

**12th Session of the Intergovernmental Group of Experts on Competition Law
and Policy**

Expert Meeting on Consumer Protection

12 – 13 July 2012

Geneva

‘The Future Path of Consumer Protection’

by

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Keynote Speech for

United Nations Conference on Trade and Development (UNCTAD)

The views expressed are those of the author and do not necessarily reflect the views of UNCTAD.

A Path to the Future

In considering how we can develop our plans for consumer protection, the thought arises of an explorer beating a path through a thick jungle. Like the explorer, we in the consumer movement have a general idea where we want to go. And, with our meagre tools we beat a path against the barriers that are attempting to stop us, or at least divert us from a more direct and satisfying route. There are also new and unexpected barriers that crop up from time to time, that we have little idea are about to occur, and which tax our imagination for a solution.

Developing a plan on consumer protection into the future is therefore no easy matter. There is the 'bedrock' of President Kennedy's 1962 'Consumer Bill of Rights' with its various additions. Following that landmark event we now have numerous consumer organisations, both government and non-government, that have business plans and strategies. And there are of course the UN Guidelines for Consumer Protection, with their acknowledgement that Governments should encourage *"fair and effective competition in order to provide consumers with the greatest range of choice among products and services at the lowest cost"*.

Nevertheless, there are always means by which existing strategies can and must be improved. In effect, I think we should be striving to be more imaginative and constantly examining the boundaries of the path we are beating.

Consumers International

Consumers International has been championing consumer rights internationally for 60 years and now has some 240 members in 120 countries. As a member of CI's Council, I have participated in this process, notably when the Hong Kong Consumer Council hosted CI's World Congress last year. During that time, the UN Guidelines for Consumer Protection (UNGCP) have served consumers well and the much quoted *'legitimate needs'* of consumers listed in Article 3 remain valid. Nevertheless we welcome the envisaged process of review. The UNGCP need updating to reflect technological developments, and we have expansions in mind for the objectives and principles, just as they were expanded in 1999 to take in sustainable consumption. This time we focus on access to knowledge, a wider concept than the long-standing pre-occupation with information. As things stand, such access is regrettably inhibited by rules on intellectual property, and so we make substantial proposals for stronger consumer protection in that domain.

We also envisage rather stronger provisions in the UNGCP for competition policy to serve as consumer protection, with regulators more prepared to deal with the danger of emergent monopolies as structural issues as well as matters of business conduct.

How are these objectives to be achieved? And, what are the areas that we need to focus on?

Developing Priorities

One of the many frustrations that consumer advocates face is the sheer variety of basic consumer issues such as food and shelter. We still face problems in these areas notwithstanding the fact that years of effort have gone into developing safeguards to protect what should be basic rights. There is a need to reinforce not only access to basic goods and services but also, for example, the right to be informed of the origin of food and whether it has been produced with genetically modified seed, or adequately protected against disease. Similarly there is the right to be given truthful information regarding vital details of mortgages and the safeguards that protect what is typically the biggest transaction consumers ever make – the purchase of a house. So basic rights require reinforcement with access to information.

Added to these basic issues are newly emerging problems with relation to electronic commerce, particularly the right to privacy of personal information, so vital with the development of consumer access to personal computers transferring vital personal information, vulnerable to being hijacked.

One of the biggest issues in the wake of the financial crisis is examining the level of protection that is necessary to protect consumers' finances. The major question that arises in this context is whether our governments are doing enough to respond to consumer concerns about financial services in terms of adequate financial regulation and supervision from an ordinary consumer's perspective.

The context in which we deal with consumers differs, depending very much on the demographics and socio-political frameworks in the regions where we work. For example, while gross national savings rates in China, South and East Asia, and the Pacific have consistently increased over the last 40 years, they have consistently decreased in the industrialised world. For example, personal savings rates in the United States have declined from around 9% in the 1980s, to less than 5% in the 1990s, and into negative territory in the early years of the 21st century¹

Consumer concerns with maintaining adequate savings in the Asia region, most likely a function of the fragile social security systems that exist, will therefore need to be mainly focused on building confidence. For example, consumers need to have confidence both in the viability of deposit-taking institutions through deposit guarantee schemes, and that information on returns and charges is not misleading and deceptive. The concern in industrialised countries is largely directed at lending practices, as the financial crisis has so clearly demonstrated what happens when they go wrong.

¹ Guidolin M and A. La Jeunesse E, FEDERAL RESERVE BANK OF ST. LOUIS REVIEW, (2007), 'The Decline in the U.S. Personal Saving Rate: Is It Real and Is It a Puzzle?

Is the Consumer Really King?

Market economies are often described by economists as systems of consumer sovereignty; or in simple words, where consumers are king. This is said to be because the day-to-day spending decisions by consumers, and the information they obtain and pass on to the market through their demand patterns determine what goods and services are produced in the economy. This neo-classical theory supports the notion that competition policy and consumer welfare are mutually beneficial.

While I am happy to accept consumer sovereignty in principle, it is often the case that the business sector is quick to pick up on this notion as a reason for governments not to intervene in the market place through regulation. The common refrain is that this intervention will have a 'chilling' effect on the dynamics of the market.

However, there are fundamental problems with this approach in the complex market environment that consumers now often face.

Consumers are not always able to choose wisely in a market-oriented economy where accurate information about costs and conditions is not free or easily available. In many markets, where complex products are bundled together, consumers will find it difficult if not impossible to compare prices for diverse products which are based on different fixed costs and variable usage costs. In effect they face what has been generally termed 'manufactured confusion'.

Manufactured confusion has been typical of the telecommunications sector for many years and we can also see it occurring in the financial services sector. Ordinary consumers with little or no experience in investments are required to compare products, evaluate risks and make decisions about provisions for retirement that many in the industry themselves have trouble understanding, (not to mention regulators).

As a result, many financial products that have been placed on the market can only be described as 'unsafe' to the general public because they are not readily comprehensible and the capital and quoted returns cannot be guaranteed. Typically, service providers will apply a standard general qualification to these products, such as "quoted returns are subject to market variations". As such, in some circumstances the products have about as much credibility as a bet placed in a casino.

The notion that in these circumstances, competition policy and the dynamics of the market alone will serve a protective role to the public and the economy is actually nonsense. An approach that balances the use of market mechanisms with direct supervisory regulation is surely not too much to ask for.

The Finance sector

The longer that indecision and obstruction goes on with regard to finance sector regulation, the more it seems that we will face a long, drawn-out process of consumer dissatisfaction, market stagnation and a cycle of failures that will lead society into uncharted waters.

I have noted in previous speeches that at an OECD meeting not long ago, a comment was made by one of the expert participants in a high level committee to one of my colleagues in Consumers International, that the financial sector cannot afford stronger consumer protection because that would undermine the financial stability of the sector.

As my colleague noted, this is a terrifying prospect because it suggests that the industry has become financially dependent on weak consumer protection and therefore relies on abusive relations with its clients to survive. To my mind it also suggests that there has been an inherent dishonesty in any claims by business that they are willing to work with the consumer movement to improve the position of consumers.

This leaves us with a terrible dilemma. Either consumer protection measures are reformed, which will apparently destabilise the industry, or we continue to tolerate abusive practices and instability. I think it is time to strike a new path that recognises the need for radical change.

Eminent economist Joseph Stiglitz recently wrote

“What is needed is to get banks out of the dangerous business of speculating and back into the boring business of lending. But we have not fixed the financial system. Rather, we have poured money into the banks, without restrictions, without conditions, and without a vision of the kind of banking system we want and need. We have, in a phrase, confused ends with means. A banking system is supposed to serve society, not the other way around².

Two years ago Consumers International launched a major new campaign calling for international action to support the development of effective consumer protection around the world. Together with our members we were calling for all consumers to have access to safe, fair and competitive financial services. Thanks to the support the campaign received from members in all regions, we have had some success. Last November the G20 leaders endorsed a new set of international principles on financial consumer protection and called for the establishment of a new international organisation to support the development of consumer protection in relation to banking and credit as called for by CI.

² Stiglitz, Vanity Fair January 22, 2012 <http://www.vanityfair.com/politics/2012/01/stiglitz-depression-201201> page 3.

Nevertheless, more work needs to be done and Consumers International has been asking its members to keep the pressure on their respective governments, to make sure the progress made leads to real benefits for consumers. For example, CI strongly recommended: *“that the G20 take action to promote competition as a means to enhance consumer protection in financial services”*. Regarding the freedom of consumers to take their business elsewhere, we recommended that G20 governments take action pertaining to comparability of products, portability of account numbers and other mechanisms to ease switching of accounts.

However, we also addressed competition policy at the macro-level, which we urge UNCTAD to do also. We feared that the crisis measures, necessary though they were at the time, led to new issues of market dominance underwritten by taxpayers and paid for indirectly by consumers. We argued that: *“steps taken to support financial institutions which are ‘too big to fail’ have resulted in significant distortions of competition.”* We therefore recommended that the G20 *“encourage member countries to instigate independent competition enquiries into the increases in concentration and reduction of competition caused by the financial crisis and recommend that national governments apply ‘public interest’ tests to the disposal of their stakes in the banking sector. This should include specific objectives to make competition stronger after disposal of the stakes so that some of the increase in concentration is reversed”*. In our view, competition policy is not just about abusive behaviour at the retail level, important though that is. It also raises structural issues at national and international level. We want the UNGCP to recognise this and encourage governments to act accordingly.

The Right to Privacy

As I mentioned earlier, privacy on the Internet is also a major issue of emerging consumer concern. Consumers International worked in this area as far back as 2001 when it published an international comparative study of consumer privacy on the Internet. Over the succeeding years the issue has been gaining momentum as Internet traffic increases and the technology to gain access to information on consumers’ usage patterns is advanced. It was noted in a recent OECD publication that:

“As the Internet evolves to become basic infrastructure and adoption saturates, the Internet economy will become increasingly indistinguishable from the overall economy”.³

Given the manner in which the Internet is becoming a part of consumers’ daily interaction with the marketplace, I consider that the issue of online privacy of

³ Lehr, W. (2012), “Measuring the Internet: The Data Challenge”, *OECD Digital Economy Papers*, No. 194, OECD Publishing. <http://dx.doi.org/10.1787/5k9bkh5fzvzx-en>

information transmitted and store on the Internet also needs to be recognised, in the same light as other consumer rights.

The threat to consumers' privacy and integrity of information on the Internet is a major concern. A clear example of the concern is the fact that threats of hacking and theft of information has led to a thriving market in Internet antivirus and security software. The need to protect themselves from these threats makes common sense, given the types of persons or organisations that are engaged in perpetrating viral attacks and hijacking information on computers for fraudulent purposes. However, the threat to personal information and possible misuse of that information encompasses more than simply the motives of thieves or vandals.

Consumers' personal information, as transmitted over the Internet, has a value that is also being exploited by legitimate business interests. Moreover, the means by which the information is being collected and exploited is not readily understood or even known by consumers.

Earlier this year, the *Trans Atlantic Consumer Dialogue (TACD)* a coalition of the leading consumer organizations in North America and Europe, wrote a letter to Google expressing its concern at Google's plan to combine data from all of its services, provided by Google users in different contexts and for different reasons, into a single profile without user consent and without any meaningful opportunity for users to opt-out. TACD stated that it was both unfair and unwise for Google to "change the terms of the bargain" as it proposed to do.

Consumers in most developed economies have had the benefit of privacy law and the creation of privacy agencies. Consumer advocates, such as the TACD have made recommendations to governments and businesses, and advocated the respect for privacy and the rights of consumers to control the collection and use of their personal information.

The experience with Google's recent changes in service, and the suspicion that this sort of conduct is not isolated to one company, indicates that privacy of information is a matter that should be clearly recognised as a consumer right.

As it stands, the UN Guidelines on Consumer Protection currently do not cover privacy as a consumer issue. However the Guidelines do state as one of its general principles:

'The promotion and protection of the economic interests of consumers' as well as: 'high levels of ethical conduct'.

In our view, any proposed revision of the Guidelines should examine whether the issue of privacy should be included as a separate principle, and guidelines drafted for governments to observe.

Funding consumer advocacy

The UN Guidelines for Consumer Protection serve a valuable role in setting an agenda for governments to address consumer issues. However, another thing that stands out in the guidelines is the absence of any explicit reference to funding for the work that needs to be carried out.

In many cases it is NGOs that carry out consumer advocacy work, and funding that work is problematic. In these circumstances, the shortfall in funding acts either:

- as a barrier that prevents the work from being carried out, or
- restricts the scope of the work.

It would seem reasonable therefore, that governments should be pressed in the Guidelines to develop a standard on the funding of consumer advocacy. For example, devoting a percentage of the country's wealth, or some other clear measure, towards funding consumer work; rather than leaving it to a vague assumption. Many consumer associations have participated in expert work pertaining to regulation, representing the consumer interest, and dispute resolution. When institutions such as the World Bank are recognising the validity of these roles in financial services for example, surely it is time for such recognition to be featured in the Guidelines.

Conclusion

The path that consumer advocates must travel is often lined by an assortment of critics eager to criticise and spread fear at what they term our 'radical' ideas. Looking back at what we have achieved over the years, it is frightening to think what sort of a mess we would be in if we had not achieved even the basic rights that we have now. The journey is not finished by any means, even though there are some who would argue that we have gone too far and should be pulled back. There is a lot more to do, and a need to reconsider our path boundaries, that have either been self-imposed or forced on by others.

We could do well to think of a quote attributed to the American poet Ralph Waldo Emerson, who stated "Do not go where the path may lead, go instead where there is no path and leave a trail"

Thank you