceable due to their organoleptic indicators and stimulating properties.

The share of micro and macro elements of tea for human health is large, which contributes to the growth of the overall vitality of the human body. Among microelements, fluorine is important. Mineral substances make up 5-6% of the dry matter of the tea product, of which 50% are potassium and 15.5% phosphorus compounds. The content of essential oils in tea improves a person's mood, gives him courage, and workability, and activates the central nervous system.

3.2 *History of Tea Distribution in Guria Region*

Visitors to Guria, in addition to seeing the tea farm, observing the work process, and tasting it, are also interested in the history of tea distribution. In Guria, the first tea bush was planted in 1809 in the garden of Mamia the Fifth Gurieli (chief of Guria 1809-1826). (Mamiya Guriel's garden was one of the current central gardens of the city of Ozurgeti: the garden of tents). The tea grown in the garden had no industrial purpose.

For 15 years, Gurieli organized a wonderful garden by growing tea, oranges, and lemons. Jacob Marr, a Scottish agronomist, and horticulturist led the cultivation of the garden.

After the death of Mamiya Gurrieli, her garden was destroyed. During the Russo-Ottoman war (1854-1856), the military settled in the former Mamiya garden in the center of the city, and they cut down and destroyed the garden.

On I. Mari's advice, tea bushes were transplanted in Goraberezhouli, on Mikheil Eristavi's estate. M. Eristavi was an appreciator of tea culture. He first saw and tasted tea in China. Decided to plant it in Georgia.

According to the story, it was forbidden to export tea seedlings or seeds from China at that time, but it is still inconvenient to bring them. In 1864 M. Eristavi was the first in Georgia to process tea products in a primitive way, and exported them to the agricultural exhibitions held in Tbilisi and St. Petersburg.

In the second half of the 19th century, the cultivation of tea bushes went beyond Guria and the practice spread to all regions of Western Georgia: Abkhazia, Adjara, Imereti, and Samegrelo. In 1861, the first Georgian "Baikhi tea" was produced. In 1864, the product was presented at an agricultural exhibition in St. Petersburg, and in 1885, the first export shipment was made to Europe.

In the 1980s, 190,000 people were employed in the Georgian tea industry, there were 70,000 hectares of tea plantations, 140 primary productions, 25 packaging, and 3 mechanical factories, as well as several industrial facilities. 600 thousand tons of green leaves, or 133 thousand tons of tea, were produced in Georgia. Georgia was in fifth place in tea production, after India, China, Japan, and Sri Lanka.

Tea went from Georgia to other Soviet republics. Exports were also made to Eastern Europe and South Africa. Georgian tea was sold in France, Germany, Austria, Finland, and Great Britain.

In Georgia, the tea industry had the greatest social responsibility, both in terms of agricultural and industrial development, as well as in terms of employment, budget revenues, and social welfare.

In 1900, out of 23 test plots of tea in Georgia, the most, 9 plots were located in Ozurgeti Mazra. Of these, the estate of the Nakashidze family in Zedubani is worth noting.

In 1889, Mikheil Nakashidze brought tea from Chakvi and planted it on five hectares, building a factory that sold products under the name "Tea Prince M. M. Nakashidze". By 1900, Ermile Nakashidze had a tea processing plant and was releasing tea under the trademark "Ermilita".

"Royal Society" also produced tea in Guria. On May 21, 1900, "Iveria" wrote: "The royal agency expects to harvest 5,000 pounds of tea from Guria plantations this year." In the years 1913-1918, he increased tea plantations in Guria, but by 1918, tea production fell by 50%. In 1921, the average yield per hectare was 500 kg.

Famous winemaker Solomon Cheishvili produced tea in the village of Askana. S. Cheishvili exported tea to Russian cities. The tea produced by him earned a certificate of praise in 1914 in Moscow.

After the establishment of the Soviet government, by 1924, mostly Chinese bushes were widespread, with some Japanese and Indian ones. Natural hybridization took place and hybrid "Batumi tea" was obtained. This is what was cultivated in Guria and Adjara during the Soviet period.

The first factories operated in Zedubani and Ozurgeti during the Soviet period.

After collectivization, during the Soviet period, tea became the No. 1 culture spread in Guria. In 1933, 138,870 kilograms of tea leaves were harvested. Every large village had a tea factory, every village had plantations and reception points.

Research Institute of Tea and Subtropical Cultures was established in Anaseuli. Tea has displaced all the traditional agricultural cultures that were cultivated before (ghomi, vines, etc.). Soviet propaganda declared the development of tea-making as the greatest success of the Soviet state.

In 1958, tea-picking machines were tested for the first time in Chanieti, Laituri, and Likhauri farms.

In the 90s of the last century, the collapse of the Soviet Union had devastating consequences for the Georgian tea industry. Georgian tea lost the Soviet market, and in the background of political and economic instability, the state could not take care of maintaining a new market or industry. The war in Abkhazia also resulted in the loss of an important tea-producing region, which reduced production. Due to the delay in harvesting, the plantations became wild.

Georgia was a unique example among the countries with a tea industry, it was a tea-producing country with a long history, had great experience in growing tea, plantations, had professionals and scientists in the field, and had great industrial potential.

Until June 2010, Georgian packaged tea accounted for only 2% of the local market.

3.3 Georgian Tea Production at this Stage

Currently, Georgian tea fills about 25% of the local market.

According to Saxstat data, in 10 months of 2021, Georgia sold 1.9 thousand tons of tea worth \$3.9 million. The main exporting countries are:

- Mongolia - 416 tons / \$219 thousand;
- Azerbaijan - 279 tons / \$1.9 million;
- Turkey - 196 tons / \$622 thousand. (Georgian... 2021).

In January-October 2021, Georgia paid \$7.2 million for the import of 1.9 thousand tons of tea (flavored and non-flavored tea). Compared to the same period in 2020, tea imports decreased by 14%. The main importing countries of tea in Georgia are:

- Azerbaijan - 633 tons / \$3.4 million;
- Sri Lanka - 264 tons / \$1.2 million;
- Russia - 206 tons / \$1.2 million. (Georgian... 2021).

3.4 At this Stage, Tea Production in the Guria Region

There are large and small tea processing enterprises operating in the Guria region. see Diagram No. 1.



Chart No. 1: Number of Tea Enterprises and Employees

Source: Chart compiled based on information obtained by us

As can be seen from the diagram, 18 tea factories are operating in the region, employing 172 locals. In addition, they also hire additional labor seasonally.

The activities of the enterprises are not limited to tea production, some of them are also engaged in Agro Tourism activities, namely:

Since 2019, a new tourism project "Tea Road" has been developed in Guria. The mentioned route was created by the organization of the "Tea Road Association". The association unites organizations and family farms operating in the regions of Georgia. (Gurian...2021).

For this purpose, the host enterprise and family farms of the "Tea Road" were selected in Guria Reg. Farmers offer visitors: picking tea, participating in the processing process, getting to know the technology and history of tea making, tasting, offering traditional dishes, and accommodation if necessary.

To popularize the idea, with the support of the United Nations Development Program, the National Tourism Administration, and Ozurgeti Municipality, a tea festival is held every year in Guria.

The main objects participating in the "Tea Road" are:

1. *Davit Tenieshvili's Family Enterprise "Yaloni"*. It is located in the village of Bakhvi

in Ozurgeti municipality. The location of the enterprise creates special conditions for the production of high-quality tea products. Natural and ecologically clean tea products are produced and sold on-site.

It gradually produces 7-8 t. tea. 4 types of tea are produced: blueberry tea, black tea, green tea, and white tea.

The company's customers are local shops, residents, and visitors, and it also exports to Poland, the Czech Republic, Germany, and Canada.

Products can be delivered to local and foreign customers at any location.

Visitors are offered a tour on the spot: guests will pass the so-called "Tea Road", which covers the tea production process from plantations to the processing plant and packaging.

Guests have the opportunity to take part in the process of picking tea using traditional clothing (chili hat and basket), take part in the process of processing the picked tea leaves, and get answers to all the questions they are interested in. The tour ends with a tasting of different types of tea.

2. *Giorgi Khuchua's Tea Processing Enterprise*. It is located in Ozurgeti Municipality, Anaseuli village. They release and sell black and green tea. They supply stores in Batumi and Tbilisi and also supply the local market in Ozurgeti. In addition to local customers, they have

foreign tourists and vacationers. Those who are offered to get to know the culture of tea, visit the enterprise, participate in the economic process, and taste tea.

In 2020, more than 2,000 tourists visited to buy the product. From Poland, the Czech Republic, and the Baltic countries: Lithuania, and Estonia.

80 people are employed in tea picking and maintenance work. Every year, the tea bush is renewed step by step. For example, in 2021, 4 hectares were renovated. Tea.

In 2019, he joined the municipal tourism project. They have almost 60 years of history of the enterprise in the field of tea and a tea museum. "Anaseuli Otka" natural fruit alcoholic beverage enterprise operates on the territory of the enterprise. It was in Anaseuli that the first tea sapling was planted in 1847 and the Anaseuli Scientific Research Center operates here. (Tourist...2021).

3. *Lana Zghenti's Tea Processing Enterprise "Plantation"*, is located in Melekeduri village, Ozurgeti municipality. Currently, it produces only 1 type of tea, black twist tea, 2 tons. In addition to regular customers, German, English, and American tourists visit.

In the future, he plans to build small wooden houses in the yard to accommodate tourists, because at this stage he is only able to taste and sell products, due to the lack of means of accommodation. Then tourists will have the opportunity to stay for several days instead of 1 day.

In the direction of Agro Tourism, he plans to expand his business. For this purpose, an additional area where tea is grown was purchased. The works of their cultivation are in progress.

The tourist location "Plantation" joined the municipal tourist project "Tea Road" in 2021. During the tour, users are offered a tour of the authentic environment, familiarization, and tasting of natural tea and local cuisine. (Tourist...2021).

4. *Lika Megrelidze's Tea Road "Komli"* - In 2019, he joined the "Tea Road" municipal project. The tourist location is of particular interest to visitors. In the 150-year-old family

farm, all conditions have been created for the visitor to feel in a special environment. It offers visitors:

- A short excursion about the history of tea in Georgia;
- Ethno-Agro tour in the yard (Agro and Ethno experience, culinary master classes);
- Going to the nearby tourist locations (The Monastery of the Creator, Mdinere Bjuzhi Gorge, visiting tea plantations.)
- Guest's participation in manual picking and processing of tea and natural drying process;
- Accommodation, food. (Sulaberidze... 2021).

5. *Berdia Elgujauri's Tea Processing Enterprise Natura Tea Company*", is located in the village of Guryanta, Ozurgeti municipality.

It is the first Georgian tea production enterprise in Georgia, which was awarded the ISO certificate confirming the international standard. The company produces 7 types of Georgian tea of the highest quality.

It sells tea abroad, in Europe: Ireland, Switzerland, and other countries.

They process up to 100 tons of raw materials. Currently owns 18 hectares of tea plantation, of which tea is cultivated on 14 hectares. The enterprise is focused on the production of environmentally friendly products.

The enterprise was put into operation on May 5, 2014. It processes up to 10 tons of raw materials. The entrepreneur gets 60% of the raw materials from his plantations, and 40% from the population.

In addition, they have a tasting place for tourists, they offer a tour of the enterprise and a visit to the farm. On average, 1 group of tourists visits the facility per day - 15 people, sometimes 4, sometimes 8 people.

Chinese tourists also brought their tea to the factory and compared it with the one here, the locally produced product turned out to be no less, and they liked the flavor even more. They also visit Germany, Switzerland, and others.

6. *Ilia Basilashvili's Tea Factory, "Bouquet of Georgia"*. It is located in Ozurgeti village. in Dwabzu. The company offers consumers natural Georgian tea of premium quality. There are no chemical dyes or flavorings in the

tea. The enterprise was commissioned in 2018.

The Total plantation is grown on 2.5 ha. They also order tea from nearby villages. They have a factory, tasting, and exhibition corner where tea is presented. Accordingly, visitors look at the farm, special clothes are provided for them. They monitor the production process. Also, they teach the process of making tea, after which tasting is done.

They Produce a total of 7 types of tea: the following brands are: infused green tea and infused black tea. And the rest: extra black tea, with a disposable nylon envelope - extra green tea, blueberry black tea, blueberry green tea, and blackberry tea, the last three types are called mountain tea and have a medicinal purpose. They also prepare tea with different flavors: honey flavor, apple flavor, lemon flavor, and others.

The largest number of visitors comes from Russia, there are also Ukrainians, Poland, America, Sweden, and various European countries.

In the future, it is planned to expand the farm and increase the quantity of the product, as well as export it. In the direction of Agro Tourism, he plans to build a hotel near the yard of the enterprise, where visitors will be accommodated. Also for they to grow selective tea with up to 100 roots so that they can learn to pick tea and then participate in the activities of the enterprise.

7. *Gela Zoidze's Tea Processing Enterprise "Cooperative Chibati"* is located in Lanchkhuti municipality, Chibati village. The history of "Cooperative Chibati" is connected with the development of the traditional industry. There was a tea plantation of up to 90 hectares in the village of Chibati, which was looked after by the inhabitants. Representatives of the cooperative managed to restore this tradition. It has turned from a Soviet-type facility into a modern, business-oriented agricultural cooperative, which works on the rehabilitation and restoration of tea plantations in the village while taking care of the success of its own

business. The local population is actively involved in tea production.

In 2014, they took part in the ENPARD project and equipped a processing factory, and asked for help in the rehabilitation works of plantations. After which the tea processing line was handed over. The building for the factory was leased from the municipality.

During the year, they sell up to 1 ton of tea. Small quantities are sold in the local market. Also on vacationers, during the season. Visitors can visit the farm, familiarize themselves with the work process, observe the production process, prepare tea infusion, taste it, and buy it.

Their immediate plans include exporting tea. In this regard, the cooperative has already succeeded in exporting its products to China. The members want to increase the production to 20-25 tons and package the final product in disposable bags.

8. *Mikhel Tsintsadze's Tea Processing Enterprise "l.l. C Aromat"*. It is located in Lanchkhuti municipality, near the center area. The enterprise manages 50-60 tons per month. tea processing. Produced: black tea, green tea, yellow tea in lemon, red tea in lemon, granular tea, etc. A total of nine types of tea are offered to consumers. Tea is sold in local shops in neighboring towns. In addition, tourists are offered a tour of the farm and enterprise, familiarization with the production process, tasting, and product purchase. 30 people are employed in the enterprise, and about 100 people work as pickers. The farm owns 2.5 ha in the village of Mamati, which is too small for the enterprise, and the neighbors also have up to 6 ha of tea plantations, which he cultivated with his training. The tea grown by them is used in production.
9. *Murman Gochaleishvili's Tea Processing Enterprise, "LLC Geoplant Ozurgeti"*, is located in Ozurgeti municipality. Produces different types of tea. For example green tea, black tea, etc. The tea grown here has a natural aroma. That is why it is in great demand abroad and its export has been carried out since 1885.

The tea plantation is grown on 120 ha. The tea is grown without pesticides in an environmentally friendly environment. Its fresh shoots are hand-picked, carefully processed without any emulsifiers, or dyes, and blended with high-quality foreign teas.

43 employees are permanently employed in the enterprise, 200 in farms, seasonally. The production is visited by both local and foreign visitors: Czechs, Poles, and Turks.

10. *Avtandil Lomtadze's Tea Processing Enterprise* is located in Chokhatauri municipality, in the village of Kvenoban. They produce 1.5 tons of 3 types of tea: Tea-standard, Black Baicho tea, and Green tea. They have their tea plantation. In addition, tea is ordered from the local population.

They sell tea as much as possible, both in Georgia and abroad: in Czechoslovakia and France. They are trying to strengthen cooperation with EU countries.

They also sell tea to tourists. They are offered a tour of the farm, getting to know the work process and getting involved in the work, picking tea, observing the production process, and preparing and tasting tea infusion. As well as the possibility of buying and taking away tea, accommodation in the host's house, or tents. In addition to local visitors, there are also foreigners: Czechs, French, British, Germans, etc.

11. *Nana Melashvili's Tea Processing Enterprise, Cooperative "Nagomari"*, is located in Ozurgeti municipality, Nagomari village. Customers are offered 8 types of tea. Mainly green and black teas, as well as teas with various fruit flavors. The tea produced by them is natural.

They gradually produce 7 tons per year. They have their own cultivated tea farm on 25 ha. It has 6 people permanently employed, and 74 workers during the season. They mainly work for export. They take tea to America and European countries.

The facility is included in the Tea Road project. They are often visited by tourists. They tour the plantation, taste, and buy tea.

12. *Giorgi Maisuradze's Tea Processing Enterprise " LLC Milmarti"* is located in Ozurgeti municipality, Shekarni village. It sells the product both in the local market and serves visitors.

13. *"Aketi Tea"* is a small family business that produces high-quality products in the village of Aketi.

Tea produced by the enterprise is already sold in Tbilisi and big cities. Therefore, the purpose of the facility is to introduce the manufactured products to the customers.

Guests have the opportunity to tour the plantations and participate in tea picking. to taste natural tea and eat a dessert prepared on the spot.

14. *"Gurieli Tea"*, As a Georgian brand of tea, was introduced to the Georgian market in 2010. Produces high-quality tea. The product has a distinctive taste and aroma, as well as an exclusive design and packaging.

15. *Agricultural cooperative "Guria-Company 2014"*. The cooperative consists of 7 members. With their active involvement and ENPARD's financial and technical support, 5 ha owned by the cooperative was managed. Rehabilitation of the tea plantation, fencing, and re-equipment of tea processing production with modern technologies. Currently, the cooperative produces about 1.5 tons of black tea.

16. *"Samebi's Tea"* factory is located in Chokhatauri municipality, a village in Trinity. Tea is harvested by hand, raw materials are processed in such a way that they retain useful properties, pleasant taste, aroma, and vitamins.

17. *Giorgi Gogishvili's Enterprise "Tea No. 101"* is located in Askana village, Ozurgeti municipality. The tea farm is planted on 8 ha. Produces several types of tea, including biologically pure brewed tea.

18. *Giorgi Lomtadze's tea "Hello"* was created in 2019 in the Ozurgeti and Chokhatauri regions of Guria by merging three enterprises.

Tea plantations are periodically visited by tourists interested in agrotourism: from EU member states. Every year, about 70 people are hosted, who stay there for 6-7 days.

Visitors observe the production process and taste the tea they have picked themselves.

Based on the available data, it can be said that the Guria region has a perspective on the development of tea culture and the promotion of the "Tea Tour". Nevertheless, there are also problems. Namely:

3.5 Impeding Factors

- During the research, the factors hindering the development of tea-making were identified:
- It is not possible to carry out measures to rehabilitate tea drinking;
- There is a lack of financial resources;
- In this direction, the interest of the state and local self-government is less;
- Tea processing production is developing at a slow pace.
- Persons employed in the sector of tea-making and agro-tourism have a lack of knowledge and experience.

The solution can be:

- Raising the knowledge of modern technologies of tea husbandry maintenance and production;
- Development of tea production, so that low-quality imported tea is replaced by high-quality, local tea;
- Finding key markets;
- Orientation both in the domestic market and abroad. to target different types of users;
- Organization of tea tours, which is at the initial stage in the region and needs development;
- State and local self-government involvement-interest;
- Development of tea culture development program;
- Finding export markets and investments.
- We think that to overcome the mentioned problems, it is important to study the experience of foreign countries and then adapt it to our business.

3.6 Experience in foreign countries and opportunities to share it

Experience can be shared from countries such as China, India, Turkey, Indonesia, and others. For the named countries, tea is one of the crops that has an important role in rural development, food security, and poverty reduction. where it is the main source of livelihood for millions of small entrepreneurs. (Phori..., 2022).

Thus, tea tourism contributes to the improvement of the socio-economic status of the local population by improving the household income of the local population. (Datta...: 2018).

Tea plays an important role in Japan's history, as tea imported from China in the 9th century became one of Japan's trendiest cultures. At first, tea was the drink of a limited, privileged people, but later it penetrated households of all levels in Japan and abroad. (Tea Tourism, 2019).

An interesting object for tea-loving visitors is the Tea Museum, located on the Makinohara Plateau. The largest tea plantation is located nearby.

Museum representatives regularly organize special exhibitions and receive visitors. Tourists especially like, in addition of the museum, the tea ceremony house, and the Japanese garden. (Shizuoka - Kyoto - Saitama, 2022).

Chinese tea products are of high quality. It is a daily food product of Chinese people. It is cultivated on relatively scarce soils, in a checkerboard pattern, the maintenance and cultivation of which are mainly done by hand.

It functions as both a tea museum and an institute for people who want to know all about tea - its history, plantation, culture related to tea farming, and tea drinking and refinement. (Gautam, 2018).

India is the largest producer of tea products in the world. It accounts for 1/3 of tea production. The world tea market and consumer supply are mainly dependent on India and Sri Lanka. (Jabnidze, 2019).

Visitors can relax and enjoy tea in the tea bungalows. Most of the tea bungalows are

Victorian-style architecture - lofty wooden stilts, usually two-story, spacious rooms with exclusive fireplaces, bamboo and wood decor, antique furniture, and large verandas. (Chakraborty...; 2022).

The development of tea culture in Indonesia began in 1825 mainly in Java and Sumatra. In the 50s of the last century, the country was the third largest producer of tea in the world. Culture is grown in the form of plantations. Their total area exceeds 230 thousand hectares. They have modern type factories for the primary processing of tea. They produce 210 thousand tons per year.

Indonesia is trying to use all resources for the development of its country's economy, and to increase the volume of tea production, so a large part of the production (77-80%) is exported. (Jabnidze, 2019).

Sri Lanka, after benefiting from the well-known brand image of Ceylon tea, can become not only a major supplier of quality tea to the global consumer, it can also become one of the leaders of the tea route in the tourism sector. (Wickramarathne, : 2018).

Vietnam, although it is mainly known for its coffee plantations in the central highlands, is also the center of the northern tea industry. Tea was first planted here in the 1880s by French colonists. Even before Mara, tea was used in Vietnam, but it was made with imported leaves.

Currently, Tea Tours are introduced in Vietnam. Visitors can simply observe the pickers, participate in the work process, tour tea factories, and taste tea. Visitors especially like lotus tea, which is made from green leaves. It has got the aroma of the lotus flower from the lotus. (Lush, 2022).

Tea and its related philosophy are well-established in the life of Iranians. A cup of tea is the first thing an Iranian will offer to his guests.

Currently, tea culture is actively used in Agro Tourism activities in the country. Because Agro Tourism is considered a stimulator of the

development of agriculture and tourism. Visitors are offered involvement in farming activities, the opportunity to purchase products on the spot, and the service of accommodation at the farm. (Majlesi, 2020).

Turkish Tea is characterized by good taste properties. They developed a state program for the development of tea production, thanks to which the area of tea plantations and the number of processing factories in the country increased significantly in the last 20-25 years. (Jabnidze, 2019).

Which also determines the demand for tea. Namely: on street corners, cafes, restaurants, taverns, playrooms, workplaces, and simply where people may have a reason to gather or spend time, tea can be enjoyed everywhere while enjoying meals or during work breaks. Drinking tea is the cornerstone of sociability and the primary ritual of hospitality. (Sawyer, 2015).

The Discussed examples show that tea culture has a long history of diffusion. This is confirmed by the growing interest of tourists in tea attractions in recent years, which has made tea tour activities popular, but a high-level specialized model of tea tours has not yet been established. (Zhou, 2023).

Tea Tours are associated with creative activities including art, literature, storytelling, cultural ceremonies, cuisine, and gastronomy. Tea tourism is recognized as a form of niche tourism in production and consumption. (JOLLIFFE...: 2022).

In addition, Tea Tourism can be commercialized or simply as a pleasurable process. Commercial tea tourism refers to business holidays. It is a place where the company finances a vacation for its employees without celebrating holidays or production successes. (L. Mary...).

So, tea is one of the most widely consumed drinks in the world. It includes a variety of medicinal, cultural, and symbolic properties. Tea plays an important role in the expression of modern national and regional identities, which in turn is delivered to tourists in the form of tea houses,

museums, tea trails, and tea tastings. (Weber, 2018).

IV. CONCLUSION

The Experience of tea-producing countries and the analysis of prospects for the development of the "Tea Road" in Georgia show that in Georgia it is necessary to develop and implement a "state program for the development of tea making", in which local farmers will be involved. The development of tea production is facilitated, in the case of the Guria region, by the subtropical climate and soil conditions, which provide ample opportunities for the production of tea culture. Because farmers should cultivate:

- Only high-yielding and high-quality tea varieties;
- Based on scientific recommendations, implement the technological processes of cultivation, maintenance, and exploitation;
- To process the harvested raw materials in the small processing plants in the system of cooperative enterprises.

Implementation of the mentioned will help:

- To eliminate the shortage of ecologically clean tea;
- Arrangement of Agro Tourism facilities;
- Planning and organizing Tea Tours;
- Also meeting the needs of the local market and visitors;
- To increase farmers' incomes and employment in the future;
- Development of tea export products, and production.

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Attention to Product Images in an Online Retailing Store: An Eye-Tracking Study Considering Consumer Goals and Type of Product

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ABSTRACT

The visual content of the product area is crucial in an e-commerce site. This paper studies the differences in attention to product images in the product area in e-commerce sites considering the effects of purchase stage and product category.

Attention to product images on websites is measured using eye-tracking in two experiments with 58 students and 66 subjects, with four product categories and four purchase tasks in each one. Our results show that pictures, in general, attract attention first, before the product names and price information.

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Classification: DDC Code: JEL: M31

Language: English



Great Britain
Journals Press

LJP Copyright ID: 146434

Print ISSN: 2633-2299

Online ISSN: 2633-2302

London Journal of Research in Management and Business

Volume 23 | Issue 4 | Compilation 1.0



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Raquel Chocarro^α, Mónica Cortiñas^σ & Arantxa Villanueva^ρ

ABSTRACT

The visual content of the product area is crucial in an e-commerce site. This paper studies the differences in attention to product images in the product area in e-commerce sites considering the effects of purchase stage and product category.

Attention to product images on websites is measured using eye-tracking in two experiments with 58 students and 66 subjects, with four product categories and four purchase tasks in each one. Our results show that pictures, in general, attract attention first, before the product names and price information.

Furthermore, images attract less total attention than textual information. Images attract less attention when they are not crucial for completing the task, such as when purchasing a determined product or when locating product tracking information. Younger people (less than 30) spend much less time viewing the product pictures than older age groups (50 or more). According to our results, e-retailers could improve their sites' performance by adapting the products' presentation to the purchase tasks and visitor characteristics.

Keywords: attention; product image; purchase task; eye-tracking; web design.

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I. INTRODUCTION

According to Statista (2022), in 2021, global e-commerce sales worldwide amounted to 4.93 trillion US dollars, with an increase of 26% over 2020, which is especially significant due to the worldwide coronavirus pandemic. Consumers use online channels to complete purchases and combine them with physical stores and social media channels as complementary information sources or combining delivery options. This behavior is called omnichannel behavior and enhances the role of online stores in the overall purchase process (Verhoef et al., 2015).

In this context, analyzing the effect of the stimulus on retailing websites is more relevant than ever. The appearance, layout, and navigation capabilities of websites will condition site users' experiences (Hasan, 2016; Wolfenbarger and Gilly, 2003). The product area, containing product images, characteristics, brands, and prices, is the most relevant (Badre, 2002; Van Duyne et al., 2003) and receives the most attention (Cortinas et al., 2019). In this area, online retailers present the product information that plays the most significant role in consumer purchasing decisions. This information is especially relevant due to the inability to physically evaluate and touch the products in online purchases and meets the information needs of consumers (Fiore et al., 2005). Therefore, the design of this area is crucial for success (Blanco et al., 2010).

The product area usually contains both visual and textual information. Within this area, we focus on a critical type of content in the product area: product images. Product pictures transmit many characteristics of products that are not easily translated into verbal information and, at the same time, make the site more attractive and the experience more pleasant (Desrochers et al., 2019).

Despite their importance, product images are often laid out on the webpage in the same way, regardless of the customer or product category. Algorithms make it possible to tailor the product offer and prices for each access to an online store. Online retailers use this personalization feature extensively, presenting different product assortments or even prices to each visitor.

However, the personalization of the relative importance of images is far less common. The product's layout usually remains fixed between categories and consumers; changes only occur with different access devices (e.g., mobile, pc, tablet). For example, search results for women's bags and electronic watches on Amazon.com show the same layout and images; neither do they vary between identified customers and anonymous visits. Is this fixed image layout strategy optimal?

Previous literature has extensively studied the effect of pictorial versus verbal cues in advertising stimuli and online website design (Velásquez, 2013; Wang et al., 2020). Most studies suggest that images are more attractive, generate more recall and are processed at a higher speed (Blanco et al., 2010; Hong et al., 2004). Unnava and Burnkrant (1991) termed this effect the "picture superiority effect". However, the literature has not investigated whether this superiority effect varies in different situations. From the perspective of a customer's shopping journey, two factors are especially important: the task at hand and the product category. To our knowledge, there has been no research that assesses the relative attention paid to product images in different purchase situations.

In the customer's shopping journey, "consumer goals" are the different tasks to perform according

to the stages of the purchase journey (Tupikovskaja-Omovic and Tyler, 2021), for example, searching for information about the products, comparing different products, and understanding delivering options. On a web page, images are atmospherics whose importance varies depending on the consumer's goal at a particular moment in an online store (Guo et al., 2016; Lee and Rao, 2010).

In addition, the type of product has been established as an influential moderator in e-commerce. There are differences in the attention process depending on the product category (Lee and Hosanagar, 2020; Luan et al., 2016). In experience products, attention to images positively affects the evaluation of the website (Desrochers et al., 2019) because products cannot be touched when shopping online, but they can be imagined (Maier and Dost, 2018). Jiang and Benbasat (2004) found that the virtual visual experience provided in certain online stores enhances the overall perceived diagnosticity of products, particularly the helpfulness of experience attributes.

We investigate the role of images in the product area depending on consumer goals and the product category. More precisely, we seek to answer the following questions: 1) Do product images attract more attention than texts in the product area of an e-commerce site? 2) How do consumers' goals and purchase stage influence the process of attention to product images? 3) How does the type of product influence the process of attention to product images? Finally, 4) How does the type of product influence the process of attention to product images in the different stages of the purchase process?

To answer these questions, we contribute theoretically using a conceptual framework that integrates two theories: Visual Marketing Attention from marketing (Wedel and Pieters, 2008) and Stimulus-Organism-Response (S-O-R) from environmental psychology (Eroglu et al., 2001; Liao, 2016; Lin et al., 2017). This study jointly considers existing research examining how online product area presentation—stimulus in the

S-O-R model and bottom-up factors, product images and textual information, in Visual Marketing Attention Theory—affects consumers' internal states—organism in the S-O-R model and top-down factors such as consumer goals in Visual Marketing Attention Theory—which, in turn, affects their purchase outcomes—response in the S-O-R model and visual attention in Visual Marketing Attention. In addition, we consider that both the product area presentation and consumer goals are affected by the type of product being considered.

We set two experimental designs to monitor product area attention in four different purchase tasks and a total of eight product categories. We measure attention to images with eye-tracking. As attention is an internal and subjective experience (Meyer and Schwager, 2007; Shi et al., 2013), this observational technique is more reliable than declarative techniques, as it does not depend on users' willingness or competence to describe how they feel when exposed to a web page (Ariely and Berns, 2010). In Study 1, we test our research hypotheses in a research design with four different product categories and four purchase tasks in a convenience sample of 58 students. In Study 2, we increase the validity of our results with a study of 4 additional categories and a more diverse sample of 66 individuals.

Both studies aim to improve our understanding of the effect of the purchase stage and product category on attention to product area, emphasizing visual product information online. Unlike previous research focused on the process of user attention to product images in particular stages of the online purchase journey (Boardman and McCormick, 2019; Desrochers et al., 2019; Wang et al., 2014, 2016) this study highlights the attentional processes to product images in the different stages of the online purchase journey while simultaneously considering the effect of the product category. If there are no differences in attention in different situations, the personalization of the layout would not add any advantages for customers' information processing. On the other hand, if the attention to images differs in different situational contexts, retailers could improve their websites'

performance by adjusting how they present the information. This research provides valuable information that internet retailers can use to develop more effective product presentations that meet consumers' needs for proper product evaluation in internet shopping.

In the next section, we present the conceptual framework, which includes the attention to the product area model and our hypotheses regarding the effects of purchase task and product category. Section 3 describes the research design used in Study 1, including the definition of the treatments, materials, participants, procedures, measures, and results. In Section 4, Study 2 is presented with the same structure as Study 1. Section 5 expands the discussion of the results. The last section summarizes our conclusions, future research lines, and the studies' limitations.

II. CONCEPTUAL FRAMEWORK AND HYPOTHESES

Attention is a cognitive phenomenon that has been intensively studied since the late nineteenth century. Attentional processes are the means of treating the vast amount of information individuals confront, prioritizing some aspects of that information while ignoring others (Näätänen, 2018); they include visual attention, auditory attention, spatial attention, and phenomena such as selective attention, divided attention, and distraction (Pashler, 2016). These processes are antecedents of other functions, such as learning, preference formation, and product choices (Wedel and Pieters, 2006).

Attentional processes devoted to visual stimuli are especially relevant. As Wedel and Pieters (2008) note, "...visual attention is important in its own right. First, ... visual attention is not only a gate, but ... a key coordinating mechanism that serves to maintain information processing and other goals over time". Visual Marketing Attention Theory (Wedel and Pieters, 2008) differentiates two types of factors affecting attention to visual marketing stimuli: bottom-up and top-down factors. The former is derived solely from the visual scene and results from color, contrast, shape, and texture (Velásquez, 2013). These visual stimuli prompt bottom-up

attention, also called stimulus-driven attention. In contrast, top-down factors are individuals' unique aspects and characteristics, such as their expectations, goals, and emotions. Top-down attention refers to voluntary attention assigned to particular objects and directed by a person's current task or goal-orientation attention (Corbetta and Shulman, 2002; van der Laan et al., 2015).

In a different research stream, from the field of environmental psychology, Mehrabian and Russell (1974) developed the Stimulus-Organism-Response (S-O-R) model as a theoretical basis for studying the effects of contextual stimuli on people's behavior. S-O-R posits that various aspects of the environment act as (S)timuli that affect the internal states of people or (O)rganism, which, in turn, affect their behavioral intentions or (R)esponses (Lin et al., 2017). (S)timuli include various aspects related to environmental factors and conditions, including social, design, and ambient elements (Herrando et al., 2018).

(O)rganisms are the inner states of perceptions, feelings, and thinking exercises (Luqman et al., 2017). These internal states result in specific behavioral (R)esponses by consumers,

comprising both approach and avoidance behaviors (Ettis, 2017). After Mehrabian and Russell (1974) proposed the S-O-R framework, Rossiter and Donovan (1982) applied the concept to the retail context and Eroglu et al. (2001) to online retailing.

Cortinas et al. (2019) combine the visual marketing attention theory approach and the S-O-R framework. In this general framework, the bottom-up factors in the Visual Marketing Theory of Wedel and Pieters (2008) are equivalent to the External (S)timuli in the S-O-R framework and the concept "atmospherics" of Eroglu et al. (2001). The top-down effects in the Theory of Attention to Visual Marketing include internal states included in the (O)rganism term and (R)esponse states.

This paper uses this integrative framework to study two of these factors and their relationships: a bottom-up factor, the product images in the website's product area, and a top-down factor, the purchase task. We also consider the potential moderating effect of the product category. The research model is presented in Figure 1. In the next subsections, we focus on the role of each of these elements.

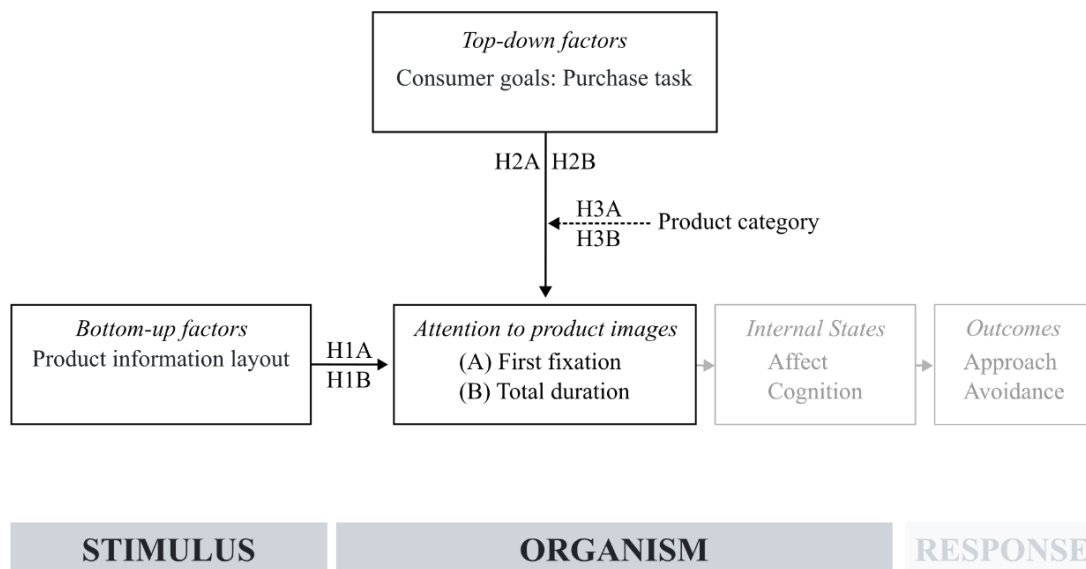


Figure 1: Conceptual Framework

2.1 The Role of Product Images in the Attention to E-Commerce Sites

The area of an e-commerce site in which products are presented is called the product area or "area

of marketing information," and it is critical to helping retailers perform their function (Badre, 2002; Blanco et al., 2010; Van Duyne et al., 2003). Its place is usually the center of the screen,

with greater importance than the retailer's logo or service information. In this area, we can distinguish two types of information: pictorial stimuli (e.g., images that portray the product) and verbal stimuli (e.g., the brand name, product description, or product price). Both types of content comprise the bulk of product presentation on typical online shopping websites and are relevant and useful for purchase-related tasks (Yoo and Kim, 2014).

Visual marketing research has analyzed the differential effects of pictorial and verbal stimuli to attract attention, especially in the context of attention to commercial advertising (Hernández-Méndez and Muñoz-Leiva, 2015; Pieters and Wedel, 2004; Yangandul et al., 2018).

The general conclusion is that images attract more attention than texts, communicate more information, and are remembered for longer (Adaval et al., 2018), leading to what is called the images' superiority effect (Childers and Houston, 1984; Unnava and Burnkrant, 1991). However, attention to images usually spans a shorter time, as their perception is faster and more automatic than the perception of texts and requires less effort and time (Rayner, 1998). Rayner et al. (2001) showed that the participants in their experiment spent more time looking at an ad's text than at the image but processed the pictures first. Other authors have obtained similar results: more time is invested in verbal content, although this content is not processed first (Hernández-Méndez and Muñoz-Leiva, 2015).

In the context of online shopping, the research focused on the product area also found that images of a garment on a model, mannequin images and zoom function all received a considerable amount of attention and had the most influence on consumer decision-making (Boardman and McCormick, 2019). However, the differences in attentional processes between visual and pictorial cues in the product area have not been explicitly addressed.

We establish our first two hypotheses by referring to the attractiveness of the images and to what it costs to assimilate them:

H1A: Product images attract attention faster than

brand name and product price in the product area.

H1B: Product images attract less total attention than brand name and product price in the product area.

2.2 Consumer Goals

Recent studies in the context of e-commerce have explored the pictorial content of product presentations considering different factors (see the summary of previous literature in Table 1).

However, none of these studies consider the different stages of the purchase process, which are also an essential determinant of the process of attention to the presentation of online products (Cortinas et al., 2019; Ohman et al., 2001; Rowley, 2000). Consumers visit websites with many different objectives in mind, for example, comparing prices with a physical store, browsing attractive products, or checking the status of an order (Mangiaracina et al., 2009). The relevance of the different stimuli is very different in each of these cases (Puccinelli et al., 2009), and users will direct their attention to the stimuli that are most informative for their current goal or task (Rayner et al., 2008; Van der Laan et al., 2015).

In the context of e-commerce, the consumer purchase process should be viewed as a sequence of three stages (Neslin et al., 2006): the prepurchase stage (in which the consumer seeks information and analyzes it to make a decision), the purchase stage (where the consumer makes the purchase), and the postpurchase stage (which involves, for example, the use of customer services or the dissemination of opinions or reviews on products) (Neslin et al., 2006). In each of these stages, the relative importance of the different atmospherics varies according to their relevance (Guo et al., 2016). For example, Eroglu et al. (2001) grouped the online establishment's environmental stimuli into high task-relevant and low task-relevant cues. High task-relevant cues are site descriptors that facilitate making the purchase. Low task-relevant cues are those that are relatively irrelevant to completing a particular purchase stage, such as colors or font families on the website.

The product images transmit the product’s visual aspect and information about its attributes and characteristics. Images provide a more holistic perception of a product’s brand (MacInnis and Price, 1987). These images are, therefore, especially relevant in situations involving product choice. In contrast, product images are less relevant in the purchase phase, when the product is already chosen, or in the postpurchase stage, where consumers search for information about the services. In these phases, verbal content such

as sales, delivery, and return policies are likely to be more relevant. Therefore, our second hypothesis states the following:

H2A: Product images attract attention faster in the choice stage, when they are relevant to the task, than in the purchase and postpurchase stages, when they are not.

H2B: Product images attract more total attention in the choice stage, when they are relevant to the task, than in the purchase and postpurchase stages, when they are not.

Table 1: Research on Attention to Visual Presentation of Products in Online Environments

Authors	Aims	Theoretical foundation	Methodology	Outcomes	Product category	Task
Bigne et al. (2020)	This study analyses how pictorial content and the sequencing of online reviews affect consumer information processing.	Stimulus-Organism-Response model (SOR)	Eye-tracking data and an online questionnaire	The visual attention paid to the pictorial content is conditional on the attention given to the text.	Experience: restaurants	Search online reviews about a restaurant
Boardman and McCormick (2019)	This paper aims to investigate if there are any differences in responses to product presentation (product images, zoom-function, product videos) between age groups in the decision-making processes.	Stimulus-Organism-Response model (SOR)	Eye-tracking (visual perception) and qualitative in-depth interviews (cognitive and affective responses)	Images of the garment on a model, mannequin images and zoom-function all received a considerable amount of attention and had the most influence on consumer decision-making. The research also found that there were differences between age groups in their responses to product presentation that there were differences between age groups in their responses to product presentation features.	Experience: Apparel products	Free-browsing task
Desrochers et al. (2019)	The purpose of this paper is explored how type of product being purchased and the arithmetical complexity of the shopping task, influence the attitude of consumers toward online grocery websites, looking into the moderating roles that cognitive load and visual attention to product pictures play in these relationships.	No specific theory	Eye-tracking data and a questionnaire	Increased visual attention on the pictures of experiential products had a significant positive effect on attitude toward the site. For more arithmetically complex tasks, increased visual attention on product pictures had a marginally significant negative effect on attitude toward the site.	Experience (unpacked goods) and search (packaged goods): grocery items	Online grocery shopping tasks
Wang et al. (2016)	This study examines the interaction effects of the online product presentation (textual description and pictures with text description) and online reviews on consumers’ attention under different involvement situations.	Cue utilization theory	Eye-tracking data and a survey	The results show that high rich product presentation (textual description and pictures with text description) and high seller reputation lead to better product quality perception. Furthermore, when seller reputation was low, high rich product presentation led to better quality perception.	Search: laptop and electronic dictionary	Free-browsing task
Wang et al. (2014)	This study explores the product pictures (with and without human image) on consumers’ online shopping emotions and subsequent attitudes towards websites.	Stimulus-Organism-Response model (SOR)	Eye-tracking experiment and questionnaire data	The results show that participants paid more attention to product picture integrated with human image in apparel, while for headphones, in conditions either with or without human image, participants paid much more attention to the functional information of headphones than the product picture.	Entertainment products (apparel) and utilitarian products (headphones).	Free-browsing and shopping tasks

2.3 Type of Product

Online channels are less capable of transmitting sensory information. In the online environment, we perceive products only through sight and sometimes through hearing, but not through touch, taste, or smell, so they remain intangible (Laroche et al., 2005). These limitations make some consumers reluctant to use online channels in their purchases (Citrin et al., 2003; Levin et al., 2003) because it is more challenging to evaluate the products and, therefore, the risk is greater (Dai et al., 2014).

The weakness of online channels providing sensory information can be more or less critical, depending on the type of product. Nelson (1970) divided product categories depending on their possibilities of evaluation before the purchase. If consumers can determine most of one product attribute before the purchase, he called it a “search product”; in contrast, if most product features are unknown until the purchase or the consumption of the product, he called it an “experience product”. Later, in the same vein, Chiang and Dholakia (2003) and Weathers et al. (2007) define search goods as those in which consumers can obtain complete information before purchasing and experience goods as those requiring direct experience. Consumers can evaluate search products by their features, brand, or price, while experience goods need senses for their evaluation. Similarly, Lynch et al. (2001) use the terms “low-touch” for search goods and “high-touch” for experience goods.

Online retailing is particularly challenging in the presentation of experience products because these are predominantly evaluated on sensory criteria, but not all senses can be similarly stimulated in an online environment. The relevance of images will therefore be higher for these products. Maier and Dost (2018) found that experience (vs. search) products benefit more strongly from mental imagery, and Jeong et al. (2009) found that visual information elicits greater experiential value. In this sense, MacInnis and Price (1987) previously postulated that the processing of images generates a more emotional sensory experience; thus, in a product with a high

load of experience attributes, evocation can be greater.

The literature has also found differences in attentional processes according to product type. Luan et al. (2016) explore differences in the attention to product reviews, finding that the attention to product reviews broken by attributes is greater for search products than for experience products. Additionally, Lee and Hosanagar (2020) detect more attention to product recommendations in experience product categories than in search product categories.

Specific studies on the attention to visual information of products have also considered the effect of the type of product. Desrochers et al. (2019) studied the effect of attention to images in online stores’ global evaluation, finding that increased visual attention to the pictures of experiential products had a significant positive effect on attitude toward the site. Wang, et al. (2014) explored the effect of product pictures (with and without a human image) on consumers’ online shopping emotions and subsequent attitudes toward websites. Their results show that participants paid more attention to product pictures integrated with human images in apparel (experience product), while for headphones (search product), in conditions either with or without human images, participants paid much more attention to the functional information about the headphones than the product picture.

The results of all these studies show that, in one way or another, individuals pay more attention to visual information to obtain clues about details that they cannot perceive through other senses. Thus, consumers process information differently when facing different types of products. However, to our knowledge, the differences in the attention to images between product categories have not been analyzed considering the stages in the purchase process. We expect an interaction effect in the attention to images between the product category and the purchase task. The need for information for experience products is more considerable when the consumer compares the different alternatives in the prepurchase stage than in the posterior stages. For search products,

the products' images are not very relevant in any purchase process phase. We expect a more similar level of attention related to the general interest generated by pictorial representations. Therefore, our third hypothesis is as follows:

H3A: Images attract attention faster in the choice stage in experience product categories than in search product categories.

H3B: Images attract more total attention in the choice stage in experience product categories than in search product categories.

We test these hypotheses by means of two independent studies. The experimental designs of both studies were similar. The variations occur in the products considered and in the variation of the characteristics of the individuals in the sample to generalize the results.

III. STUDY 1

3.1 Definition of the Treatments

After a pretest study with qualitative interviews, we selected four different tasks and four different product categories to test our hypotheses. We define a task for each of the stages in the purchase journey. Our definitions of tasks are similar to those used in previous studies (Leuthold et al., 2011; Reutskaja et al., 2011; Wang et al., 2014).

- *Task 1:* Exploration Task: "Rate the website for overall appeal."
- *Task 2:* Choice Task: "Visit the website and select from those offered the product that most appeals to you based on the information provided."
- *Task 3:* Purchase Task: "Add option X to the shopping cart."
- *Task 4:* Postpurchase Task: "Find how to track your order."

Product images are useful information in selecting one product and somewhat useful in evaluating the website appeal. In contrast, they are not necessary for the other three tasks: adding a named product to the cart and finding tracking information.

We also select four product categories with varying degrees of search and experience

attributes (Mitra et al., 1999). The selected product categories are:

- 1) With experience attributes: sports shoes.
- 2) With search attributes: mobile phones, ballpoint pens and hard disks.

We consider sports shoes as experience products, while mobile phones, ballpoint pens, and hard disks are considered search products with different risk levels. Previous studies have used electronics to represent search products and clothing and shoes as experience products (Huang et al., 2014; Kim and Lennon, 2008; Levin et al., 2003; Luan et al., 2016).

3.2 Materials

We implement the experimental design by creating four mock retail websites, one for each product category (see Figure 2).

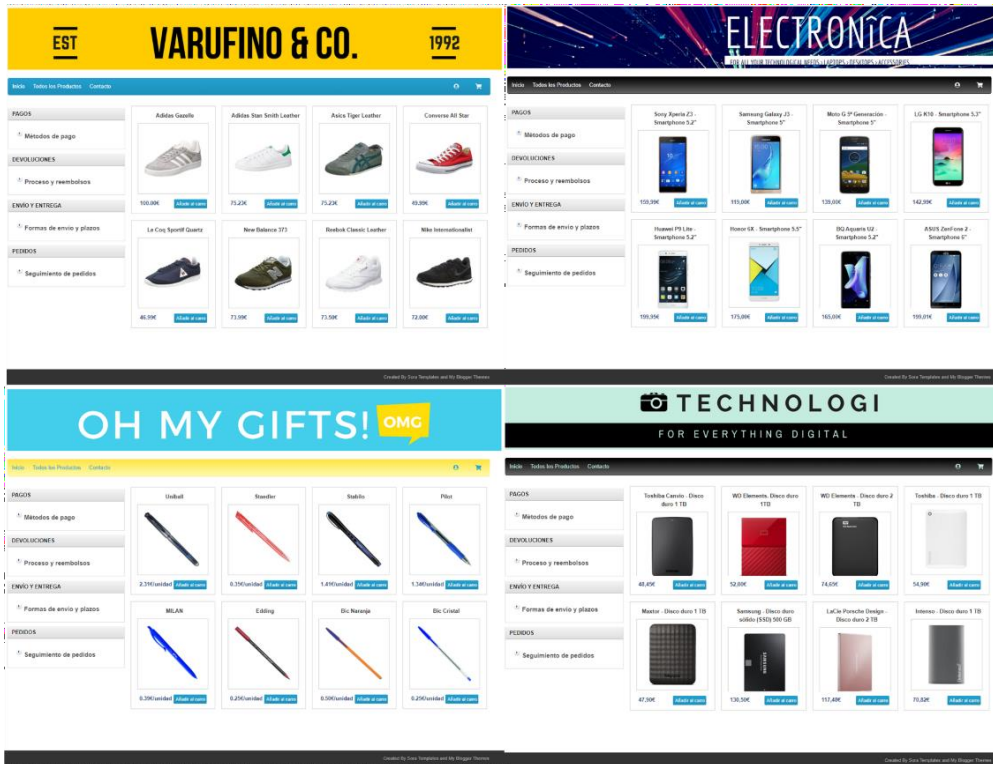


Figure 2: Simulated E-Commerce Stores for Study 1: Shoes, Mobile Phones, Ballpoint Pens and Hard Disks

Each online store offers only one product category. Using simulated websites is not new to this type of research (Leuthold et al., 2011; Wang et al., 2014). These types of web experiments can be perceived as real businesses with real online interactions (Hantula, 2005). Our mock websites, even if they lose something in realism, enable stricter control of other effects that might bias the results and the exact location of the Areas of Interest (AOIs).

We use the same realistic e-commerce template, a natural-looking e-commerce website layout, and then vary the colors, brand logos, and font families in the four stores. Visual stimuli (images of items) and extrinsic information (product name and prices) about the products were collected from actual commercial websites to be attractive to target customers and encourage research participants to behave more realistically (Kim et al., 2019). To avoid extraneous factors, only pictures of items without human models were selected. All images have the same white background to eliminate confounding mental imagery effects (Maier and Dost, 2018). In the four stores, the product area is in the center of the

screen, with eight different products, showing the product name above, the product image in the middle, and the product price and cart option at the bottom (see Figure 3 for our definition of AOIs). This layout is widespread in e-commerce sites (Bernard and Sheshadri, 2004).

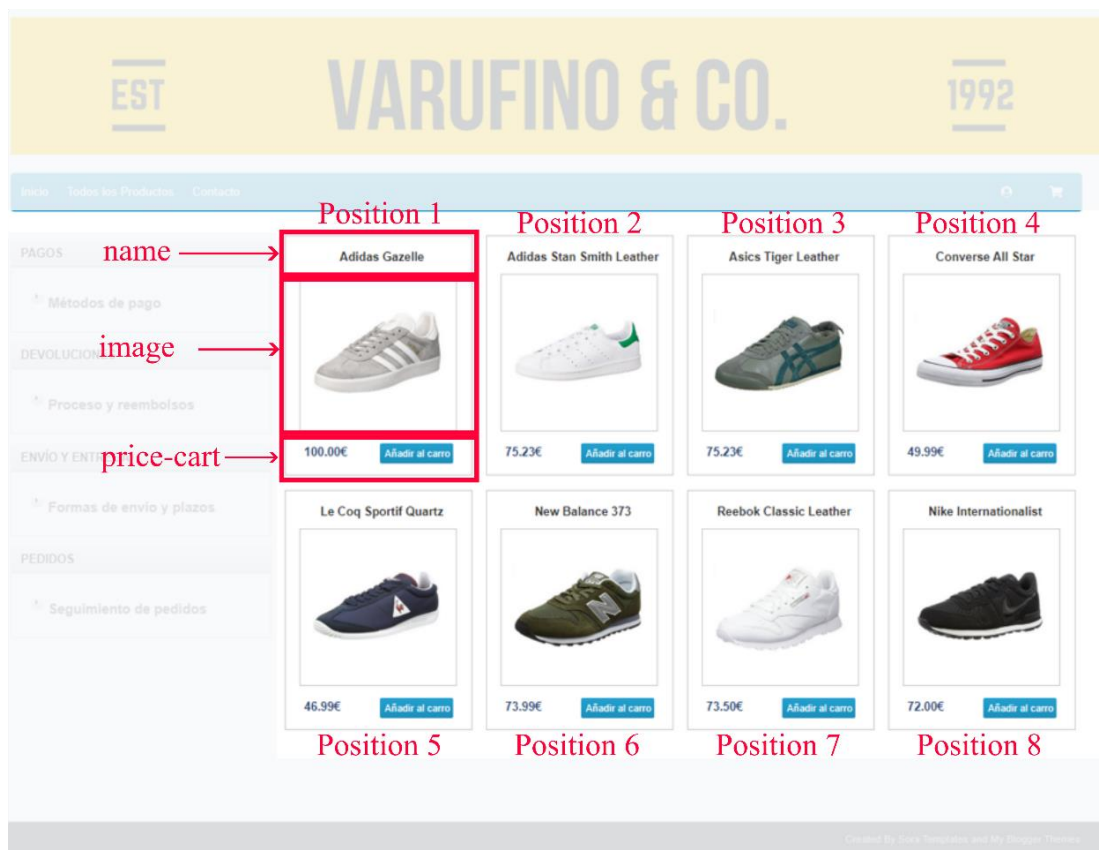


Figure 3: Definition of Areas of Interest. Product Area in Which the Name, Image and Price of the Product Are Highlighted

3.3 Participants and Procedure

The research team recruited 58 college students in their fourth year of a degree course in Business Administration and Management and invited them to the laboratory for data collection. These students were enrolled in an optative subject in Information Systems taught by the researchers of this project, which offered them the opportunity to experience eye-tracking technologies firsthand in exchange for course credit. All volunteers noted their availability on the day and time that best suited them from those available and visit the laboratory in the same week. The university's ethical committee first approved the procedure, and the participants provided their written, informed consent to participate in this study. Other eye-tracking studies have shown that students are valid subjects when analyzing attentional processes on websites (Djamasbi et al., 2010; Leuthold et al., 2011; Reutskaja et al., 2011; Velásquez, 2013). Similar studies of attention to visual information, including eye

tracking, have used similar sample sizes (e.g., 50 participants in Boardman and McCormick (2019)).

We carried out the data collection phase of Study 1 in April 2018. The 58 subjects were, on average, 25 years old, and 60% of them were women. Regarding the product categories, as expected, participants have more knowledge about sport shoes and mobile phones, and hard disks are the least known products. The recruits were then instructed to sit on a chair approximately 65–70 cm in front of the eye tracker, which was placed beneath the stimulus computer monitor, while their eye movements were monitored. All participants had normal or corrected-to-normal vision. We chose to conduct the experiment in a controlled lab environment to avoid possible biased interruptions.

The subjects' level of attention across task types was measured using purpose-designed eye-tracking hardware comprising a camera and

an infrared light. The specific choice of hardware for this study was The EyeTribe Tracker.

According to its manufacturers, the EyeTribe Tracker has an average accuracy of 0.5° , a spatial resolution of 0.1° , and an average frame rate of 30 Hz. This eye-tracker's spatial precision and accuracy are good enough for fixation checking, point-of-regard analyses, and pupillometry (Dalmaijer, 2015). The system monitors the subject's gaze throughout the trial and registers eye fixations according to a specified spatial dispersion criterion.

The eye-tracker's calibration procedure took place, and each subject was randomly assigned to task/category pairs. Each participant completed four tasks and visited the four category stores. However, the task-category pairs were different for each subject. There was no time limit placed on any task. We used the Qualtrics online platform for random store-task pair assignment and questionnaire implementation. Thus, for example, individual 1 had to complete the exploration task in the sports shoes store, the choice task in the mobile phone store, the purchase task in the ballpoint pen store and the postpurchase task with the hard disks. An individual never performed the same task twice and always visited all four category stores. The questionnaire also included several demographic questions after all four tasks were completed.

Data collection, including eye-tracker instrument calibration, questionnaire completion, and associated tasks, took approximately 15 minutes per person. As a reward, we include them in a raffle with several 20€ Amazon shopping vouchers. A researcher accompanied the subjects throughout this process.

3.4 Measures

A fixation is a quasi-stable position of the eye for a minimum of 200 milliseconds. The requirement for a quasi-stable position requires that the angular dispersion of the eye be below 1° . The fixation check procedure filters out noise in the gaze data. Our process only records fixations within the selected areas of interest; thus, outliers in the gaze patterns are filtered out. Once the trial

was complete, we took the gaze position coordinates and time patterns across the four tasks, and the subject's fixation times were recorded and classified by AOI and type of task. We checked for outliers in the completion time for each task, using 1.5 times the interquartile range of the completion time as the range for discarding outliers (e.g. Kar, 2020) and excluding 14 tasks performed by 12 individuals.

There are different possibilities for analyzing fixation patterns (Wedel and Pieters, 2008). *Given our objectives, we construct two attention indicators:*

- Indicator of attraction by one AOI: number of fixations before the participant fixated on the AOI for the first time. This indicator is an inverse one, as lower values indicate greater attraction capacity.
- Indicator of attention intensity in one AOI: number of fixations in an AOI (image, brand information, price information) standardized by 10,000 pixels.

Feedback from the questionnaire complemented this information to control potentially unobserved subject characteristics that might affect each task's attention and time. The questionnaire included information on purchase habits, category knowledge, and subject characteristics, such as online shopping experience and demographics. The individual attention patterns obtained by the eye tracker were linked to the declarative data from the questionnaire by a unique code generated by Qualtrics for each questionnaire to ensure anonymity for the subjects.

3.5 Results: Study 1

We analyze the importance of images compared to information about the product's name and information about the price. The first two columns in Table 2 (part A) show the average number of fixations on the web page before each AOI and the standard deviation of this variable. The fewer the number of fixations before an area, the sooner it attracts attention. The number of fixations in an area before an image (mean= 53.62) is lower than in the name (mean= 71.54)

and price (mean= 105.92) areas, indicating that individuals pay attention to images before other AOIs. The last two rows of Table 2 show the result of the ANOVA test for this variable (F= 13.456, p= 0.000). These results confirm Hypothesis 1A. Besides images, the name of the product draws attention in the second fastest place and the price is the third.

The last two columns in Table 2 (part B), show the mean and standard deviation of the number of total fixations in each AOI, standardized per

10,000 pixels. As expected, total attention to images (mean= 5.39) is slightly less than attention to name (mean=6.87) and price (6.37) areas. The last two rows show the result of the ANOVA test for this variable (F= 2.395, p= 0.092). We find evidence to confirm Hypothesis 1B at the 10% level. The images are the ones that are processed the fastest, followed by the price area and lastly the name of the product. Text elements require more viewing time.

Table 2: Fixations Before AOIs and Fixations by 10,000 Pixels (Study 1)

(A) Number of Fixations before element			(B) Total Fixations by 10.000px	
AOI	Mean	Std. Dev.	Mean	Std. Dev.
Image	53.62	79.87	5.39	5.51
Name	71.54	113.34	6.87	8.57
Price-cart	105.92	106.19	6.37	6.26
F value	13.456		2.395	
Pr(>F)	0.000***		0.092*	

* significant at 10% level

*** significant at 1% level

To test Hypotheses 2A, we use the number of fixations on the web page before an image and compute the average values and the standard deviation of this variable considering the different tasks, product categories, product positions and gender of the subject (Table 3 - part A, first three columns). In addition, the last rows of part A of Table 3 correspond to the ANOVA tests.

According to Hypothesis 2A, we expect that product images attract attention faster in the choice stage than in the purchase and postpurchase stages. However, the results show precisely the opposite. Images attract attention earlier in the purchase stage (mean= 81.93) and prepurchase stage (mean= 109.12) than in the choice (mean= 123.46). An ANOVA test on number of fixations before images in task revealed a significant main effect (F= 8.746, p= 0.000). Thus, regarding the attraction effect, there are significant differences in the number of fixations before images between tasks, but the fewest fixations take place in the purchase stage and the postpurchase stage. Therefore, Hypothesis 2A is rejected.

To test Hypotheses 2B, we compute the mean and standard deviation of the number of total fixations in images considering the different tasks, product category, product position and gender of the subject, standardized per 10,000 pixels, which are shown in the last two columns of Table 3 (part B). The last rows of part B of Table 3 report the results of the ANOVA tests. Images attract more attention when they are relevant to the task at hand, in the choice stage (mean=30.37) and images attract less attention when they are not crucial for completing the task: when purchasing a product defined by its name (mean= 12.58) or when locating product tracking information (mean= 17.51). Table 3 also shows that the differences in the total number of fixations by tasks is significant (F= 26.891, p= 0.000). Hypothesis H2B is therefore confirmed.

In addition to the analysis of the differences by task, Table 3 also shows the average and standard deviation of number of fixations on the web page before an image and total fixations in images considering the product categories and the position of the product on the webpage of the

product considered. We also account for gender as a control variable. There are differences in the average number of fixations before images between categories ($F= 13.480$, $p= 0.000$). The average number of fixations before images are lower for ballpoint pens (mean= 89.74) and sport shoes (mean= 92.20) and higher for mobile phones (mean= 133.61) and hard drives (mean= 139.52). There are not significant differences in the average total fixations in images ($F= 0.509$, $p= 0.676$).

Regarding the position of the images in the stores, we detect a significant main effect of the product

position in the number fixations before images ($F= 16.634$, $p= 0.000$) and total number of fixations ($F= 2.320$, $p= 0.024$). Images in the upper row (means 49.63, 69.22, 105.68, 128.09) attract attention earlier than images in the second row (means 146.53, 135.55, 139.57, 155.20). The product located in the second row farthest to the right is the last to attract attention (mean= 155.20). The image in the second position of the first row (mean= 25.57) and the third product in the second row (mean= 26.42) attract more attention, and the first images in the second row (mean= 17.78) attract less attention.

Table 3: Fixations Before Images and Fixations in Images by 10,000 Pixels (Study1)

	(A) Fixations before images		(B) Total Fixations in images	
	Mean	Std Dev.	Mean	Std Dev.
Task:				
Site exploration	128.57	121.96	23.06	25.47
Product choice	123.46	149.31	30.37	31.13
Purchase	81.93	76.09	12.58	17.57
Postpurchase	109.12	104.32	17.51	21.68
Category:				
Sport Shoes	92.20	87.80	21.70	27.18
Mobile Phones	133.61	134.73	24.74	27.78
Ballpoint Pens	89.74	101.11	20.88	22.95
Hard Disks	139.52	149.55	21.86	26.73
Product Position:				
Position 1	49.63	82.12	23.31	25.13
Position 2	69.22	79.71	25.57	25.44
Position 3	105.68	102.69	21.68	26.49
Position 4	128.09	107.42	19.43	23.43
Position 5	146.53	135.87	18.78	21.07
Position 6	135.55	119.07	21.53	29.61
Position 7	139.57	142.23	26.42	33.36
Position 8	155.20	156.96	20.79	23.83
Gender:				
Male	118.34	126.19	20.81	25.06
Female	110.13	119.25	23.60	27.40
ANOVA Test	(A) Fixations before images		(B) Total Fixations in images	
Variable	F value	Pr(>F)	F value	Pr(>F)
Task	8.746	0.000***	26.891	0.000***
Category	13.480	0.000***	0.509	0.676
Product Position	16.634	0.000***	2.320	0.024**
Gender	1.434	0.231	1.606	0.205

Task*Category	4.913	0.000***	2.306	0.014**
Task*Product Position	0.742	0.791	1.037	0.415

** significant at 5% level

*** significant at 1% level

We find no significant effect of gender neither in the variable fixations before images ($F= 1.434, p= 0.231$) nor in the number of total fixations in the images ($F= 1.606, p= 0.205$).

Finally, to test Hypotheses 3A and 3B, regarding the different effect of product category for different tasks, we represent the interaction effect of the task and the category in the attention to the images in Figure 4. We compare the attention to images in one experience category (sport shoes) and three search categories (mobile phones, ballpoint pens and hard disks).

First, Panel A in the upper part of Figure 4 shows the interaction effect of task and category for the variable fixations before images. According to Hypothesis 3A, we expect that images attract attention faster in the choice stage in the

experience product category (sport shoes) than in the other three search product categories. Focusing on the choice stage in Figure 4A, results confirm that images attract attention faster in the choice stage in the experience product category (sport shoes) than in two search product categories, mobile phones and hard drives, where the product description is more useful for making product choices. We do not find significant differences between ballpoint pens and sport shoes. Penultimate row in Part A of Table 3 also shows that the general interaction effect between task and category significant ($F= 4.913, p= 0.000$). These results lead to confirm Hypothesis 3A for all categories but ballpoint pens: images attract attention faster in the choice stage in the experience product category than in search product categories.

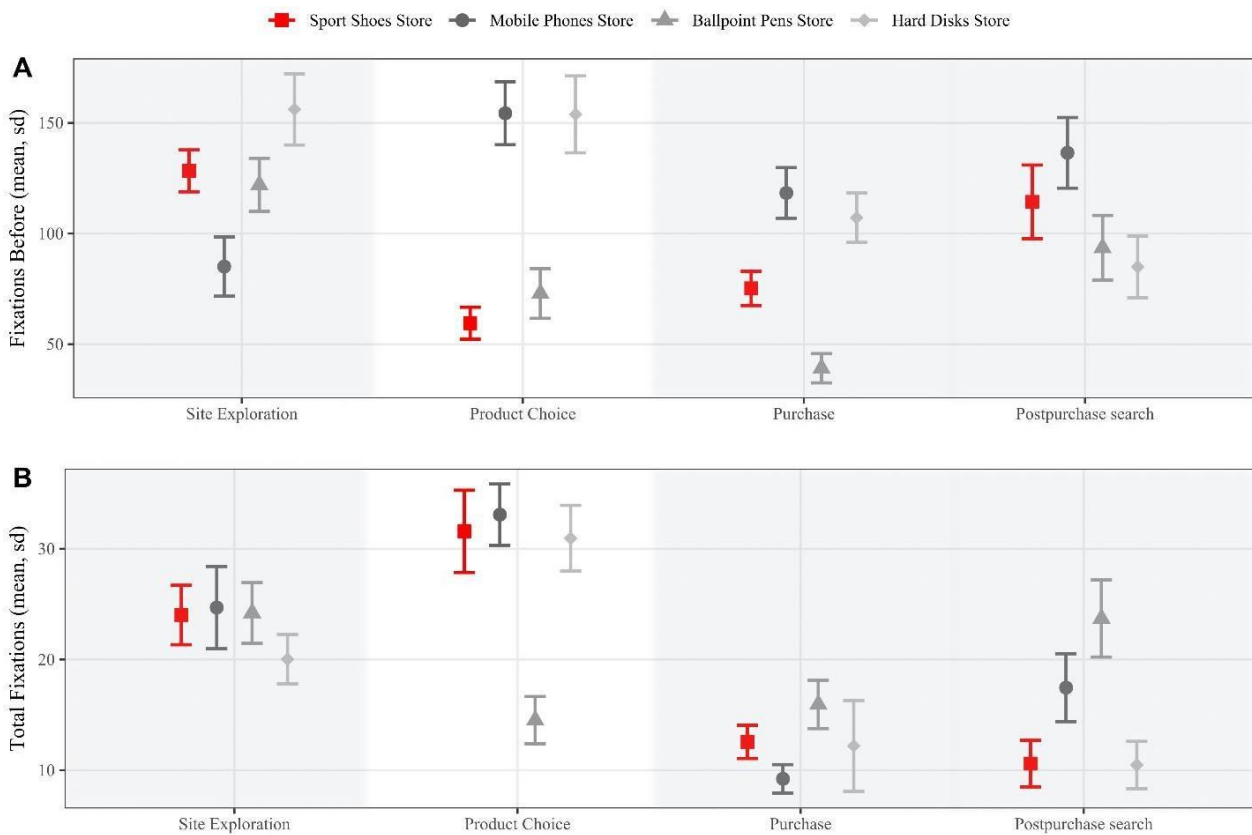


Figure 4: Interaction Effect of Task and Category in Attention to Images (Study 1)

Panel B in the lower part of Figure 4 shows the interaction effect of task and category for the variable total fixations in images. According to Hypothesis 3B, we expect that images attract more total attention in the choice stage in the experience product category (sport shoes) than in the other three search product categories. The hypothesis cannot be accepted. Focusing on the choice stage in Figure 4, there are not significant differences in the total number of fixations in images between sport shoes and mobile phones or hard disks. Hypothesis 3B is only accepted for the ballpoint pen category that shows significantly lower total fixations in images. Penultimate row in Part B of Table 3 also shows that the general interaction effect between task and category is significant ($F= 2.306, p= 0.014$).

IV. STUDY 2

To deepen the study of the product category effect, we design Study 2 with more categories with experience characteristics; four new product categories are included. We also include, in this case, a more diverse sample of individuals in terms of age and education and use a better hardware device, a Tobii Pro Nano with a frame rate of 60 Hz, instead of the 30 Hz Eyetribe device used in Study 1.

4.1 Experimental Design

We performed the second experiment to reinforce the test of the hypotheses, with four types of tasks combined with four product categories. The experimental design of Study 2 is similar to that of Study 1, except for the following differences:

1. All tasks are the same, except task 3. In Study 1, the purchase task was to add a specific model to the shopping cart, and in Study 2, the individuals had to add the cheapest model. We decide to include this change to focus the attention on this task in the price area instead of the name area (see Figure 3 for the definition of the areas). In Study 1 we found that the subjects paid more total attention to the area of the product name than to the rest (see Table 2, part B). We believe that this result is a direct consequence derived

from the very design of the experiment. The selected tasks of Study 2 are:

- *Task 1:* Exploration Task: “Rate the website for overall appeal.”
 - *Task 2:* Choice Task: “Visit the website and select from those offered the product that most appeals to you based on the information provided.”
 - *Task 3:* Purchase Task: “Add the cheapest option to the shopping cart.”
 - *Task 4:* Postpurchase Task: “Find how to track your order.”
2. The product categories change: in Study 1, we considered one experience product and three search products, and in Study 2, we considered three experience products and one search product. The selected product categories are:
 - With experience attributes: backpacks, study chairs, and T-shirts.
 - With search attributes: computer screens.

4.2 Materials

For this experiment, we created four simulated online shopping websites. The setting of the simulated websites was similar to Study 1. All the design elements on the four websites were the same except for the specific product names, pictures, and prices (see Figure 5).

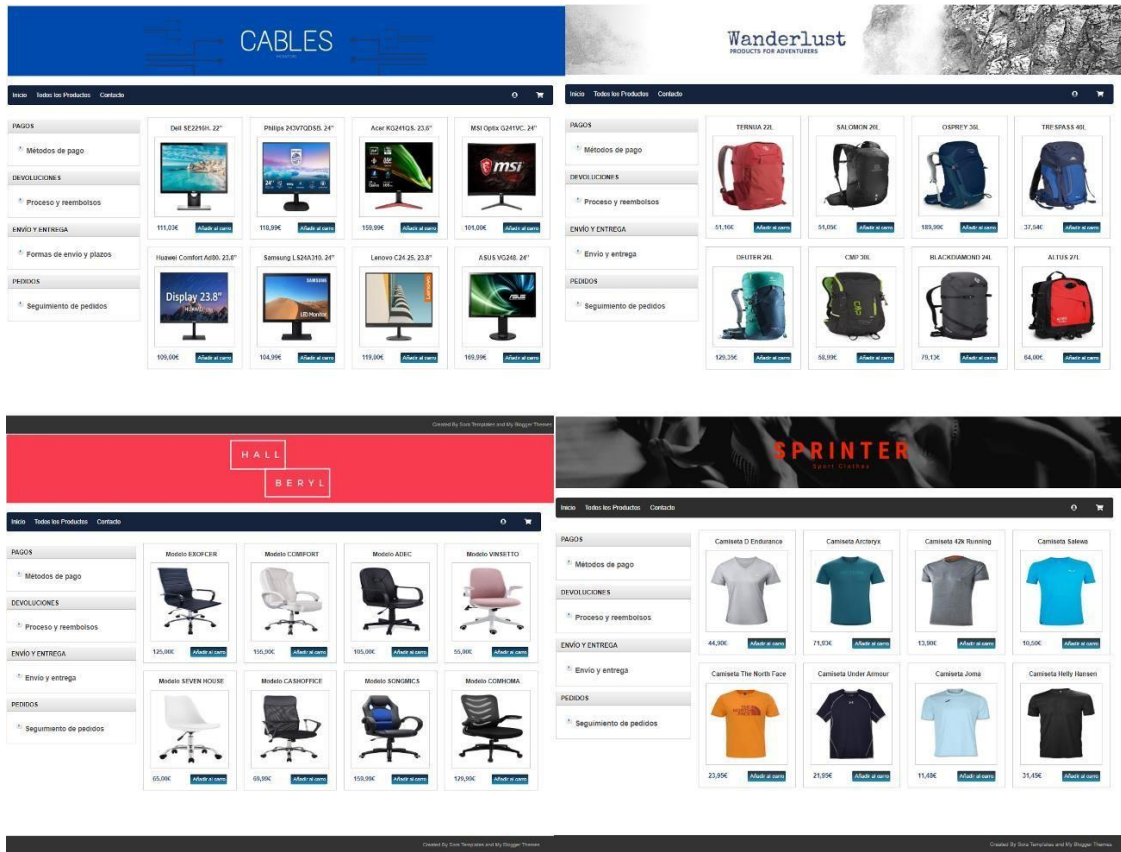


Figure 5: Simulated E-Commerce Stores for Study 2: Backpacks, Study Chairs, T-Shirts, Computer Screens

4.3 Participants and Procedures

The participants in Study 2 did not overlap with the participants in Study 1. A total of 70 participants, (40%) males and (56%) females with an average age of 40 years were recruited from a

specialized market research company. Data collection for the study took place in February 2022. Table 4 shows the descriptive statistics of both study 2 and 1.

Table 4: Descriptive Statistics

	Study 1		Study 2			
Gender	Male N = 23 (40%)	Female N= 35 (60%)	Male N= 26 (40%)	Female N= 37 (56%)	Other / Not declared N= 3 (4%)	
	Mean	Std Deviation	Mean	Std Deviation		
Age in years	24.79	4.73	39.87	14.19	66	
Time completing each task (in seconds)	11.7	8.25	13.96	5.78		

Study 2 was conducted following the same sequence as in Experiment 1, so we made this exposition shorter. We first conducted a pilot experiment with seven participants to test the experimental process and appropriateness of the

experimental setting. With no concerns raised from the pilot study, the formal experiment was conducted. Thus, we can standardize the experimental processes and guarantee the appropriateness of the experimental setting. The

participants read and signed an informed consent form before taking part in the eye-tracking experiment. The lab was reserved for one participant at a time.

The eye tracker was calibrated for each participant, which took approximately two minutes on average. After calibration, four pages were presented, having to perform on each page a purchase process task assigned in random order to avoid the learning effect. Participants' eye movement data were automatically recorded by the eye tracker. After viewing each page, subjects were asked to answer some questions. After the experiment, they were sincerely thanked, and each participant was given a monetary incentive of 20,00€. Data from four individuals were finally eliminated due to bad calibration, and the final sample consisted of the observations of 66 subjects in the four stores. We also follow the same procedure for detecting outliers as in Study 1 and discard 11 tasks performed by 11 participants.

4.4 Results Study 2

The structure of the presentation of the results of Study 2 is similar to that of Study 1. We analyze the importance of images compared to information about the product's name and information about the price. The first two columns in Table 5 (part A) show the average number of fixations on the web page before each AOI and the standard deviation of this variable. The fewer the number of fixations before an area, the sooner it attracts attention. The number of fixations in an area before an image (mean=

87.52) is lower than in the name (mean= 181.24) and price (mean= 153.9) areas, so individuals pay attention to pictures before other AOIs. The last two rows of Table 5 show the result of the ANOVA tests for this variable ($F= 12.496$, $p = 0.000$), confirming Hypothesis 1A as in Study 1, as the number of fixations before an image is lower than the number of fixations before the name or price. In this case, after the images, the price draws attention second and the product's name third.

The result of this order of attention, images first, price second and product's name third, may be due to the design of the experiment itself. In Study 2, the purchase task consisted of individuals having to click on the product cheapest, that is, they were directed to look at the area of the prices.

The last two columns in Table 5 (part B), show the mean and standard deviation of the number of total fixations in each AOI, standardized per 10,000 pixels. In this case, total attention to name (mean= 6.38) is slightly less than attention to image area (mean=6.85). This may be because the product's name is very short and is also processed quickly. As we had anticipated, it is true that the total attention to the image (mean=6.38) is less than to the price area (mean= 13.23). An ANOVA on total fixations in one AOI reveals a significant main effect ($F= 30.875$, $p= 0.000$). In view of these results, we can partially confirm Hypothesis 1B. We cannot confirm that the processing of images is faster than the processing of names. Images and brand names are processed faster while prices seem to take longer to process.

Table 5: Fixations before AOIs and Fixations by 10,000 Pixels Study 2

(A) Number of Fixations before element			(B) Total Fixations by 10.000px	
AOI	Mean	Std Dev.	Mean	Std Dev.
Image	87.52	151.13	6.85	7.85
Name	181.24	249.69	6.38	9.39
Price-cart	153.90	207.11	13.23	12.80
F value	12.496		30.875	
Pr(>F)	0.000***		0.000***	

*** significant at 1% level

To test Hypotheses 2A, we use the number of fixations on the web page before an image and

compute the average values and the standard deviation of this variable considering the different

tasks, product categories, product positions and gender of the subject (Table 6 - part A, first three columns). In addition, the last rows of part A of Table 6 correspond to the ANOVA tests for these variables. We expect that product images attract attention faster in the choice stage than in the purchase and postpurchase stages. Images attract attention slightly earlier in the purchase task (mean= 160.15), then the choice task (mean= 161.75) and significantly later in the postpurchase task (mean= 178.84). The ANOVA test reveals a significant main effect ($F= 20.474, p= 0.000$).

The results show that there are no differences between the product choice and the purchase task, and that the hypothesis is only valid when the choice task is compared with the postpurchase task. Therefore, Hypothesis 2A is partially confirmed.

To test Hypotheses 2B, we compute the mean and standard deviation of the number of total fixations in each AOI considering the different tasks, standardized per 10,000 pixels, that can be observed in the upper part of Table 6 (part B). In addition, the last rows of part B of Table 6 correspond to the ANOVA tests. Images attract more attention when they are relevant to the task at hand, in the choice stage (mean= 47.02) and images attract less attention when they are not crucial for completing the task: when purchasing the cheapest product (mean= 13.40) or when locating product tracking information (mean= 21.17). Table 6 also shows that the task's total number of fixations is significant ($F= 58.258, p= 0.000$). Hypothesis 2B is confirmed: images attract more global attention for product choice than for the other tasks.

In addition to the task, Table 6 also shows the average and standard deviation of number of fixations on the web page before an image and total fixations in images considering the different product category and the position of the product

on the webpage of the product considered. We also account for gender and age as control variables.

The main effect of the category is significant both in fixations before images ($F= 8.523, p= 0.000$) and in total fixations in images ($F = 2.660, p = 0.047$). Individuals look at images earlier in experience products (T-shirts mean= 165.29, Backpacks mean= 174.09, Study Chairs mean= 177.52) than in search products (Monitors mean= 220.67), although the total number of fixations on images is higher on monitors (mean= 36.56).

Regarding the position of the images in the stores, we detect a significant main effect of the product position in the number of fixations before images ($F= 29.467, p= 0.000$) but not in the total number of fixations ($F= 1.492, p= 0.166$). Images in the upper row (means= 78.79, 78.51, 170.93, 242.99) attract attention earlier than images in the second row (means= 247.6, 220.32, 251.86, 229.25). The product located third in the second row is the last to attract attention (mean= 251.86).

We find a significant effect of gender in the variable number of total fixations in the images ($F= 7.200, p = 0.001$) due to the difference in the very small group of subjects in the category "others". We also find significant differences for age groups (fixations before images ($F= 5.922, p= 0.003$) and total number of fixations ($F = 3.483, p= 0.031$). Images attract attention earlier for younger people, but elderly individuals overall pay more attention to them. Boardman and McCormick (2019) obtained a similar result: individuals between the ages of 20–30 had the quickest fixation durations on the product image, whereas those over 50 spent the most time looking at it. Thus, consumers in their 20s did not study the images for long.

Table 6: Fixations before Images and Fixations in Images by 10,000 Pixels (Study 2)

	(A) Fixations before images		(B) Total Fixations in images	
	Mean	Std Dev.	Mean	Std Dev.
Task:				
Site exploration	232.79	230.79	28.17	29.18

Product choice	161.75	161.67	47.02	40.62
Purchase	160.15	164.71	13.40	24.34
Postpurchase	178.84	211.08	21.17	37.68
Category:				
Monitors	220.67	215.41	36.56	40.76
Backpacks	174.09	150.33	25.00	31.31
Chairs	177.52	204.37	33.42	38.05
T-shirts	165.29	190.29	28.79	32.40
Product Position:				
Position 1	78.79	130.67	30.94	33.24
Position 2	78.51	125.46	38.54	43.09
Position 3	170.93	164.94	31.70	35.58
Position 4	242.99	214.61	30.84	32.67
Position 5	247.36	221.99	25.18	33.98
Position 6	220.32	196.70	31.56	40.56
Position 7	251.86	214.99	29.57	34.81
Position 8	229.25	166.49	30.81	33.76
Gender:				
Male	197.99	202.39	29.96	33.73
Female	177.84	190.00	30.51	33.53
Other / Not declared	180.31	177.21	46.88	65.83
Age:				
Less than 30	161.95	188.29	29.33	32.29
30-49	180.40	176.08	29.57	32.27
50 or more	213.66	215.18	34.90	43.38
ANOVA Test	(A) Fixations before images		(B) Total Fixations in images	
Variable	F value	Pr(>F)	Variable	F value
Task	20.474	0.000***	58.258	0.000***
Category	8.538	0.000***	2.660	0.047
Product Position	29.467	0.000***	1.492	0.166
Gender	0.290	0.748	7.200	0.001***
Age (Quantiles)	5.922	0.003***	3.483	0.031**
Task*Category	1.561	0.122	2.013	0.035**
Task*Product Position	1.199	0.243	0.823	0.693

* significant at 10% level
 ** significant at 5% level
 *** significant at 1% level

To test Hypotheses 3A and 3B, it is necessary to observe the interaction effect of the task (choice) and the category in the attention to the images in Figure 6. Panel A in Figure 6 shows the interaction effect of task and category for the variable number of fixations before images.

Images attract attention faster in the choice stage in experience product categories (backpacks,

study chairs and t-shirts) and they attract much less attention in the search category (monitors), where the product description is more useful for making product choices. These results lead us to confirm Hypothesis 3A: images attract attention faster in the choice stage in experience product categories than in search product categories.

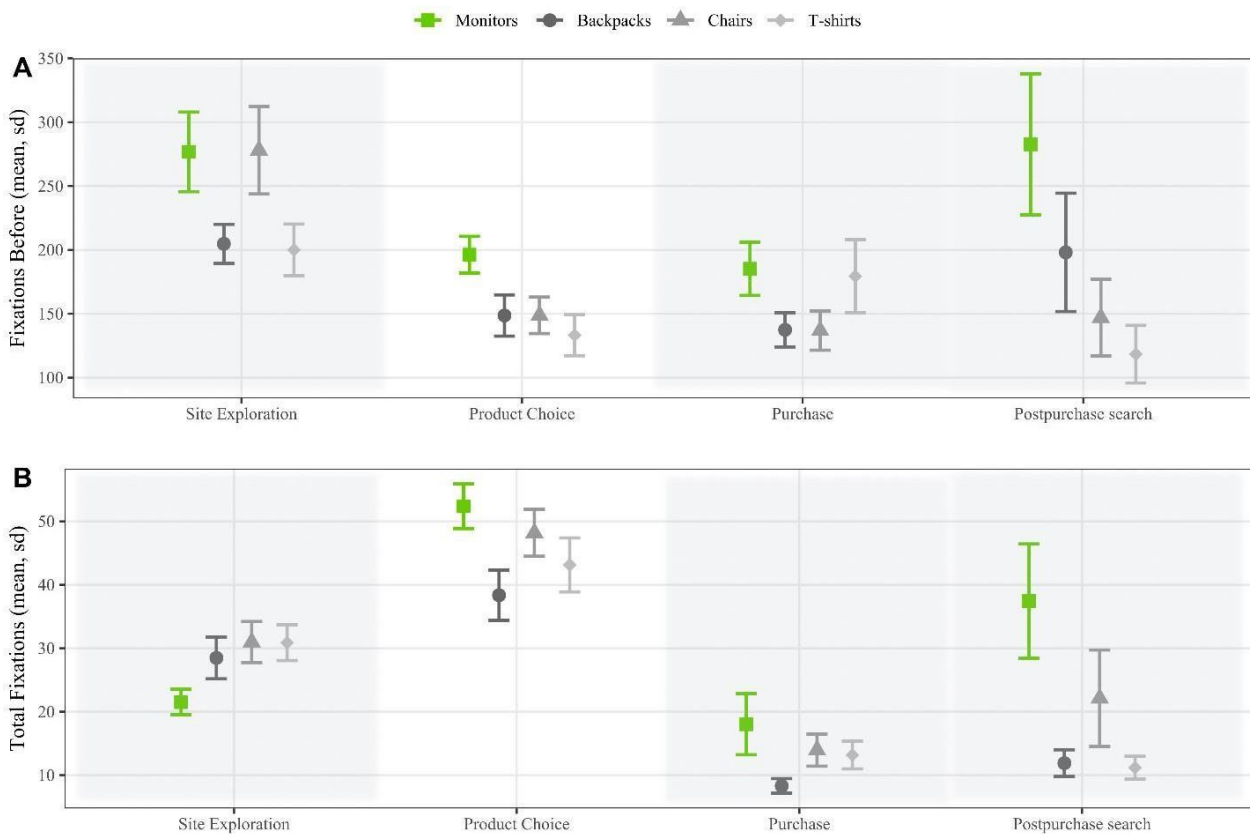


Figure 6: Interaction Effect of Task and Category in Attention to Images (Study 2)

Panel B in Figure 6 shows the interaction effect of task and category for the variable total fixations in images. Results in Table 6 show that this interaction effect between task and category is significant ($F = 2.013, p = 0.035$). However, the direction of the interaction effect is contrary to that expected. Images seem to be more important for choice of monitors than for backpacks or t-shirts. No significant difference is found between monitors and chairs. In this case, images attract more attention for search categories in product choice. Specifically, images seem to be more important for the monitors in the choice, an effect not anticipated. Therefore, Hypothesis 3B is rejected in Study 2.

V. DISCUSSION

Table 7 presents a summary of the result of the hypotheses raised in study 1 and 2. This table shows that of the six hypotheses proposed, two have been confirmed, another two partially and another two rejected.

Our results confirm both in Study 1 and in Study 2 that images attract attention faster than textual elements. However, there are differences in which item is fixed in second place. Specifically, in Study 1, the second element that first attracts attention is the name of the product, while in Study 2 it is the price. Precisely, the purchase task in Study 1 consisted of adding a certain model to the cart

and in Study 2 it was necessary to add the cheapest product. Our research design can therefore explain this result.

Table 7: Summary of Hypotheses Testing

Hypotheses	Results	Comment
<i>H1A</i> : Product images attract attention faster than brand name and product price in the product area.	Confirmed	Accepted in Study 1 and Study 2: images attract attention faster than textual elements
<i>H1B</i> : Product images attract less total attention than brand name and product price in the product area.	Partially confirmed	Images attracts less attention than brand names confirmed in Study 1, not significant differences in Study 2 Images attract less total attention than prices in Study 1 and Study 2
<i>H2A</i> : Product images attract attention faster in the choice stage, when they are relevant to the task, than in the purchase and postpurchase stages, when they are not.	Rejected	Rejected in study 1: attention to images is faster in purchase and postpurchase tasks. Not significant for purchase task in Study 2, accepted for postpurchase task in Study 2
<i>H2B</i> : Product images attract more total attention in the choice stage, when they are relevant to the task, than in the purchase and postpurchase stages, when they are not.	Confirmed	Accepted for study 1 and study 2
<i>H3A</i> : Images attract attention faster in the choice stage in experience product categories than in search product categories.	Partially confirmed	In study one confirmed for all categories but ball-point pens In study two confirmed
<i>H3B</i> : Images attract more total attention in the choice stage in experience product categories than in search product categories.	Rejected	Only accepted for the differences with ball point pens in Study 1. Rejected for backpacks and t-shirts in study 2. Not significant differences for mobile phones (Study 1), hard disks (Study 1) and chairs (Study 2)

Also, in both studies, it is found that prices attract more total attention than images. These results show that numerical information is more difficult to process, takes more time and that is why the number of total fixations is greater in both studies. Authors like Rayner et al. (2001) and Hernández-Méndez & Muñoz-Leiva (2015) showed that the participants in their experiment spent more time looking at text than at the image.

Our results in Study 1 and 2 pointed in the same direction with the specific textual information of products' prices. Consumers' response to price stimuli could involve, in addition to attention, comprehension, retention, and recall (Jacoby and

Olson, 1977). In the second study, we cannot confirm that images attract less total attention than product names. This can be due also to our research design, more focused on prices for the purchase task in Study 2.

When consumer goals are taken into account, they influence attention. However, we find a different result to that expected in the case of the attraction effect. Images attract attention faster at the purchase and post-purchase stage, rather than at the product choice. This may be due to the targeted nature of the purchase and post-purchase tasks in our design for Study 1 and Study 2. The purchase and post-purchase tasks

are concrete and give a greater sense of urgency in their execution than the choice of product.

Being focused and directed tasks, individuals go more quickly to the product area and observe not only images, but the three elements (images, names and prices) faster than for the choice and exploration tasks. We have conducted two robustness checks in order to test this explanation. First, we have computed the mean number of fixations before prices and product names for the different tasks in Study 1 and 2, and they are indeed lower for purchase and postpurchase tasks than for exploration and choice tasks for all categories in Study 1 and 2.

Secondly, we have excluded the purchase task for the analysis ANOVA in Study 1 and 2, to test for the possible effect of the change in the design for the purchase task between studies and we obtained similar results. In future studies, it would be convenient to explore new measures of attraction that could distinguish these confounding effects. As stated in Hypothesis 2B, both in Study 1 and in Study 2, we confirm that images attract more total attention in the choice stage, when they are relevant to the task.

Attention to product images in the choice task is more than two times the attention in the purchase tasks both in Study 1 and 2. Also, the attention to images in the purchase stage is 176% higher in Study 1 and 203% higher in Study 2 to the attention to images in the postpurchase task. This result has not been previously tested in the literature. Although we didn't have any specific hypothesis about this effect, the attention to images is also higher in the choice stage than in the exploration task, when product images are also relevant.

Finally, comparing the importance of product images in search and experience product, images attract attention faster in experience products (sport shoes in Study 1 and backpack, t-shirts and chairs in Study 2) than for search products (mobile phones, hard disks in Study 1 and monitors in Study 2) but this effect is not consistent with the results for ballpoint pens that attract attention faster in Study 1. Regarding total

attention to images, we obtained mixed results, as there are not significant differences between sport shoes, mobile phones and hard disks in Study 1 nor between monitors and chairs in Study 2, and the attention to images in backpacks choice (an experience product) is lower than in monitors choice. We conclude that there are differences in the attention to product images (both in terms of speed and duration) between product categories but these differences are not attributable to their search or experience characteristics but to other differences. For example, ballpoint pens are rarely bought online by our subjects (only 3% of them have purchased them online). Ballpoint pens are small objects, cheap and tend to be easily lost, so they are renewed with some frequency before the product is consumed (less use of the image in the choice, the price will be more relevant). The category also involves a lower level of risk than the other three categories and, therefore, a lower level of our subjects' involvement. Monitors in Study 2 are within the search product classification, but they also imply a higher level of risk and involvement with the purchase of the product (Dholakia, 1997). They are expensive objects and remain visible in a space being part of the decoration of a room and their appearance can influence their choice.

VI. CONCLUSIONS, FUTURE LINES OF RESEARCH, AND LIMITATIONS

In this study, we use the Visual Marketing Attention model proposed by Wedel and Pieters (2008) and Stimulus- Organism-Response (S-O-R) model proposed by Mehrabian and Russell (1974) as an integrated theoretical framework for understanding the effect of product pictures on B2C websites.

First, consistent with previous studies, we observed how product images attract attention more quickly, as they are observed before other information (Adaval et al., 2018; Hernández-Méndez and Muñoz-Leiva, 2015). We also obtain robust results regarding the position of the images in the online stores. Images in the upper row and the left side attract earlier attention than images in the second row and the right side of the page. The image in the second

position of first row and the third product in the second row attract more attention and the first and second images in the second row attract less attention. Preliminary research suggested that the central area of the screen encompasses the majority of visual attention (Brasel and Gips, 2008; Goldstein et al., 2007). We have confirmed that product pictures attract less attention than the product name and the price information. Authors like Rayner et al. (2001) and Hernández-Méndez & Muñoz-Leiva (2015) showed that the participants in their experiment spent more time looking at text than at the image.

Also, the importance of product images is not independent of consumers' goals in the two studies. We show how more time is devoted to images, more attention is paid to them when relevant for the task at hand, in our case, product choice and, to a lesser extent, when locating a product by name or price and when looking for tracking information. In short, images attract more global attention when individuals are immersed in the task of choosing the product in their purchase journey than for other types of tasks. Contrary to what we had predicted, in both studies, we obtain that when individuals make purchase and postpurchase tasks, they put their attention first on the product images. One would expect that for this type of task, individuals would first pay attention to the textual information, which is essential for fulfilling the task. However, having to carry out directed tasks seems to lead individuals to focus on the product area in the first place. In a future paper, it would be convenient to consider the fixations before the product area variable to test the hypothesis about product images attract attention faster in the choice stage than in the purchase and postpurchase stages.

We have also studied the differences between product categories. We find a complex interaction effect of task and category, not simply related to search or experience categories or the level of risk. Therefore, we cannot confirm that images attract more attention for all experience categories in product choice, and the conclusions are specific for each product category. For example, in study 1, there are significant

interaction effects of task and category in the speed of attention to product images. For choosing sports shoes (experience), individuals look first at the images in front of the search products like phones and hard drives. This effect is not significant in ballpoint pens. In study 2, for choosing experience products (backpacks, chairs, t-shirts), individuals look first at the images in front of the monitors (search). This is a very significant result because it highlights the importance of images in experience products to provide information initially through the sense of sight. However, this information is less necessary when it comes to search products.

Also, in study 1, we find an interaction effect of task and category in the total attention to each AOI. This effect is not significant in mobile phones and hard disks. Thus, this effect is mainly due to the minor use of images in product choice for the ballpoint pens. Buying ballpoint pens involves low level of risk and involvement. Pieters and Warlop (1999) find images to be more important when the motivation is higher. Previously, other authors had observed differences in attention to print advertising images according to the involvement with the category (Pieters and Wedel, 2004; Singh et al., 2000).

In study 2, the interaction effect of task and category is significant in the opposite direction. Monitors (search) require full attention to images more than experience products (backpacks and t-shirts). This effect is not significant in chairs.

Thus, this effect is mainly due to the increased use of images in product choices for pc monitors (search). It is probably due to the computer screens are technological products in which visual design is important in a similar way to a television. In Study 1 mobile phones require similar total attention to images than sport shoes. It seems that in technological products the importance given to design and aesthetics is not typical of search products.

Therefore, more research, with a higher number of categories, will be needed to confirm the pattern of the attentional process to images

across shopping tasks and product categories. Our data do not allow us to discern the relative importance of purchase habits and category risk in these results, but this is a potentially fruitful area for future research.

Finally, in our second study, we have obtained that age impacts the way that consumers respond to online product presentation and shows that retailers' targeting different age groups should consider this when investing in their product presentation features. Younger people (under 30 years of age) notice the images first, and those over 50 years of age spend longer looking at pictures and less time assessing the text areas. These findings show that age is an important factor to consider in website design studies, particularly with the aging population and increasing number of older people shopping online.

This study has focused on the presentation of product images in a basic format as the simplest means to overcome the intangibility of online products. However, this first research step could be extended to other types of presentations to see more details and provide more information about products such as 3-D images and zooming technology (Boardman and McCormick, 2019) or olfactory scenes (Flavián et al., 2021; Krishna et al., 2014) in the future. In addition, the image size factor could also be considered. Research on online shopping has shown that the size of the image is positively related to generating favorable affective and cognitive attitudes and higher purchase intentions (Kim and Lennon, 2008).

Our study provides valuable evidence of differences in product images' importance due to factors such as the purchase task and the product category. In the introduction, we question the usual retailers' fixed image layouts strategy. Our results show that using a fixed layout for product information could not be optimal. These differences are an opportunity for e-retailers to implement technological solutions tailoring the experience on the webpage, optimizing customers' experience, and gaining competitive advantage.

ACKNOWLEDGMENTS

This work is part of the R+D+i project PID2019-108554RB-I00 financed by the AEI, DOI 10.13039/501100011033

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Keywords: N. A,

Classification: DDC Code: JEL: K41 - Litigation Process

Language: English



Great Britain
Journals Press

LJP Copyright ID: 146435
Print ISSN: 2633-2299
Online ISSN: 2633-2302

London Journal of Research in Management and Business

Volume 23 | Issue 4 | Compilation 1.0



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ABSTRACT

Rules of natural justice are critical to administration of justice and the tenets of the rule of law which are the bedrock of Nigeria's constitutional democracy. These rules are copiously captured in the 1999 constitution of Nigeria as amended under the right to fair hearing which forbids one from being a judge in his own cause, and that no one should be condemned or unheard. Without any doubt, these rules represent the hallmark of due process and fair hearing traceable to the natural law doctrine which modern societies pride themselves to promote. However, the Asset Management Corporation of Nigeria Act provides for special recovery procedures of huge bank loans which have accumulated over the years and become non performing.

The Asset Management Corporation of Nigeria (AMCON) was established as a special purpose vehicle with special powers under judicial cover, to seize assets and freeze accounts of these debtors through exparte applications without recourse to them, all in a bid to recover these bad loans. This special procedure has generated a lot of concerns and raised a number of legal questions as to the legality of the provisions. This paper therefore seeks to address the legal and constitutional issues thrown up by these unique recovery powers. It appraises the legality of the AMCON Act in light of the constitutional provisions and judicial pronouncements on the issue. The paper concludes that the court has the sacred responsibility to assert the supremacy of the constitution with certainty and ensure that AMCON discharges its mandate in accordance with the rule of law without compromising individual rights.

I. INTRODUCTION

Rules of natural justice have developed with civilisation and the height of its compliant is therefore considered as a proper measure of the level of civilisation and rule of law in any society. One of the theories of law posit that law came about from a divine source, that is natural to man, this is the origin of natural justice. Natural justice implies fairness, reasonableness, equity and equality. Natural justice is the concept of common law. The American system recognises it as 'procedural due process'. Natural justice represents higher procedural principles developed by judges which every administrative agency must follow in taking any decision adversely affecting the rights of a private individual. These principles are codified in various constitutions to show the level of importance the society attach to them and their institutionalization. In Nigeria, the principle is codified in section 36 of the Nigerian Constitution. The principle under the Nigerian Constitution incorporates all the elements of fair trial principle. Particularly, section 36 of the Constitution provides for the twin pillars of natural justice:

1. Nemo in propria causa judex, esse debet – no one should be made a judge in his own cause, or the rule against bias.
2. Audi alteram partem – no one should be condemned unheard.

Exparte applications are by their nature contrary to the provisions of the Constitution but can be accepted in certain circumstances. Some pieces of legislation in Nigeria have incorporated the statutory provisions allowing it to use exparte applications as, including section 36 of the Nigerian Drug Law Enforcement Agency Act and

section 29 of the Economic and Financial Crimes Commissions Act.

Section 49(1) and section 50(1) of the Assets Management Corporation of Nigeria (AMCON) Act 2010 as amended in 2021 and Order 4 of the Federal High Court Assets Management Corporation of Nigeria (AMCON) Proceedings Rules, 2018 gives AMCON the power to apply through *ex parte* applications for interlocutory orders. This work examines the current statutory provisions regarding the powers of AMCON in this area and judicial authorities to ascertain the constitutionality of this practice.

II. ASSETS MANAGEMENT CORPORATION OF NIGERIA (AMCON)

The global financial crises of 2008-2009 had devastating effect on the global financial systems all over the world. In order to reduce the impact on the Nigerian banking system considering the number of non-performing loans in the country, it became imperative to have a 'Special Purpose Vehicle (SPV) to revive, stabilise banks and forestall any systemic breakdown of the Nigerian financial system'¹. Asset Management Corporation of Nigeria (AMCON) was established through the AMCON Act enacted on the 19 July 2010 as a 'key stabilizing and re-vitalizing tool aimed at reviving the financial system by efficiently resolving the non-performing loan assets of the banks in the Nigerian economy. Stabilizing and revitalizing tool in Nigeria economy'².

The objectives of AMCON as set out in Section 4 of the AMCON Act and it include:

- 1) To assist eligible financial institutions (EFI) to efficiently dispose of eligible bank assets;
- 2) To efficiently manage and dispose of eligible bank assets, and

- 3) To obtain the best achievable financial returns on eligible bank assets (EFA) acquired by the Corporation in pursuance of the AMCON Act having regard to certain specified matters.

In pursuing and achieving its third object, AMCON is required to have regard to certain specified matters, to wit:

- the need to protect, or otherwise enhance the long-term economic value of those assets;
- the cost of acquiring and dealing with those assets;
- AMCONs cost of capital and other costs;
- any guidelines or directions by the Central Bank of Nigeria; and any other factor which AMCON may under Section 4(c)(v) of the AMCON Act, consider relevant to the achievement of its objects.³

The Court of Appeal explained the idea of AMCON in *FUTO v. AMCON & Ors*⁴ thus "Sections 4(a), 5(a) and 61 of AMCON Act clearly vests jurisdiction on AMCON to buy eligible assets from financial institutions as recommended by the Central Bank of Nigeria and they in turn recover the debts or resuscitate the debtor with a view to keeping it in business to generate funds to pay the debts owed".

AMCON has the power to acquire designated EFAs from EFIs⁵ in so doing, AMCON will purchase all the toxic assets from banks to enable the banks have clean balance sheet.⁶ Some of these NPLs have been in the EFIs books for years and all efforts by the EFIs to recover the debts through traditional banking and legal means had been ineffective for several reasons. Chief among these reasons is the manipulative use of legal means by obligors to ensure that no progress is made in enforcing the security on these loans.

¹ A.L. Ikobi-Anyali 'Managing Non-Performing Loans in Nigeria: An Appraisal of the Asset Management Corporation of Nigeria (AMCON)' Nnamdi Azikiwe University Journal of Commercial and Property Law Vol. 7(1) 2020 <https://journals.unizik.edu.ng/index.php/jcpl/article/view/341>

² This is AMCON's vision boldly written on their website <https://amcon.com.ng/resources.php> accessed on February 20, 2022.

³ Rodethorne (Nig) Ltd & Anor V. AMCON (2020) LPELR-50395(CA)

⁴ (2019) LPELR-47327(CA)

⁵ AMCON Act

⁶ AM Adeolu, 'Impact of Asset Management Corporation of Nigeria (AMCON) On the Securitisation in the Nigerian Banking Sector' [2015] *Global Journal of Contemporary Research in Accounting, Auditing and Business Ethics* 284 https://globalbizresearch.org/files/2036_gjcr_matthew-a-abata-134626.pdf

The Court in *Fiogret Ltd & Anor v. AMCON*⁷ stated thus:

The Act, which is a Statute enacted by the National Assembly, establishes the Respondent, AMCON purposefully for the aggressive pursuit of bad debts from companies and individuals who have made a caricature of the country's financial system and have devised strategies to evade paying back these loans or surrendering the assets for which the loans were secured in the first place. The Corporation is an unusual vehicle used to recover funds and thrives on the peculiar provisions of the enabling Act, which sets out procedures for such recovery through judicial cover. It is also a fast-track procedure which brooks no delay. Of particular relevance are the special powers of the Respondent captured in Sections 48 and 49 of the Act.

It follows therefore that using the same traditional banking and legal means by AMCON would have also been ineffective and impossible to recover these debts. In order to solve this problem, AMCON as a special purpose vehicle was designed to possess extraordinary powers to enable it to achieve its immediate mandate. Some legal procedures have also been relaxed in AMCON debt recovery matters. For instance, Section 34 (6) of the AMCON Act⁸ provides that no injunction, preservative or restorative or Order, interim, interlocutory, perpetual or like order described shall be granted against the AMCON or its director or officers in any action, suit or proceedings in relation to debt recovery or performance of AMCON's duties. Several lawyers and authors have questioned this law and contended that the provision is draconian and violates the judicial powers provided under section 6 of the Nigerian Constitution⁹.

To carry out its special functions, AMCON is given special powers including:

1. A protected receivership regime which enables it to appoint its own receiver for a debtor company¹⁰;
2. Power to apply ex-parte for possession of a debtor's property while filing a debt recovery action¹¹
3. Power to apply ex-parte for attachment and freezing of a debtor's funds while filing a debt recovery action¹²
4. Special powers in bankruptcy proceedings where a debtor can be adjudged bankrupt by virtue of a receiving order made pursuant to the Act¹³
5. Simpler set of winding up rules¹⁴; and
6. Special debt recovery procedure where the Chief Judge of the Federal High Court has been obligated to designate Judges for the swift hearing and determination of AMCON debt recovery matters¹⁵

III. INTERIM APPLICATIONS UNDER AMCON ACT

As earlier stated, the AMCON Act gives AMCON special powers, including the power to apply for interlocutory orders of forfeiture in an interim application. Section 49(1) of the AMCON Act provides thus:

Where the Corporation has reasonable cause to believe that a debtor or debtor company is the bonafide owner of any movable or immovable property, it may apply to the court, before or at the time of filing an action for debt recovery or other like action or at any time after the filing of action, and before or after the service of the originating process by which action is commenced on the debtor or

⁷ *Fiogret Ltd & Anor v. AMCON* (2018) LPELR-49828(CA)

⁸ As amended in 2019

⁹ 'Court Injunctions and the Effect on AMCON's Debt Recovery Duty' *Business Post* of January 20, 2021 <https://businesspost.ng/featureoped/court-injunctions-and-the-effect-on-amcons-debt-recovery-duty/>

¹⁰ Section 48 of the AMCON Act *Afrijet Airlines Ltd V. Elias & Anor*(2019) LPELR-47304(CA) *Amcon V. Canvass Farms (NIG) LTD & ORS* (2021) LPELR-54651(CA)

¹¹ Section 49 of the AMCON Act *Fiogret Ltd & Anor v. AMCON* (2018) LPELR-49828(CA)

¹² Section 50 of the AMCON Act *Fiogret Ltd & Anor v. AMCON* (2018) LPELR-49828(CA)

¹³ Section 51 of the Act. See *AMCON V Mr. Tolu Ojukutu* unreported suit no. FHC/L/BK/7/2019 delivered by Hon. Justice M. S. Hassan of the Federal High Court Lagos Division on July 6, 2022

¹⁴ Section 52 of the Act. *AMCON v. Capital Oil And Gas Industries Ltd* (2017) LPELR-50201(CA)

¹⁵ Section 53 of the Act

debtor company, by motion ex-parte for an interlocutory order granting possession of the property to the Corporation pending the hearing and determination of the debt recovery or other action to abide the decision in such action. (Emphasis supplied)

Section 50(1) of the AMCON Act provides thus:

Where the Corporation has reasonable cause to believe that a debtor or debtor company has funds in any account with any eligible financial institution, it may apply to the court, before or at the time of filing an action for debt recovery or other like action or at any time after the filing of action, and before or after the service of the originating process by which action is commenced on the debtor or debtor company, by motion ex-parte for an interlocutory order freezing the debtor or debtor company's account. (Emphasis supplied)

Section 61 of the AMCON Act defines debtor or debtor company thus:

"Debtor" or "Debtor Company" means any borrower, beneficiary of an eligible bank asset and includes a guarantor of a debtor, guarantor or director of a debtor company¹⁶

As stated earlier, the AMCON Act gives AMCON special powers. Section 49(1) of the AMCON Act provides thus:

Where the Corporation has reasonable cause to believe that a debtor or debtor company is the bonafide owner of any movable or immovable property, it may apply to the court, before or at the time of filing an action for debt recovery or other like action or at any time after the filing of action, and before or after the service of the originating process by which action is commenced on the debtor or debtor company, by motion ex-parte for an interlocutory order granting possession of the property to the corporation pending the hearing and determination of the debt

recovery or other action to abide the decision in such action.

In deciding a case on section 49 of the AMCON Act, the Court of Appeal in *Elder Henderson Enyinna Somiari Jumbo V. Asset Management Corporation of Nigeria & Ors*¹⁷ said "This is a sui generis proceeding and cannot be treated like the ordinary and general civil causes." The court further agreed that the enforcement of this proceedings must be strictly obeyed. The Court however stated that a claim can be filed on the case before application for interim injunction. The court upheld the provision of section 49 and 50 of the AMCON Act. In *Nnabue B. Konye V. Assets Management Corporation of Nigeria*¹⁸, the Court approved the procedure of making such exparte applications before or after or while filing an action for debt recovery. Also, in *America Specification Autos Limited & Anor V. Asset Management Corporation of Nigeria*¹⁹ the Court of Appeal unanimously held that the provisions of section 49 and 50 of the AMCON Act are special provisions and that they are not in contravention of section 36 or section 44 of the Constitution. The court in its judgment mentioned the cases of *7UP Bottling Go. Ltd. v. Abiola and Sons Ltd.* (199) 3 NWLR (pt.383) and *Nathaniel Adedamola Babalola Kotoye v Central Bank of Nigeria & Ors*²⁰.

These provisions are novel and special, and there are very few cases that have comprehensively analysed them. For instance, no reported Supreme Court decision has analysed these provisions of the AMCON Act against constitutional provisions of fair hearing and natural justice. It is therefore necessary to analyse similar provisions and situation that have been decided on by courts in understanding the constitutionality of these provisions. This is in line with the principles of *stare decisis*. The principle of *stare decisis* is properly articulated in *Adesokan & Ors V. Adetunji & Ors*²¹ thus:

¹⁷ (2020) LPELR-50231(CA)

¹⁸ (2019) LPELR-49825(CA)

¹⁹ (2017) LPELR-44016(CA)

²⁰ (1989) LPELR-1707(SC)

²¹ (1994) LPELR-152(SC)

¹⁶ See the Court of Appeal's interpretation of the word 'Debtor' in *Imasekha v AMCON & Ors* (2018) LPELR – 45980(CA).

Stare decisis et non quela movere, meaning literally - To stand by what has been decided and not to disturb and unsettled things which are established. Stare decisis thus means to abide by former precedents where the same points come again in litigation. Stare decisis presupposes that the law has been solemnly declared and determined in the former case. It thus precludes the Judge of the subordinate Courts from changing what has been determined. In other words, they should keep the scale of justice even and steady not liable to waiver with every Judge's opinion." "Under the doctrine of stare decisis, lower Courts are bound by the theory of precedent. Now a precedent is an adjudged case or decision of a higher Court considered as furnishing an example or authority for an identical or similar case afterwards arising or a similar question of law. Courts attempt to decide cases on the basis of principles established in prior cases. Thus, prior cases which are close in facts or legal principles to the case under consideration are called precedents." ²²

The principle applies when "the facts of the decided case are substantially the same with the case at hand"²³. The rule also requires counsel to follow the most recent decision of the highest court on the point canvassed and not just any decision²⁴.

To analyse the provisions, there is need to call in aid the provisions of the EFCC Act and the NDLEA Act. Section 20 of the EFCC Act provides for forfeiture after conviction²⁵ and forfeiture to the Federal Government²⁶. Sections 28, 29 and 30 in part V of the EFCC Act and Section 36 of the NDLEA Act provide for interim forfeiture of assets.

²² Per SYLVESTER UMARU ONU, JSC (Pp 56 - 56 Paras A - F) See recent case of STATE v. YANGA (2021) LPELR-53086(SC) and Adegoke Motors Ltd. Vs Adesanya (1989) 3 NWLR (Pt. 109) 250; Mailantarki Vs Tongo (2017) 5 - 6 SC (Pt. II) 132; University of Lagos Vs Olaniyan (1985) LPELR - 3419 (SC) @ 26 C - F."

²³ Mailantarki Vs Tongo (2017) 5 - 6 SC (Pt. II) 132

²⁴ OBIUWEUBI v. CBN. (2011) LPELR-2185(SC)

²⁵ Sec. 20 EFCC Act

²⁶ Sec. 21 EFCC Act

SECTION 36(a) and (b) of the NDLEA ACT²⁷ provides thus:-

Where (a) the assets or properties of any person arrested for an offence under this Act have been seized; or (b) any asset or property has been seized by the Agency under this Act, the Agency shall cause an application to be made to the Federal High Court for an interim order forfeiting the property concerned to the Federal Government and the Federal High Court shall, if satisfied that there is prima facie evidence that the property concerned is liable to forfeiture make an interim order forfeiting the property to the Federal Government.

Sections 28, 29 and 30 of the EFCC Act provide thus:

28. Where a person is arrested for an offence under this Act, the Commission shall immediately trace and attach all the assets and properties of the person acquired as a result of such economic or financial crime and shall thereafter cause to be obtained an interim attachment order from the Court.

29. Where- (a) the assets or properties of any person arrested for an offence under this Act has been seized ; or (b) any assets or property has been seized by the Commission under this Act, the Commission shall cause an ex-parte application to be made to the Court for an interim order forfeiting the property concerned to the Federal Government and the Court shall, if satisfied that there is prima facie evidence that the property concerned is liable to forfeiture, make an interim order forfeiting the property to the Federal Government.

30. Where a person is convicted of an offence under this Act, the Commission or any authorised officer shall apply to the Court for the order of confiscation and forfeiture of the convicted person's assets and properties acquired or obtained as a result of the crime subject to an interim order under this Act.

²⁷ CAP. N30, Laws of the Federation of Nigeria, 2004,

The provisions of these sections are meant to protect the proceeds of crime pending the final decision of the court to avoid any tampering with the property. In *Francis Atuche vs. Chairman, Economic & Financial Crimes Commission* ²⁸the court explained thus:

The interim seizure allowed by section 25 and 26 of the EFCC Act is to prevent the dissipation or disposing of assets reasonably suspected to be proceeds of economic/financial crime before the determination of the criminal trial against an accused implicated in the crime. Although section 44 (2)(b) of the 1999 Constitution, as amended, referred to by the appellant states that the impossibility of forfeitures for breach of any law should be enforced after conviction for an offence, Section 44(2)(k) of the same Constitution which comes after Section 44 (2) (c) thereof qualifies it that the temporary taking of possession of property for the purpose of examination, investigation or enquiry is proper and constitutional.

*This power must however be exercised in line with the law and cannot be exercised arbitrarily. In George Chigbu v Economic and Financial Crimes Commission & 3 Ors*²⁹, the court reiterated this when it said thus:

I have carefully read the EFCC Act and nowhere can they exercise the power of forfeiture in an arbitrary manner as done in this case. Section 20 of the EFCC Act talks about forfeiture upon conviction. Sections 26 and 28 of the EFCC Act deal with interim forfeiture and these orders are always made upon a proper application which the High Court or Federal High considers on the merit exercising its powers under Section 19 of the EFCC Act.

The order of forfeiture under the EFCC Act is also granted at the discretion of the court and the

²⁸ Ikyegh JCA in *Francis Atuche vs. Chairman, Economic & Financial Crimes Commission* (unreported) Appeal No: CA/L/830/10; delivered on the 28th of June, 2013.

²⁹ (Unreported) suit no: FCT/HC/M/5678/10 delivered on 31 May, 2011 by Hon. Justice A. I. Kutigi

court is not bound to make such order. In *Federal Republic of Nigeria V Prince Abubakar Audu*³⁰ the court stated thus:

Reliefs available to an applicant in an *ex parte* application made pursuant to any of the relevant provisions of sections 26, 27 (4), 28 and 29 of the EFCC Act, are not granted by the Court as a matter of course or just for the asking. As specifically provided in section 29 (b), of the Act, the Court must be satisfied that there is prima facie evidence that the property concerned is liable to forfeiture, before granting the interim order sought.

IV. EXPARTE APPLICATION FOR INTERIM/INTERLOCUTORY ORDERS

Interim means something made or done to occur “for an intervening time, temporary or provisional”³¹. Interlocutory on the other hand means, “Not constituting a final resolution of the whole controversy”³². The court differentiated between an interim and interlocutory injunction in *Sabru Nigeria Ltd. v. Jezco Nigeria Ltd.*³³ thus:

An interlocutory injunction such as the one sought for by the respondent has been defined as one made pending the final determination of pending suit. See *Obeya Memorial Specialist Hospital v. Attorney-General of the Federation* (1987) 3 NWLR (pt.60) at 325; *Ojukwu v. Governor of Lagos State* (1986) 3 NWLR (Pt.26) 39, *Kotoye and C.B.N.* (1989) 1 NWLR (Pt.98) 419 at 422. An Interim injunction on the other hand is one made or granted to last until a named or definite date or until further order or pending the hearing of motion on notice between the parties. See *Kotoye v. C.B.N* (1989) 1 NWLR (Pt.98) 419 at 422; *Globe Fishing Industries v. Coker* (1990)

³⁰ (Unreported) Suit no CV/4071/13 MOTION NO: M/805/13 by His Lordship Hon. Justice O. A. Adeniyi of FCT High Court on 13 November 2013

³¹ A. G. Garner(ed) *Blacks Law Dictionary* (Thompson West Publishing Company 2004 eight Edition p. 832)

³² A. G. Garner(ed) *Blacks Law Dictionary* (Thompson West Publishing Company 2004 eight Edition p. 832)

³³ (2000) LPELR-6082(CA)

7 NWLR (Pt.162) 265, (1990) 11 SCNJ 56 at 57³⁴

On the difference between an interim and an interlocutory order, the Supreme Court in *7UP Bottling Co. Ltd. v. Abiola and Sons Ltd*³⁵ restated the law clearly thus “An order of interlocutory injunction is predicated on the determination of a number of contentious issues which require that the court hears both sides before deciding. See Kotoye’s case. supra, at page 446. On the other hand, an order of interim injunction merely leaves matters in status quo and the court entertaining the application does not have to decide any contentious issues before reaching a decision. See Kotoye’s case supra”

In *Dangabar v. FRN* ³⁶ the Court of Appeal likened interim forfeiture under the EFCC Act to *mareva* injunction issued by courts in its inherent jurisdiction even under common law. The court held that such injunctions can also be made against a third party “if it can be established that those assets are beneficially issued by a Defendant”³⁷. The Supreme Court in *Brittania-U Nigeria Limited V. Seplat Petroleum Development Company Limited & Ors*³⁸ stated that.

It is to be noted that an interim injunction is not an open ended restriction order but one for a short period of time, preservatory in nature at the early stage in the proceedings. It is like first aid, an emergency intervention which is made before a patient gets into hospital and can be administered even by non medical

In the locus classicus of *Nathaniel Adedamola Babalola Kotoye v Central Bank of Nigeria & Ors*³⁹ Nnaemeka-Agu, JSC, gave a detailed explanation as to the constitutionality of laws or rules of court concerning interim and interlocutory injunction. In differentiating

between *ex parte* injunction and injunction on notice, his lordship had this to say:

I think it is correct to say that "ex parte" in relation to injunctions is properly used in contradistinction to "on notice" - and both expressions, which are mutually exclusive, more strictly rather refer to the manner in which the application is brought and the order procured. An applicant for a non injunction may bring the application *ex parte*, that is without notice to the other side or with notice to the other side, is appropriate. By their very nature, injunctions granted on *ex parte* applications can only be properly interim in nature. They are made, without notice to the other side, to keep matters in status quo to a named date, usually not more than a few days, or until the Respondent can be put on notice...

On the other hand, even though the word interlocutory comes from two Latin words "inter" (meaning between or among) and "locutus" (meaning spoken) and strictly means an injunction granted after due contest *inter partes*, yet when used in contradistinction to "interim" in relation to injunctions, it means an injunction not only ordered after a full contest between the parties but also ordered to last "until the determination of the main suit".

I think Professor A. B. Kasunmu, S.A.N., with whom Chief F. R. A. Williams, S.A.N., agrees is right in his submission that once the application is one "until the final determination of the suit" as was prayed for by the appellant in this case it is an interlocutory injunction which ought not to be heard or granted *ex parte* - See *Ojukwu Vs. Governor of Lagos State & anor.* [1986] 3 NWLR (Pt. 26) 39 @ 44...

Applications for interlocutory injunctions are properly made on notice to the other side to keep matters in status quo until the determination of the suit. Evidence is by affidavit. (emphasis supplied)⁴⁰.

³⁴ Per Umorem, J.C.A. (P. 8, paras. D-G)”

³⁵ (1995) 3 NWLR (pt.383)

³⁶ (2012) LPELR-19732(CA)

³⁷ (2012) LPELR-19732(CA) Per Bada, J.C.A. (Pp. 20-21 Paras. E-D

³⁸ (2016) LPELR-40007(SC)

³⁹ (1989) LPELR-1707(SC)

⁴⁰ (1989) LPELR-1707(SC)

The Supreme Court then further emphasized that in considering an interlocutory application, the court must consider the following

1. The strength of the applicant's case.
2. Once the applicant gets over the initial hurdle of showing that there is a serious question to be tried, he must succeed in showing that the balance of convenience is on his side,
3. Must furthermore show that damages cannot be an adequate compensation for his damage, if he succeeds at the end of the day.
4. Conduct of the parties
5. Also delay in bringing the application will defeat it because such a delay postulates that there is no urgency in the matter and destroys the very basis for a prompt relief by way of interlocutory injunction.

The Court then stated "It can be seen from the nature of the above issues that they are such that they cannot, and ought not, be decided without hearing both sides to the contest."⁴¹

Reasoning further, the court explained:

"Interim injunctions, on the other hand, while often showing the trammels of orders of injunction made ex parte are not necessarily coterminous with them. Their main feature which distinguishes them from interlocutory injunctions is that they are made to preserve the status quo until a named date or until further order or until an application on notice can be heard. They are also for cases of real urgency. But, unlike ex parte orders for injunction, they can be made during the hearing of a motion on notice for interlocutory injunction when, because of the length of the hearing, it is shown that an irretrievable mischief or damage may be occasioned before the completion of hearing.

Also, it can be made to avoid such an irretrievable mischief or damage when due to the pressure of business of the court or through no fault of the applicant it is impossible to hear and determine the application on notice for interlocutory

injunction. See *Beese v. Woodhouse* (1970) 1 W.L.R. 586, at p. 590. It must, however, be emphasized that what the court does in such a case is not to hear the application for interlocutory injunction ex parte, behind the back of the respondent, but to make an order which has the effect of preserving the status quo until the application for interlocutory injunction can be heard and determined⁴²".

In *Obidiagwu Onyesoh v Nze Christopher Nnebedum & Ors.*, Karibi-Whyte, JSC, observed thus: "The remedy by interlocutory injunction as its name implies is temporary. Being an equitable remedy it is also discretionary. Hence the central objective of the court granting an interlocutory injunction is to exercise its discretion to keep the parties in status quo pending the determination of the substantive action".⁴³(underline supplied for emphasis)

The Court of Appeal following the above decision stated thus in *Anisu v Osayomi & Ors*⁴⁴: "My understanding of the above judgments is that an interlocutory injunction is an interim order which lasts till the suit on which it is predicated is disposed of." (Underline supplied for emphasis)

*In Felimon Enterprises Nigeria Limited v The Chairman, EFCC & Anor*⁴⁵ the Court of Appeal explained the word 'interim' in section 29 of EFCC Act. The court had this to say:

An ordinary order of Interim Injunction ex-parte, which is normally made until a named date, or pronouncement of a decision on an interlocutory application for injunction, is in my view distinct from the use of the word "interim" in Section 28 of the EFCC Act. I agree with the argument of learned counsel for the 1st Respondent that the word "interim" as used in the provisions of the Act is not the same as used in an application for injunction, but an order of attachment made until the end

⁴¹ Nathaniel Adedamola Babalola Kotoye v Central Bank of Nigeria & Ors (1989) LPELR-1707(SC)

⁴² Nathaniel Adedamola Babalola Kotoye v Central Bank of Nigeria & Ors (1989) LPELR-1707(SC)

⁴³ (1992) 3 NWLR (Pt.229) page 315 cited in *Anisu v Osayomi & Ors* (2000) LPELR-11974(CA)

⁴⁴ (2000) LPELR-11974(CA) Per Amaizu, J.C.A. (Pp. 11-12, paras. G-G)

⁴⁵ (2013) LPELR-20366(CA)

of the case, when the Court will either finalize the order of forfeiture, or finally discharge it.⁴⁶

V. CONSTITUTIONALITY OF THESE PROVISIONS

By virtue of the provisions of Section 43 and 44(1) of the Constitution, every citizen of Nigeria has the right to acquire immovable property and no moveable or immovable property shall be taken possession compulsorily except in the manner and for purposes as prescribed by law. The exceptions to these constitutional provisions are as contained in subsection 2(a)-(m) of Section 44 of the 1999 Constitution.

Section 44(2) of the Constitution provides that “Nothing in subsection (1) of this section shall be construed as affecting any general law for the imposition of penalties or forfeitures for the breach of any law, whether under civil process or after conviction for an offence”

The literal interpretation of this constitutional provision is that in a criminal trial, forfeiture can only be ordered after conviction. Forfeiture can also be ordered pursuant to a civil proceeding. The court however has the inherent powers to make interim or interlocutory orders for the protection of the res or subject matter of litigation.⁴⁷ This power of the court is an equitable power exercised at the discretion of the court in line with the restriction provided under the Constitution.⁴⁸ Therefore for a court or a law in Nigeria to properly order an interim or interlocutory injunction, such decision or law must pass the constitutional muster.

In addition, this means that a law competently made by a legislative body in Nigeria will not be unconstitutional if it deviates from section 44(1), as long as it is a general law for the imposition of penalties or forfeitures for the breach of any law under criminal or civil proceedings. Such pieces of legislation are however interpreted strictly,

because it tends to deprive individual rights conferred by the Constitution. Accordingly, the Court of Appeal stated in *Bendex Engineering Corporation & Anor v Efficient Petroleum Nigeria Ltd*⁴⁹, “Particularly instructive is the principle that, any legislative provision which seeks to deprive the citizenry of his rights, be they personal or proprietary rights, must be interpreted fortissime contra-preferentes, i.e. strict construction against the person relying on the power of deprivation”.

More importantly, section 36 of the Nigerian Constitution provides the constitutional right to fair hearing thus:

1. In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.
2. Without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers on any government or authority power to determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person if such law –
 - provides for an opportunity for the persons whose rights and obligations may be affected to make representations to the administering authority before that authority makes the decision affecting that person; and
 - contains no provision making the determination of the administering authority final and conclusive.
3. The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public.
4. Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in

⁴⁶ Per Pemu, J.C.A. (P. 8, paras. A-F). See also *Skye Bank Plc V. David & Ors* (2014) LPELR-23731(CA)

⁴⁷ *Azuh v UBN PLC* (2014) LPELR-22913(SC) p.30, paras B-G. see also section 6(6)(a) of the Constitution

⁴⁸ *Aliyu & Ors v Intercontinental Bank Plc & Anor* (2013)LPELR-20716 (CA)

⁴⁹ (2000) LPELR-10143(CA)

public within a reasonable time by a court or tribunal:

Provided that –

- a court or such a tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice;
 - if in any proceedings before a court or such a tribunal, a Minister of the Government of the Federation or a commissioner of the government of a State satisfies the court or tribunal that it would not be in the public interest for any matter to be publicly disclosed, the court or tribunal shall make arrangements for evidence relating to that matter to be heard in private and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter.
5. Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty; Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.
 6. Every person who is charged with a criminal offence shall be entitled to –
 - (a) be informed promptly in the language that he understands and in detail of the nature of the offence;
 - (b) be given adequate time and facilities for the preparation of his defence;
 - (c) defend himself in person or by legal practitioners of his own choice;
 - (d) examine, in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution; and
 - (e) have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.
 7. When any person is tried for any criminal offence, the court or tribunal shall keep a record of the proceedings and the accused person or any persons authorised by him in that behalf shall be entitled to obtain copies of the judgement in the case within seven days of the conclusion of the case.
 8. No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed
 9. No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court.
 10. No person who shows that he has been pardoned for a criminal offence shall again be tried for that offence.
 11. No person who is tried for a criminal offence shall be compelled to give evidence at the trial.
 12. Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.

From section 36(2)(a) of the Constitution, determination of a person`s case cannot be made without inviting the person for his representation. The Constitution only allows such on a temporary basis. Any law or Act that does not comply with the express provision of the Constitution is therefore null for as the Supreme Court counselled in *Kotoye v CBN*⁵⁰

⁵⁰ (1989) LPELR-1707(SC)

It must always be borne in mind when we consider English decisions on the point that in Nigeria, the right of fair hearing is a right entrenched in the Constitution whereas in England it is a creation of the common law which is regulated by the Rules. The effect of entrenching a provision in the Constitution is that it overrides all contrary provisions in any law of the land, be they substantive or adjectival. As it is so, Chief Williams and Professor Kasunmu were right when they submitted that Orders 20 and 33 of the Federal High Court rules must be interpreted and applied in such a way as not to run counter to the letters and spirit of section 33 of the Constitution.

The constitutionality of the provisions for interim forfeiture of assets has been questioned several times. The gravamen of the objection to its constitutional status is the fact that the sections shut out the defendant in the determination of the order for interim forfeiture.

In *America Specification Autos Limited & Anor V. Asset Management Corporation of Nigeria*⁵¹ the Court of Appeal unanimously held that the provisions of section 49 and 50 of the AMCON Act are special provisions and that they are not in contravention of sections 36 and 44 of the Constitution. In the same vein, the Court of Appeal has also held that Section 28 & 29 of the EFCC Act does not violate the constitutional provisions of fair hearing. The court, in *Dangabar v FRN*⁵² held thus:

I have to point it out at this stage that the power conferred on the Court under Sections 28 and 29 of the EFCC Act is a special jurisdiction. It is a statutory power which is superior to the Rules of the lower Court. The interim order of attachment made by the lower Court pursuant to Sections 28 and 29 of the EFCC Act was not meant to be indefinite but only to last till the final determination of Charge No: FCT/CR/64/2012 preferred against the Appellant which is pending at the High Court of the Federal Capital Territory,

Abuja. Therefore I do not see how the ex-parte order granted by the lower Court violated the Appellant's right to fair hearing because the order was in the nature of a preservatory order. The order is in my view in the interest of both parties. This is because it will prevent dealing with the properties in such a way that could render the final Judgment of the Court nugatory. The order therefore operates until the determination of the civil rights and obligations of the parties with regard to the properties under consideration. See the case of:- *Nwude v. Chairman EFCC* (2005) All FWLR Part 276 Page 740. I have said earlier that the order made by the lower Court is preservatory. This is consistent with the intendment of Section 44(2)(k) of the Constitution of the Federal Republic of Nigeria 1999 which provides as follows:- "Nothing in Sub-section (1) of this Section shall be construed as affecting any general law; (k) relating to the temporary taking of possession of property for the purpose of any examination, investigation or inquiry." The lower Court made the order in issue in order to preserve the properties suspected of being proceeds of crime in view of the fact that the Appellant may take steps to defeat the purpose of the relevant provisions of the EFCC Act which deals with forfeiture. In *Chief Constable of Kent v. V. & another* (1982) 3 All E.R. page 36 one of the issues for consideration was the extent of the Court's power to grant an interlocutory injunction to the police for the preservation of the proceeds of crime in the public interest. Lord Denning M. R. expounded the legal position as follows at page 41:- "I turn therefore to the crucial question in this case, has the Chief Constable sufficient interest to apply for an injunction? We considered the position of the Police in *R v. Metropolitan Police Commissioner Ex-Parte Blackburn* (1968) 1 All E. R. Page 760 at 763 where I said- "I hold it to be the duty the Commissioner of Police as it is of every Chief Constable to enforce the law of the land. He must take steps so as to post his men that crimes may be detected, and that honest citizens may go about their affairs in peace."

⁵¹ (2017) LPELR-44016(CA)

⁵² (2012) LPELR-19732(CA)

To this I would now add that it is the duty once he knows or has reason to believe that goods have been stolen or unlawfully obtained to do his best to discover and apprehend the thief and to recover the goods. Corresponding to that duty, he has a right or at any rates an interest on behalf of the public to seize those goods and detain them pending the trial of the offender and to restore them in due course to the true owner. In pursuance of that duty and of that right and interest, he can apply to the magistrate for a search warrant and to a High Court for an injunction." In 7up Bottling Company Ltd. vs. Abiola & Sons Ltd (Supra) Page 257 Adio JSC at Page 277 stated as follows:- "In the present case, the motion ex-parte was for an interim injunction restraining the Appellants from doing certain things to the properties of the Respondents..... If as it was in this case, the learned trial Judge could not properly determine any contentious issue when the motion ex-parte for an order of interim injunction came before him, the question of giving an opportunity of being heard to the Appellant before determining the application could not arise and the Provisions of Section 33(1) of the Constitution were not applicable and were not violated." In his own contribution Uwais JSC (as he then was) elaborated at page 280 as follows:- "In both criminal and civil proceedings, there are certain steps to be taken which are incidental or preliminary to the substantive case such steps include motion for direction, interim or interlocutory injunctions..... It is in respect of such cases that provisions are made in Court Rules to enable the party affected or likely to be affected to make ex-parte applications. The orders to be made by the Court, unlike final decisions, are temporary in nature, so that they do not determine the "civil rights and obligations of the parties in the proceedings as envisaged by the Constitution." It is therefore my view that mere granting of an ex-parte application to preserve the properties of the Appellant pending the final determination of the criminal case filed against him cannot violate the Appellant's fundamental right to

fair hearing. Another important thing to note is the final order which the Court can make after the trial of the appellant, if found guilty.

One may be tempted to argue that a defendant who an interim order of forfeiture against his assets has been made by a court can apply to the court for variation of such order or discharge of such order⁵³. The court in *Dangabar v FRN*⁵⁴ held thus: "It must not be forgotten that the Appellant has failed to apply to the lower Court to discharge the ex parte order."

However, the Court of Appeal in *Felimon Enterprises Nigeria Limited v The Chairman, EFCC & Anor*⁵⁵ stated that "The provisions of the Economic and Financial Crimes Commission [Establishment] Act does not provide for the discharge and or setting aside of interim attachment of properties of culprits"

It stands to reason that such orders made in the absence of the party without any input from the party cannot under any circumstance be varied or discharged. Also, if the court's claim that they cannot vary or discharge these interim orders, the implication is that even if new facts emerge to show that the orders were wrongly made, the court will be unable to listen to these new facts until the determination of the case. It would be recalled that the Court of Appeal in *Dangabar v FRN* stated that these orders can be made against a third party. This means that a third party whose property is forfeited under these provisions may have his property taken by an interlocutory order without making any input to the trial or to the interlocutory order.

⁵³ 'Yakubu asks court to set aside forfeiture order on seized N3bn' See *Punch News* of February 20, 2017 accessed on 18/05/17 from <http://punchng.com/yakubu-asks-court-to-set-aside-forfeiture-order-on-seized-n3bn/> see also EFCC website accessed on 18/05/17 from <http://www.efccnigeria.org/efcc/news/2356-efcc-ask-s-court-to-preserve-interim-forfeiture-order-on-mala-bu-oil>,

⁵⁴ (2012) LPELR-19732(CA)

⁵⁵ (2013) LPELR-20366(CA)

Also, if this discharge were possible, the Supreme Court stated *Kotoye v CBN*⁵⁶ that it will still be unconstitutional and stated thus:

The right to apply to vary or discharge an order of interlocutory injunction made ex parte lacks one of the attributes of fair hearing which I have enunciated above, to wit: equality of opportunity to both sides to the contest. It, therefore, falls short of the expectations of section 33(1) of the 1979 Constitution. This is why in this country an application to set aside an order made ex parte should arise only in the case of interim orders which should not cause serious detriment to the person affected and where there is a case of real urgency, and it is impracticable to afford an antecedent hearing.”⁵⁷

The decision in *Kotoye v CBN*⁵⁸ suggests that when an interim order is made against a party, the order can only last until a determination of an interlocutory application by the applicant. The person the order is made against is not expected to take any step to vary or discharge the order, the order is meant to laps at a very short time. Moreso, the decision in *Felimon Enterprises Nigeria Limited v The Chairman, EFCC & Anor*⁵⁹ imply that the defendant has no say and cannot be heard with regards to the forfeited properties until the termination of trial. This is despite the fact that the court stated that the defendant has the onus to prove that the assets being forfeited is not the proceed of the crime charged.

*In Francis Atuche vs. Chairman, Economic & Financial Crimes Commission*⁶⁰, the Court of Appeal placed this burden on the defendant thus:

What the EFCC is required to do under Section 27 of the Act is to investigate the declaration of assets linked to alleged economic/financial crimes and seize the

affected assets leaving intact the assets acquired by honest means for interim attachment of the former only. The onus is thus on an accused to establish on the balance of probability that the assets submitted by the EFCC for interim order of attachment are not afflicted with economic/financial crimes and; upon such satisfactory account or explanation the innocent assets would be released to the accused. All that the respondents are bound to establish is the reasonable suspicion of linkage of the assets with the alleged commission of economic/financial crimes which the respondents were able to establish at a glance ... I need to add that the tracing and attachment of assets by the respondents are based on either an arrest or search pursuant to section 25 (1)(a) of the EFCC Act... The said attachment of assets would therefore not appear to depend necessarily on the pendency of a charge or an amended charge.

One important question to ask therefore is how the defendant will discharge this onus on him without participating in the determination of the order for interim forfeiture of assets. In addition, it seems from this decision of the Court of Appeal that the court may order for interim forfeiture of assets pending determination of a criminal case that has not commenced. Since EFCC has the discretion to file a charge whenever it likes, this interpretation will mean hardship for the defendant. An abuse of these provisions has led to the current situation where there are several seizures of property without conviction⁶¹. This decision of the court in *Dangabar v FRN*⁶² seem to deviate from laid down principles of law relating to fair hearing and interim orders especially as established by the Supreme Court. The question is whether such law is sustainable under our constitutional order. The Constitution is the main basis for the legality of any law and all laws must pass the constitutional test to be applicable.

⁵⁶ (1989) LPELR-1707(SC)

⁵⁷ (1989) LPELR-1707(SC)

⁵⁸ (1989) LPELR-1707(SC)

⁵⁹ (2013) LPELR-20366(CA)

⁶⁰ Ikyegh JCA in *Francis Atuche vs. Chairman, Economic & Financial Crimes Commission* (unreported) Appeal No: CA/L/830/10; delivered on the 28th of June, 2013.

⁶¹ See “Anti-graft war: Many seizures, few convictions” *Punch Newspaper* of May 29, 2017 accessed from <http://punchng.com/anti-graft-war-many-seizures-few-convictions/> on 30/05/2017

⁶² (2012) LPELR-19732(CA)

By the provisions of sections 28, 29 and 30 of the EFCC Act, the order for interim forfeiture of assets has the nature of an interlocutory injunction because it lasts until the determination of the case against the defendant. This means that in a situation where the trial of the defendant lasts for years, the defendant will suffer the disadvantage or punishment of not using his properties for years for a crime he is accused of committing. This appears injurious to a defendant when the presumption is that he is innocent.⁶³ For instance, the case of *Ude Jones Udeogu V. Federal Republic of Nigeria & Ors*⁶⁴ was commenced by the EFCC in 2008 and up till 2017 the parties were still at the early stage of trial. If all the assets of the defendant in this case were seized, it would mean that the defendant would have been deprived of his properties for close to 10 years while being presumed innocent.

In *Federal Republic of Nigeria v Prince Abubakar Audu*⁶⁵ the court stated thus: "one cannot pretend to be oblivious of the prevailing trend that the trial of a Charge of the nature pending against the Applicant could last for an indeterminable period. Therefore, it is only fair, just, reasonable and proper to permit him to make a contribution, one way or the other, to an application that seeks to take away his rights for such an anticipated indeterminate period of time"

In *Deduwa v Okorodudu*⁶⁶ the court explained that the only basis of making an *ex parte* order is that they are made for a limited period pending the hearing of motion on notice.

On the issue of fair hearing in granting order of interim and interlocutory injunctions, Hon. Justice Nnaemeka-Agu of the Supreme Court said this:

Griffith, C.J. in Thomas Edison Ltd. v. Bullock (1912) 15 C.L.R. 679, at p. 681 which Chief Williams has cited in argument. The learned C.J. said:

⁶³ Section 36(5) of the Constitution

⁶⁴ (2016) LPELR-40102(SC)

⁶⁵ (Unreported) Suit no CV/4071/13 Motion no: M/805/13 by His Lordship Hon. Justice O. A. Adeniyi of FCT High Court on 13 November 2013

⁶⁶ *Deduwa v Okorodudu* (1976) NMLR 236

"There is a primary precept governing the administration of justice, that no man is to be condemned unheard; and therefore, as a general rule, no order should be made to the prejudice of a party unless he has the opportunity of being heard in defence. But instances occur where justice could not be done unless the subject matter of the suit were preserved, and, if that is in danger of destruction by one party, or if irremediable or serious damage be imminent, the other may come to the court, and ask for its interposition even in the absence of his opponent, on the ground that delay would involve greater injustice than instant action." I entirely agree with him. But there is nothing in the above dicta or in the case itself to warrant the hearing of an interlocutory application for injunction *ex parte*. Indeed, this court sounded much the same caveat, per Ibekwe, J.S.C. (as he then was) when he stated in *Woluchem v. Wokoma* (1974) 1 All N.L.R. (Part 1) 605, at p. 607. "An interlocutory injunction has a binding effect until it is discharged. Failure to comply with it could lead to disastrous consequences, such as having to commit the offending party to prison for contempt. It is a well settled rule of practice in civil proceedings that the party to be affected by the order sought should normally be put on notice." See on the above: Daniel's Chancery Practice (7th Edn.) pp. 1363-1364, Snell's Principles of Equity (28th Edn.) pp. 639-644 and 646; vol. 24 Hals. Laws of Eng. para. 1052.⁶⁷

In *Kotoye v CBN*⁶⁸ the question was about the validity of Section 13 of the Federal High Court Act, 1973, Order 33 (particularly rules 5, 8, and 10) of the Federal High Court Rules⁶⁹, 1976, and Order 20 (particularly rules 4 and 5) of the same which gives an applicant the power to apply for an interlocutory injunction by *ex parte* application. The applicant argued at the Supreme Court that

⁶⁷ *Kotoye v CBN* (1989) LPELR-1707(SC)

⁶⁸ (1989) LPELR-1707(SC)

⁶⁹ This rule is made pursuant to the law making powers of the Chief Judge of the Federal High Court just like any other law like AMCON Act, made pursuant to the Law making powers of the National Assembly.

since the law provides that such applications can be brought ex parte, the court should comply with the legislative provision and follow the method prescribed by the law.

Nnaemeka Agu JSC in deciding on the Constitutionality of law stated thus:

I wish to begin my consideration of this aspect of this appeal by pointing out that there is really no dispute that an application for injunction “until the final determination of the suit” is an application for an interlocutory, and not an interim order. The real issue is as to whether such an application can be heard and granted ex parte. I have examined above the nature of a decision in an interlocutory injunction and shown that it entails a deliberation on a number of well-settled issues upon which the right of an applicant to the grant of it depends. The question, therefore, is, in view of the provisions of section 33 of the Constitution of 1979, can and should a court proceed to deliberate on those issues and come to conclusions on them on an ex parte hearing, that is without hearing all the parties to be affected by the order? To answer this question properly, it is necessary to consider the provision under section 33 of the Constitution of 1979, particularly sub-section (1).

This provides as follows:

“(1) In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality. “Clearly whenever the need arises for the determination of the civil rights and obligations of every Nigerian, this provision guarantees to such a person a fair hearing within a reasonable time. Fair hearing has been interpreted by the courts to be synonymous with fair trial and as implying that every reasonable and fair-minded observer who watches the proceedings should be able to come to the conclusion that the

court or other tribunal has been fair to all the parties concerned. See on this Mohammed v. Kano N. A. (1968) 1 All N.L.R. 424, at p. 426.

There are certain basic criteria and attributes of fair hearing, some of which are relevant in this case. These include:

(i) That the court shall hear both sides not only in the case but also in all material issues in the case before reaching a decision which may be prejudicial to any party in the case. See Sheldon v. Bromfield Justices (1964) 2 Q.B. 573, at p. 578.

(ii) That the court or tribunal shall give equal treatment, opportunity, and consideration to all concerned. See on this: Adigun v. Attorney General, Oyo State and Ors. (1987) 1 N. W. L. R. (Pt.53) 678.

(iii) that the proceedings shall be held in public and all concerned shall have access to and be informed of such a place of public hearing and

(iv) That the proceedings shall be held in public and all concerned shall have access to and be informed of such a place of public hearing and that having regard to all the circumstances, in every material decision in the case, justice must not only be done but must manifestly and undoubtedly be seen to have been done: R. v. Sussex Justices, ex parte McCarthy (1924) 1 K.B. 256, at p.259; Deduwa and Ors. v. Okorodudu (1976) 10 SC. 329.

Thus, fair hearing in the context of section 33(1) of the Constitution of 1979 encompasses the plenitude of natural justice in the narrow technical sense of the twin pillars of justice – audi alteram partem and nemo iudex in causa sua as well as in the broad sense of what is not only right and fair to all concerned but also seems to be so.

In the context of interlocutory injunctions in which, as I have shown above, a number of decisions on set principles most of which are highly contentious, need be made, can it be doubted that to decide them after hearing only one side clearly offends each and everyone of the above criteria and attributes of fair hearing? I do not want to concern

myself with the unnecessary exercise of examining whether or not such applications can, on the letters of the rules, be brought ex parte. But I am of the clear view that, once it is conceded that what is involved is an order for interlocutory injunction and not a mere interim order to keep matters in status quo pending the hearing of the application for interlocutory injunction on notice to both sides or until a near named date, then the procedure runs counter to the letters and spirit of section 33 of the Constitution of 1979 and ought not be entertained. For while it can be said that an interim order of injunction merely leaves matters in status quo and that the court does not have to decide any contentious issue before so doing, I do not see how the same could be said when the order by its very nature depends on the resolution of such issues as whether the applicant has established his possibility of success, that the balance of convenience is on his side as against the Respondent, that the award of damages cannot sufficiently compensate his damage, and that his conduct all through entitles him to the discretion of the court.

From the decision in *Kotoye v CBN*⁷⁰, it is clear that an application for an injunction or an order that will affect the defendant until the determination of the case is properly an interlocutory order and is best made on notice. Also, from the above decision, any law that states that such interlocutory decision should be made *ex parte* of the defendant is unconstitutional and violates the defendant's right to fair hearing. The Supreme Court in *7UP Bottling Co. Ltd. v. Abiola and Sons Ltd*⁷¹ Explained the law clearly thus : "Further, and this is very important, a grant of an application for an interlocutory injunction without notice to the respondent or behind the respondent is void by virtue of the provision of section 33(1) of the Constitution."

Clearly, the situation in *Kotoye v CBN*⁷² is a similar situation with an application made under section 49 and 50 of the AMCON Act where the

⁷⁰ (1989) LPELR-1707(SC)

⁷¹ (1995) 3 NWLR (pt.383)

⁷² (1989) LPELR-1707(SC)

law permits the making of an interlocutory application by ex parte application. The natural outcome is that following the pronouncement of the Supreme Court that such provisions must be read to comply with constitutional provisions, the AMCON Act must also be read in compliance with section 36⁷³ of the 1999 Constitution. The Legal principle regarding the supremacy of the Constitution is trite and was recently restated in *Nwokedi V. Anambra State Govt & Anor*⁷⁴ where the Supreme Court reiterated thus:

"By the provision of Section 1 of the 1999 Constitution, the Constitution is supreme, and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. If any other law is inconsistent with the provisions of the Constitution, the Constitution shall prevail and that other law shall to the extent of the inconsistency be void. See *Cadbury (Nig) Plc v FBIR (2010) 2 NWLR (pt. 1179) 561*, *Governor of Ekiti State v Olubunmo (2017) 3 NWLR (pt.1551)1.*"⁷⁵

The recent decision of the FCT High Court in *Federal Republic of Nigeria V Prince Abubakar Audu*⁷⁶ on similar provisions in the EFCC Act followed the Supreme Court's opinion instead of the Court of Appeal's decision in *Dangabar v FRN*⁷⁷. The court held thus:

I am therefore of the firm view, in the overall context of the instant case, where it is shown that the Orders sought by the pending ex parte Summons have every feature of an interlocutory Orders, that to hear and determine the same without giving the Applicant a hearing would run counter to the letters and spirit of his right to fair hearing

⁷³ Which has same provisions with section 33 of the 1979 Constitution.

⁷⁴ (2022) LPELR-57033(SC)

⁷⁵ Per JOHN INYANG OKORO, JSC (Pp 38 - 39 Paras E - A) see also *APC & Ors V. Enugu State Independent Electoral Commission & Ors (2021) LPELR-55337(SC)* and *Jegade & Anor V. INEC & ORS (2021) LPELR-55481(SC)*

⁷⁶ (Unreported) Suit no CV/4071/13 Motion no: M/805/13 by His Lordship Hon. Justice O. A. Adeniyi of FCT High Court on 13 November 2013

⁷⁷ (2012) LPELR-19732(CA)

preserved by section 36 (1) of the Constitution. I so hold.”

The FCT High Court Judge then gave a brilliant solution to this issue when he held thus:

There is nothing in the EFCC Act that precludes a Court, in the determination of an ex parte application for interim Orders brought pursuant to the relevant sections thereof, from converting such an application to be heard on notice where the justice of the case so demands⁷⁸

VI. CONCLUSION

As stated by the Supreme Court, the decision in *Kotoye v CBN*⁷⁹ was made due to “an urgent need to state the law.” This, no doubt, represents the law on the subject and only an amendment to the Constitution or a review of the decision by the Supreme Court can dislodge the current interpretation of the law. While it is apparent that the idea of the AMCON Act provisions and the special powers of AMCON are laudable, the provisions of sections 49 and 50 of the AMCON Act are not sustainable in light of rights to fair hearing and ownership of property guaranteed by the 1999 Constitution as amended. The objective of the provisions can however be achieved by construing the provisions with due regard to the constitutional provisions. An application for interim forfeiture can be made pending the determination of the interlocutory application where all the parties are given opportunity to make their inputs to help the court reach a fair decision. It is even more challenging where the claim fails and the defendant’s property is detained throughout the duration of the trial. There is certainly no harm in allowing the defendant to be heard in the application before an ‘interlocutory’ order of interim forfeiture is finally made against him⁸⁰. It is humbly submitted that

the court has the sacred responsibility to resolve this knotty issue with certainty and ensure that statutory agencies operate within the law without compromising constitutionally guaranteed rights.

⁷⁸ (Unreported) Suit no CV/4071/13 Motion no: M/805/13 by His Lordship Hon. Justice O. A. Adeniyi of FCT High Court on 13 November 2013

⁷⁹ (1989) LPELR-1707(SC)

⁸⁰ *Federal Republic of Nigeria V Prince Abubakar Audu*(Unreported) Suit no CV/4071/13 Motion no: M/805/13 by His Lordship Hon. Justice O. A. Adeniyi of FCT High Court on 13 November 2013