

Second Ad Hoc Expert Meeting on Consumer Protection

Geneva, 11-12 July 2013

**Contribution on the Revision of the
United Nations Guidelines on Consumer Protection**

by

Consumers International

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



Consumers International proposals for amendments to the UN Guidelines for Consumer Protection

*In advance of the Ad Hoc Expert Meeting on Consumer Protection,
UNCTAD, Geneva, July 2013*

About Consumers International

Established in 1960, CI is the world federation of consumer rights groups. Our goal is to ensure that consumer rights can never be ignored. With over 240 member organisations spanning 120 countries, we serve as the only independent and authoritative global voice for consumer rights. We are a registered UK charity.

1. Introduction

Consumers International (CI) has been recognised by UNCTAD as a named stakeholder in the revision process of the UN Guidelines for Consumer Protection (UNGCP). This is our response to the call by the UNCTAD secretariat for contributions from stakeholders regarding the revision process for UNGCP currently under way.

CI believes that there is much in the existing Guidelines that is valuable and they have served well as the reference point for consumer protection since their formulation. We agree with the UNCTAD Implementation report (April 2013) in which it states in para 43: *“Since 1985, the United Nations Guidelines on Consumer Protection have been widely implemented by Member States of the United Nations. National contributions to this revision process show that all areas of the current Guidelines remain valid and useful”*.

Nevertheless, documents that are valid and useful may still require updating and improving. The existing UNGCP are now in need of amendment due to changes in the external environment as well as a consumer agenda that has moved on from many of the issues prevalent in 1985, and indeed in 1999 when they were last revised. This could involve some quite substantial insertions within the existing framework, and the full set of our detailed proposals for revision are to be found in Annex A. This Annex consists of amendments entered as track changes to the existing text and it was drafted in consultation with our membership, between December 2012 and March 2013, through survey, conference and internet. More than 100 responses were received, a mark of how seriously the members take the UNGCP. The relevant parts of Annex A are referred to throughout this submission by footnotes.

New Issues?

The UNCTAD secretariat’s Implementation report states, in para 33, that there is a consensus for including e-commerce and financial services in the revision of the Guidelines. However, it does not follow from the evidence provided that there is a consensus of member states to focus **only** on those areas.

While those two issues were highlighted in the questionnaire prepared by the UNCTAD secretariat on which the implementation report was based, there were also a number of other possible areas for amendment raised at the First Ad Hoc Expert Group Meeting on Consumer Protection (Geneva, July 2012). Neither at that meeting, nor in the questionnaire, were member states asked to choose between, or to prioritise, the various issues that had been suggested as possible areas for amendment. Therefore, the restriction of possible amendments to just these two issues would be somewhat arbitrary.

Compounding this problem is that amendments or additions made to one part of the text will frequently have repercussions elsewhere. In particular, e-commerce is an inadequate ‘silo’ within which to contain all of the interrelated issues that impact upon today’s consumers of online products and services. Personal data protection, for example, was highlighted at the 2012 Ad Hoc Expert Group Meeting as an important area for amendment, yet it would be problematic to confine this issue to a single new section on e-commerce, because the principles of privacy and data

protection that are applicable online are equally applicable offline. Hence, in CI's proposals, provisions that bear on data protection are located in several places throughout the text.¹

Similarly, with regard to financial services, in CI's presentation to the conference in July 2012 in Geneva (attached as Annex B²), we made the point that many of the existing generic Guidelines (GLs) are already appropriate to the financial services sector. As with e-commerce, we suggested both a subject-specific text, under existing section H, '*measures relating to specific areas*', and improvements elsewhere in the text.

We note that the secretariat has suggested, in the Implementation report (para 43) that other areas might be open for consideration, in particular: "*Additional issues such as data protection, abusive advertisement, energy and cross-border trade will merit wider consultations*". It is far from clear just which dimensions of these issues would be covered and there is no explanation of the reasons for their selection. As it happens, we agree strongly with the inclusion of data protection and energy. We consider abusive advertisement to feature already in the Guidelines in several places, but we have no objection to the provisions being strengthened. The reference to cross-border trade is unexplained, but we certainly agree that there needs to be reference to cross-border enforcement of consumer protection measures particularly in light of the development of e-commerce.

While we have no quarrel with the inclusion of these additional issues as well as financial services and e-commerce, we should bear in mind that subject-specific amendments may trigger changes elsewhere. It follows that CI strongly supports a more holistic review of the Guidelines that does not shy away from the modification of existing text, nor from the insertion of new paragraphs wherever necessary anywhere in the text. It should be noted here that in inserting proposals on sustainable consumption in 1999, the UN adopted a dual approach, both including a specific new section on sustainable consumption (the current Section G) on the one hand, while on the other reference was made explicitly to sustainable consumption (ie, using that specific term) elsewhere in the text, eg, 1h), 3g), 4, 5, 66, and 67, in addition to less explicit references elsewhere. We suggest that such a dual approach will be necessary for this review also.

That being said, we address the two areas of e-commerce and financial services specifically below, without prejudice to our argument that the revision should be undertaken on the broader basis described above. That is followed by less detailed consideration of the other areas mentioned in the implementation report. Finally, we address other areas which have arisen in our work with our Members worldwide.

2. Electronic commerce and related provisions

CI has published a separate 110-page publication titled *Updating the UN Guidelines for Consumer Protection for the Digital Age* which details our proposals for new measures covering e-commerce

¹ Paras 1(i), 11 and 69 of Annex A. See also Annex C *Data Protection: UNGCP*.

² Annex B, R Simpson: *Emerging issues in consumer protection: financial services*, UNCTAD ad hoc conference on consumer protection, Geneva July 2012.

and related areas of importance to consumers in the digital age.³ Here, a summary of proposals is presented, with page references to the separate publication where more information can be found.

A number of the key provisions of the Guidelines are located in a proposed new section titled “*E-commerce and digital products and services*” (see Annex A), but as suggested above, we do not consider that there is any logical and consistent way to separate out the various issues that confront the consumer in the digital age into a single silo called “e-commerce”. Instead of attempting to do this, for simplicity we have roughly sorted the provisions that relate to consumers in the digital age into the following categories, which cut across various sections of the Guidelines:

Access to knowledge

Most of the proposed provisions in this category are those dedicated to ensuring that consumers of digital content products (such as e-books) are treated on a level footing with consumers of equivalent analogue products (such as printed books).⁴ They would require that suppliers of such digital content products inform consumers of the effect of any applicable technical protection measures (sometimes called “digital locks”) or interoperability limitations that could impede the consumer from using them.⁵ Suppliers are exhorted not to use such technological mechanisms to cripple digital products or unreasonably limit the ways in which consumers can use them.⁶ More broadly, we aim to prohibit intellectual property rights from being enforced in ways that override consumers’ human rights.⁷

Internet and telecommunications

The provisions in this category recognise the positive as well as negative impacts that communications networks such as the Internet have brought to consumers. They address the dangers for consumers of loss of control over their personal information online, remedies against such loss, the preemptive measure of limiting the information that is collected about consumers to begin with, and treatment of security.⁸ They promote affordable access to the Internet itself, and require governments and businesses to uphold the principles of network neutrality.⁹ They also promote public access to codes, standards and compliance documentation, as well as safety information over the Internet,¹⁰ the creation, dissemination and preservation of content in diverse languages and accessible formats.¹¹

E-commerce and digital products

Equivalent consumer protection mechanisms should apply no matter whether products or services are delivered online or offline, and whether or not they are supplied in a digital format.¹² One of the biggest obstacles to the protection of consumers of online or digital products and services is the

³ *Updating the UN Guidelines for Consumer Protection for the Digital Age*, Consumers International, 2013, available at <http://A2Knetwork.org/guidelines>, henceforth *Digital Age*.

⁴ Paras 1(j) and 70 of Annex A discussed at *Digital Age*, pp.21-23 and 46.

⁵ Para 30, Annex A, discussed at *Digital Age*, p.49.

⁶ Para 27, Annex A, discussed at *Digital Age*, p.20.

⁷ Para 6, Annex A, discussed at *Digital Age*, pp.18-19.

⁸ Paras 1(i) and 11, Annex A, discussed at *Digital Age*, pp.33-36.

⁹ Paras 49 and 50, Annex A, discussed at *Digital Age*, pp.39-41.

¹⁰ Paras 10 and 16, Annex A, discussed at *Digital Age*, p.31.

¹¹ Para 48, Annex A, discussed at *Digital Age*, pp.37-39.

¹² Paras 1(j) and 66, Annex A, discussed at *Digital Age*, pp.46 and 51-52.

ease with which suppliers are able to use unnecessarily long and complex standard contractual terms of service to take away consumers' rights, often even reserving the right to change those terms at whim. This should be prohibited.¹³ Consumers should also be able to maintain control over content that is hosted for them online.¹⁴ Extra attention needs to be paid to information disclosure,¹⁵ payment, security,¹⁶ redress¹⁷ procedures in online transactions, as well as consumer education.¹⁸

3. Financial services

In our response to the UNCTAD 'matrix consultation' in December 2012, CI recognised that: "*many of the existing cross-cutting principles which constitute the bulk of the Guidelines are also applicable to Financial Services, for example the provisions on information, fairness of contract, and redress*".¹⁹ So as with e-commerce, we propose a specific new set of provisions to go under a sub-heading of section H on *Measures relating to specific areas*, as well as amendments elsewhere in the existing text. These proposals have borrowed on our work in the G20 process aimed at strengthening consumer protection in financial services.²⁰

Better information design and disclosure, clearer contracts and charges:

Financial service providers should be required to take responsibility for ensuring consumers receive clear, sufficient, reliable, comparable and timely information about financial service products. Key information documents should be obligatory for purposes of comparison. Clearly the '*legitimate needs*' of consumers listed in GL 3 of the existing text cover information under sub-para c). Reference to '*informative marketing*' in GL 15, '*false or misleading claims*' in GL 16, '*information necessary to enable consumers to make informed and independent decisions*' in GL 22, '*free flow of accurate information*' in GL 23, are all highly relevant. The Guidelines generally meet our requirements then in this respect. However, given the poor record of the sector despite the wide consensus of the need for improved information, we think the Guidelines need to be firmer regarding sanctions. The same goes for unfair contract terms and abusive practices which are referred to in para 1 of the GLs ('*abusive business practices*') and GL 21 ('*contractual abuses*') and so we propose strengthening GL 21 to the effect that failure to meet the listed criteria should cause a contract to be voidable.²¹

Universal access to basic financial services:

There is a wide degree of consensus on the need to make basic financial services available to all, and there are encouraging examples of service innovation in developing countries, notably in the link of mobile telephony and money transfer, a sub-sector in which CI is currently working in the

¹³ Paras 26 and 28, Annex A, discussed at *Digital Age*, pp.47-48.

¹⁴ Para 71 of Annex A discussed at *Digital Age*, pp.50-51.

¹⁵ Paras 67 and 68 of Annex A discussed at *Digital Age*, p.52.

¹⁶ Para 69 of Annex A discussed at *Digital Age*, p.53.

¹⁷ Paras 40 and 42 of Annex A discussed at *Digital Age*, p.51.

¹⁸ Para 72 of Annex A discussed at *Digital Age*, p.53.

¹⁹ CI, *Response to UNCTAD consultation on the UNGCP*, 14 December 2012.

²⁰ CI, '*Safe, fair and competitive markets in financial services: recommendations for the G20 on the enhancement of consumer protection in financial services*' available at:

www.consumersinternational.org/media/668925/cifinancialreport2011execsummary.pdf

²¹ Annex A, para 26.

development of standards to protect consumers. Remittance services are now a much larger sector than when the GLs were first drafted, and consumers in that sector are particularly vulnerable to one-sided terms.²² This needs to be reflected in the UNGCP.²³

Remuneration structures:

Recent research by CI and its Members, even since the UNCTAD meeting of 2012, show how many abuses in the sector have been, at least, intensified by remuneration structures with their emphasis on sales targets which are often in conflict with product suitability. Reform has been accepted up to a point by some institutions but the pace is too slow. We make proposals for remuneration structures to work to the benefit of consumers.²⁴

Governance:

The existing text on international cooperation in section 4 relates to consumer education and information, and we propose to extend this to consumer participation in regulation and redress.²⁵ Although this section deals with international cooperation, it calls upon national governments and international agencies to act in this respect. We also advocate specific reference to consumer participation in service regulation in the new financial services section.²⁶

Depositor protection:

CI has campaigned for some time at international level through the G20 process for reform of consumer protection in financial services for global development of deposit guarantees. Recent events in Cyprus have shown the importance of the establishment and maintenance of depositor protection which is a major safeguard against bank runs and support for systemic stability.²⁷

Competition:

There is a need to reverse the market concentration, which, accelerated by the financial crisis, has contributed to the creation of institutions that are 'too big to fail'. Independent competition enquiries need to be carried out and public interest tests applied to government stakes in the banking sector and their disposal. There is a need to remove barriers that discourage consumers from switching accounts (eg, comparability of charges should be mandatory and portable account numbers should be introduced).²⁸

Responsible lending:

Regarding assessment for credit-worthiness, the lack of which was a major contributor to the financial crisis, existing GL 21 already makes reference to '*unconscionable conditions of credit by sellers*'. This needs to be strengthened in the UNGCP by enshrining the principle of responsible lending. Consumers also need to accept the need for assessment of their own ability to repay loans,

²² CI, *The remittances game of chance: playing with loaded dice*, 2012.

²³ Annex A, para 82.

²⁴ Annex A, para 82.

²⁵ Annex A, para 92.

²⁶ Annex A, para 82.

²⁷ Annex A, para 83.

²⁸ Annex A, para 85.

and lenders should be obliged to make such assessments or face nullification of the enforcement of contracts. We, therefore, propose a new paragraph to the effect that credit granters should be required to apply due diligence when extending loans to consumers, in particular assessing ability to repay.²⁹ More systematic use of credit assessment in turn raises issues of privacy, and we deal with that below. Governments also need to develop procedures to treat over-indebtedness by consumers, such as development of debt payment plans and debt forgiveness for severe cases.

4. Issues which “merit wider consultation”

These are issues which have been identified by UNCTAD in para 43 of the Implementation report. As mentioned above, we have no objection to their inclusion, but do not accept the implicit division of topics into ‘probables’ (ie, e-commerce and financial services) and ‘possibles’ which merit wider consultation.

Data protection

Personal information of consumers is a valuable commodity, exploited both by industry (eg, through targeted advertising), and by governments (eg, in law enforcement and tax collection). But such exploitation must be subject to limits that respect the consumer’s privacy. For example, Article 12 of the Universal Declaration of Human Rights states that: *“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence...”*

The digital and online environment have turned the personal information of consumers into even more of a commodity, making it practical to replicate databases of consumer information almost instantaneously and at next to no cost, and to thread together different sources of personal information into a composite record (through a technique known as data mining). The Internet has also enabled businesses that don’t strongly protect consumer privacy to flock to jurisdictions in which privacy is not well protected by law (“data havens”).

In Annex C we spell out our concerns that relate particularly to the online and digital environment with regard to the issues of online behavioural advertising, online anonymity, data retention and ‘deep packet inspection’.

We have made proposals for amendments to deal with these issues.³⁰ As can be seen, the provisions that bear on data protection are located in several places throughout the text. In this context, we repeat the point that the treatment of data protection in the UNGCP cannot be accomplished simply through the e-commerce section, as the principles of privacy and data protection that are applicable online are equally applicable offline.

Abusive advertisement

We believe that this is already reasonably well covered by the UNGCP, notably by GLs 15, 16, 22, 25, and 26, especially if a broad interpretation is taken to include marketing practices. We think the Guidelines are lacking in terms of recommended sanctions, and we have indicated that we would

²⁹ Annex A, para 84.

³⁰ Annex A, paras 1i), 69 and 11.

seek, for example, non-enforceability of service contracts by the provider in the event of requirements for fairness and intelligibility not being met.³¹

We advocate that the Guidelines should make reference to the need for restraint in food and beverage marketing in particular to children, in a general context of health promotion, and should restate the need for policies and laws restricting advertising of alcohol and tobacco.³² Repeated failures in these regards have led to continued premature deaths and a global surge in non-communicable diseases that together constitute a massive public health failure.

Energy

We strongly welcome the suggestion that energy be considered and we have put forward a single paragraph covering universal service, community participation in regulation, sustainable consumption and production and the shifting of subsidies from consumption to connection, to concentrate resources on the non-connected poor.³³ However, as with other topics, amendments are also recommended elsewhere in the text. For example, we recommend that the section on sustainable consumption take into account the needs of the connected poorest populations in the event of the diminution of consumption subsidies.³⁴ Essential services in general need to involve consumer representation and an amendment to that effect is included in the section titled *Distribution facilities for essential consumer goods and services*.³⁵

Cross-border trade

International trade already features widely in the text, implicitly and explicitly in too many places to list, and so it is not clear exactly what is meant here by the implementation report. We make proposals for amendment with respect to international standards³⁶ the need for international trade agreements to prevent predatory pricing³⁷ and in particular, to the prevention of agricultural dumping on the one hand and international food price manipulation on the other.³⁸

We specifically address cross border transactions in the context of section 4 on *International Cooperation* where we propose strengthening consumer protection across borders giving e-commerce or tourism as examples. We draw attention to the need for cross-border dispute resolution mechanisms.³⁹ We refer to the related issue of the need to protect the consumer rights of tourists and travellers and note the recent approval by the Hague Conference on Private International Law of a programme to develop an International Convention on the Protection of Tourists and Visitors.⁴⁰

³¹ Annex A, para 26.

³² Annex A, para 74.

³³ Annex A, para 80.

³⁴ Annex A, para 62.

³⁵ Annex A, para 38c.

³⁶ Annex A, paras 9 and 35.

³⁷ Annex A, para 24.

³⁸ Annex A, para 76.

³⁹ Annex A, para 87b.

⁴⁰ Annex A, para 19.

5. The need for a comprehensive revision

In addition to the ‘*new issues*’ and the issues which ‘*merit wider consultation*’, our consultation with our Members has also resulted in a further rich crop of issues bringing the following areas to our attention.

Improved guidance in specific sectors

Water: sanitation and the principle of universal service should be included. Subsidies should support improvements to access, and poor consumers will need help with rising prices.⁴¹

Food: measures to promote sustainable food production and tackle waste should be supported. The production and distribution of organic food should be encouraged.⁴²

Pharmaceuticals: generic competition should be promoted as a step towards providing universal and affordable healthcare. Reference to the objectives of the Doha declaration on the TRIPS agreement and public health would strengthen public health services.⁴³

Cross-cutting issues

The role of Consumer Organisations: The existing UNGCP make several references to the role of consumer organisations, including in Objective 1e) facilitation of their development, which could include financial support as already happens in many jurisdictions, sometimes under a legal obligation. There is specific reference to the work of consumer organisations in monitoring (GLs 16 and 25), education (GLs 35 and 38), and development of voluntary codes (GL 26). But there is little, if any, reference to their role in regulatory activities, in redress and dispute resolution, and in testing products and services, three major activities for our Member organisations. Our overall analysis suggests, therefore, some scope for amendments regarding the role of consumer organisations. There also needs to be recognition of their potential role in collective legal actions, possibly under existing GL 32 on redress. We suggest amendments accordingly:

Redress: This is covered by section E, one of the better sections in the present text. It requires amplification with reference to consumer participation in dispute resolution⁴⁴ and collective legal action to seek redress against abusive practices.⁴⁵

Participation in regulatory processes: We make several proposals for amendment to existing text regarding participation in general (GLs 31 and 68⁴⁶) and at sectoral level, in water (GL 59⁴⁷), and we propose new GLs including participation in regulatory processes in energy and financial services.⁴⁸

⁴¹ Annex A, para 78.

⁴² Annex A, para 77.

⁴³ Annex A, para 81.

⁴⁴ Annex A, para 43.

⁴⁵ Annex A, para 40.

⁴⁶ Annex A, paras 38, 39 and 92

⁴⁷ Annex A, para 78

⁴⁸ Annex A, paras 80 and 82.

Independent testing: We propose the strengthening of existing GL 30 by stressing the need for independent testing and the potential role for consumer organisations in that domain.⁴⁹

Social responsibility: This has raised its profile since 1985 and requires integrating into the consumer protection landscape.⁵⁰ It is only referred to tangentially in the current text (GLs 7 and 26).

Consumer education: The relevant section F is currently strong but could be strengthened further by reference to the role and needs of women and the potential use of the Internet as a medium of education.⁵¹

The needs of ALL consumers should be recognised

After 28 years, the weaknesses of the existing UNGCP are showing. They show a tendency to treat 'consumers' as 'customers', ie, those engaged in commercial transactions with sellers. They pay insufficient attention to the needs of people outside of formal markets and users of public services.⁵² Symptomatic of this is the absence of any reference to access to essential goods and services in the most quoted section of the UNGCP, namely GL 3 '*the legitimate needs*', despite reference to '*distribution facilities for essential goods and services*' in section D for which we propose amendments.⁵³ We propose, therefore, that access to essential goods and services should be acknowledged as '*a legitimate need of consumers*', so that protection should extend to all consumers not just those in the formal economy.⁵⁴

There is little emphasis in the Guidelines on the very significant role played by state-owned or municipal enterprises or services operating in many sectors including vital infrastructure services, marketing boards and other activities in the market. The consumer interest is common to the public and private spheres and the same expectations should be applied to state-owned enterprises as to private concerns. The UNGCP need to include prominent recognition that municipal or state-owned enterprises, as well as corporations, have responsibilities to consumers and we propose that such recognition be made under the objectives set out in section 1.⁵⁵

A further weakness is that the UNGCP has not caught up with certain demographic shifts since 1985. For example, the distinction made in several places (eg, GLs 6, 31a) and b)) between urban and rural consumers seems to reflect an assumption that rural consumers are the more vulnerable. This may have been broadly true in the past but should not be so assumed today, especially in the light of the growth of peri-urban settlements. Where there are specific issues of remoteness, then those are of course entirely relevant, but if groups of consumers are to be singled out for special mention it should be for reasons of vulnerability whatever form it takes. Disadvantaged consumers live in rural

⁴⁹ Annex A, para 37.

⁵⁰ Annex A, paras 9 and 43.

⁵¹ Annex A, paras 44, 49 and 50.

⁵² Indrani Thuraisingham, CI, *The need to revise the UNGCP*, UNCTAD ad hoc conference, Geneva, July 2012.

⁵³ Annex A, paras 38c) and 39.

⁵⁴ Annex A, para 3i).

⁵⁵ Annex A, para 1k).

and urban areas, and the current imbalance in the text can be corrected through minor amendments.⁵⁶

6. Conclusion: Ongoing support for the implementation of the Guidelines

UNCTAD are right to point to the need for modernisation regarding issues such as e-commerce (to which we would add the emerging issue of m-commerce currently in a state of rapid development both regarding regulation and basic requirements for consumer protection). However, as indicated above, there are other issues where the world has changed since 1985, and we note also the need for greater consideration of the needs of women⁵⁷ and consumers with disabilities.⁵⁸ Some issues have never been satisfactorily dealt with by the UNGCP, notably the treatment of the most marginal populations outside of the formal market, and the capacity for the state to behave against the interests of consumers. So revision is more than modernisation.

Restricting revision to specific aspects of the UNGCP raises the prospect that large sections would remain unrevised from 1985 until the next revision. It has been suggested a few times by the secretariat that areas other than e-commerce and financial services might be dealt with under a process of ongoing revision. We would suggest that this is not a good approach. We do, however, agree that it would be a positive step to keep the UNGCP 'locked in the radar' of a new standing commission with a duty to monitor compliance with the Guidelines.⁵⁹ This was called for by many of our Members in our recent survey.⁶⁰ Reports to the new Commission could coincide with a UN International Day for Consumer Protection, to raise awareness and generate support. We, therefore, call for the UN to give official recognition to 15 March, already widely observed as the annual world day for consumer protection.⁶¹

The whole point of the UN Guidelines is that they are definitive. A process of rolling revision would undermine that definitive status as they would be in a permanent state of flux. As the space has been cleared in the UN agenda for revision, then this is the moment to seize the opportunity and make a comprehensive review. We are ready to play our part in that process.

Consumers International, June 2013

⁵⁶ See existing text GL 6.

⁵⁷ Annex A, para 44.

⁵⁸ Annex A, para 15.

⁵⁹ Annex A, para 94.

⁶⁰ CI, *The state of consumer protection around the world*. Revised April 2013.

⁶¹ Annex A, *chapeau*.



Consumers International proposals for amendments to the UN Guidelines for Consumer Protection

Annex A: Marked up amendments

Introduction

This document is an Annex to CI's formal submission to UNCTAD in advance of the Ad Hoc Expert Meeting in July 2013 at the UN in Geneva. It is an essential part of the submission as it sets out CI's actual proposed amendments to the UNGCP.

The text consists of the current UNGCP with CI's proposed amendments shown as both deletions and insertions. The *chapeau* is not an integral part of the proposed UNGCP text. The footnotes are also not a part CI's proposed amendments, but are detailed notes to amplify the broader points made in the main submission. CI advocates that the GLs would be strengthened by reference to other international agreements or guidelines, in particular those emanating from the UN, and we make such references in the footnotes.

As we have inserted some entirely new Guidelines (GLs) as new paragraphs or sub-paragraphs, the numbers change compared with the existing GLs. For ease of reference we refer, in the main submission, to the existing Guidelines as GLs, and the paragraphs set out below as Paras, particularly in the footnotes. The current numbers of the GLs are shown below next to the proposed new numbers where they diverge. When that happens the 'old' GL numbers are shown deleted.

United Nations Guidelines for Consumer Protection

This is Consumers International's marked up copy of the United Nations Guidelines for Consumer Protection, with proposed amendments indicated by striking out and underlining. Last amended June 18 2013. In conjunction with the amendment of the Guidelines, we ask that the United Nations officially recognise 15 March as the International Day for Consumer Protection.

• I. Objectives

1. Taking into account the interests and needs of consumers in all countries, particularly those in developing countries; recognizing that consumers often face imbalances in economic terms, educational levels, and bargaining power; and bearing in mind that consumers should have the right of access to non-hazardous products and the right to participate in cultural, civic and educational affairs,⁶² as well as the right to promote and benefit from just, equitable and sustainable economic and social development and environmental protection, these guidelines for consumer protection have the following objectives:

- (a) To assist countries in achieving or maintaining the highest level of protection for their populations s as consumers;
- (b) To facilitate sustainable production and distribution patterns responsive to the needs and desires of consumers;
- (c) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;
- (d) To assist countries in curbing abusive business practices by all enterprises at the local, national and international levels which adversely affect consumers;
- (e) To facilitate the development of independent consumer groups;
- (f) To further international cooperation in the field of consumer protection;
- (g) To encourage the development of competitive market conditions which provide consumers with greater choice at lower prices as appropriate with particular emphasis on the affordability of basic goods and services and the maintenance of quality.⁶³
- (h) To promote sustainable consumption;
- (i) To safeguard consumers against the unauthorised collection, use, disclosure or loss of their

62 This amendment to the preamble paragraph of the Objectives echoes the relevant provisions of the Universal Declaration of Human Rights and the Covenant on Economic, Social and Cultural Rights that underlie the subsequent amendments. These words are also found in the 2007 Draft Access to Knowledge (A2K) Treaty which is available online from http://www.cptech.org/a2k/a2k_treaty_may9.pdf.

63 CI does not favour 'low price at any price' as there is reason to oppose artificially low prices such as those resulting from agricultural dumping and predatory pricing. Even 'greater choice' requires qualification, due to the consumer detriment that has come from introducing retail level choice to natural monopolies as with electricity. We do, however, favour competition outside of natural monopolies. The amendments provide the necessary qualifications to the existing text.

personal information;⁶⁴

(j) To promote parity in the treatment of consumers of goods and services specific to, or mediated through, electronic communications (including online or digital products or services), compared with consumers of analogous products and services provided in offline or analogue form;⁶⁵ and

(k) To promote the application of the above principles regardless of the type of institution producing, distributing and retailing the products or services; the principles should apply to state-owned, municipal, regional and private enterprises as well as to services provided by NGOs.

● II. General principles

2. Governments should develop and/or maintain a strong consumer protection policy, taking into account the Guidelines set out below and relevant international agreements. Governments need to adopt a clear legal mandate to protect consumers including the application within their jurisdictions of existing legislation, as well as initiating new measures. In so doing, each Government should set its own priorities for the protection of consumers in accordance with the economic, social and environmental circumstances of the country and the needs of its population, bearing in mind the costs and benefits of proposed measures and the need to maintain high levels of protection.

3. The legitimate needs which the guidelines are intended to meet are the following:

(a) The protection of consumers from hazards to their health and safety;

(b) The promotion and protection of the economic interests of consumers;

(c) Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs;

(d) Consumer education, including education on the environmental, social and economic impacts of consumer choice;

(e) Availability of effective consumer redress;

(f) Freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision-making processes affecting them and for those views to be dealt with in an equitable manner;⁶⁶

(g) The promotion of sustainable consumption patterns;

(h) Access to knowledge, that is, more equitable public access to the products and tools of human culture and learning,⁶⁷ and

64 Although we propose that consumer privacy and data protection be dealt with in more detail in the new section on e-commerce, these are a cross-cutting need that should also apply in offline consumer transactions. It is therefore apt that this need should be recognised here.

65 See *Updating the UN Guidelines for Consumer Protection for the Digital Age* (Consumers International, 2013), henceforth “*Digital Age*”, pages 43-45.

66 The proposal reflects a widespread concern that consultation should be meaningful not just *vis a vis* industry but also regulators.

67 This mirrors statement of principle 3b), “The promotion and protection of the economic interests of consumers”, and is implied by the proposed amendments in the objectives. It incorporates a short definition of the phrase “access to knowledge” that was developed by Consumers International as part of its global programme on A2K, and first published in its book *Access to Knowledge: A Guide for Everyone* in 2010, available online from: <http://A2Knetwork.org/handbook>.

i) Guaranteed access to essential goods and services⁶⁸.

4. Unsustainable patterns of production and consumption, particularly in industrialized countries, are the major cause of the continued deterioration of the global environment including climate change. Nevertheless, all countries should strive to promote sustainable consumption patterns; developed countries should take the lead in achieving sustainable consumption patterns; developing countries should seek to achieve sustainable consumption patterns in their development processes, having due regard to the principle of common but differentiated responsibilities. The special situation and needs of developing countries in this regard should be fully taken into account.

5. Policies for promoting sustainable consumption should take into account the goals of eradicating poverty, satisfying meeting the basic human needs of all members of society people, and reducing inequality within and between countries.

6. Policies for the enforcement of intellectual property rights should seek to strike a fair balance between rewarding creativity and investment on the one hand, and the cultural, civic, health and educational rights of consumers and their economic and social development on the other.⁶⁹

~~6. 7.~~ Governments should provide or maintain adequate institutional infrastructure to develop, implement and monitor consumer protection policies. Special care should be taken to ensure that measures for consumer protection are implemented for the benefit of all sectors of the population, particularly ~~the rural population and~~ people living in poverty.

8. Governments need to ensure that consumers are regularly surveyed in relation to their level of satisfaction with goods and services and with the providers of such goods and services. Furthermore, their views should be sought in respect of consumer protection measures undertaken by governmental, regulatory or other relevant bodies. Governments should ensure that compliance with product safety and quality standards is regularly and objectively assessed, disaggregated and analysed. The results of such surveys should be made readily publicly available, including via the Internet. Governments should develop appropriate measures of consumer detriment and work with stakeholders to develop mechanisms for prevention, rectification and compensation.

~~7. 9.~~ All enterprises ~~should~~ must obey the relevant laws and regulations of the countries in which they do business. They should also conform to the appropriate provisions of international standards for consumer protection to which the competent authorities of the country in question have agreed⁷⁰. (Hereinafter references to international standards in the guidelines should be viewed in the context of this paragraph.) Enterprises should be encouraged to go beyond legal conformity and make positive contributions to social responsibility over and above the minimum and in accordance with international guidelines emanating from international standards setting bodies⁷¹.

10. All laws, regulations and non-statutory instruments such as codes, standards and compliance and relevant research reports which are related to the protection and advancement of the interests of consumers and the public at large, should be freely, accessibly and publicly available, including via the Internet.⁷²

68 See footnotes to paras 75, 78 and 80.

69 The principle of balance between creator and consumer rights is a well accepted principle in intellectual property regulation and is enunciated in most instruments. See further paragraph 27 below.

70 See OECD *Guidelines for Multinational Enterprises*, 2011 edition, Ch 8 *consumer interests*.

71 See for example: ISO 26000 *Guidance on Social responsibility*, 2012.

72 See *Digital Age*, pages 31-32.

11. Governments and businesses should ensure effective consumer control of personal data. Collection of personal data (including internet usage information and IP addresses) should be made through free, informed and positive consent (opt-in), and only when strictly necessary, in an open and transparent way and wherever practicable and lawful. Confidential personal data should be protected against unauthorized use, and in any event, its use should be minimised. Those affected by any personal data breach must be promptly notified of the details of the breach and of the available means of redress.⁷³

~~8.~~ 12. The potential positive role of universities and public and private enterprises in research should be considered when developing consumer protection policies. Governments should also consider ensuring that consumer bodies or associations receive capacity-building or financial support to facilitate and support their effective engagement with policy and other stakeholder consultation processes.

● **III. Guidelines**

~~9.~~ 13. The following guidelines should apply both to home-produced goods and services and to imports.

~~10.~~ 14. In applying any procedures or regulations for consumer protection, due regard should be given to ensuring that they ~~do not~~ comply with international principles that protect human rights and the social, cultural and economic rights of all people. Procedures and regulations should not become unjustifiable barriers to international trade and they ~~are~~ should accordingly be consistent with international trade obligations.⁷⁴

A. Physical safety

~~11.~~ 15. Governments should adopt or encourage the adoption of appropriate measures, including legal systems, safety regulations, national and/or international standards, voluntary standards and the maintenance of safety records to ensure that products are safe for ~~either~~ intended or normally foreseeable use for all consumers, including those with different abilities.⁷⁵

~~12.~~ 16. ~~Appropriate~~ Policies should ensure that goods produced by manufacturers are safe for either intended or normally foreseeable use. Those responsible for bringing goods to the market, in particular suppliers, exporters, importers, retailers and the like (hereinafter referred to as "distributors"), should ensure that while in their care these goods are not rendered unsafe through improper handling or storage and that while in their care they do not become hazardous through improper handling or storage. Consumers should be instructed in the proper use of goods and should be informed of the risks involved in intended or normally foreseeable use. Vital safety information should be conveyed to consumers, including by

73 See *Digital Age*, pages 33-36, as well as the 2008 OECD Civil Society Background Paper (available online from <http://www.oecd.org/dataoecd/45/47/44686738.pdf>), the Trans-Atlantic Consumer Dialogue (TACD) Charter of Consumer Rights in the Digital World, available online from: (http://tacd.org/index2.php?option=com_docman&task=doc_view&gid=43&Itemid=) and the EU Data Protection Directive (Directive 95/46/EC available online at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:EN:HTML>).

74 There is otherwise an imbalance in this provision, implicitly elevating trade obligations over other fundamental underlying principles, such as human rights.

75 Consumers with disabilities are among the most vulnerable consumers of all, and to mention them in this context would accord with the Article 3 of the Convention on the Rights of Persons with Disabilities.

internationally understandable symbols wherever possible, [and including via the Internet](#).⁷⁶

~~13.~~ **17. Appropriate** Policies should ensure that if manufacturers or distributors become aware of unforeseen hazards after products are placed on the market, they should notify the relevant authorities and, ~~as appropriate~~, the public without delay. Governments should also consider ways of ensuring that consumers are properly informed of such hazards.

~~14.~~ **18.** Governments should, ~~where appropriate~~, adopt policies under which, if a product is found to be seriously defective and/or to constitute a substantial and severe hazard even when properly used, manufacturers and/or distributors should recall it and replace or modify it, or substitute another product for it; if it is not possible to do this within a reasonable period of time, ~~the consumers~~ should be adequately compensated [either individually or collectively](#). [Legal procedures such as group actions should be developed to this effect](#).

B. Promotion and protection of consumers' economic interests

~~15.~~ **19.** Government policies should seek to enable consumers to obtain optimum benefit from their economic resources. They should also seek to achieve the goals of satisfactory production and performance standards, adequate distribution methods, fair business practices, informative marketing and effective protection against practices which could adversely affect the **economic** interests of consumers and the exercise of choice in the market place. [The above should apply to tourists and visitors as well as to resident populations, and special services may be required to provide such protections](#).⁷⁷

~~16.~~ **20.** Governments should intensify their efforts to prevent practices which are damaging to the economic interests of consumers ~~through~~ [by](#) ensuring that manufacturers, distributors and others involved in the provision of goods and services ~~adhere to~~ [comply with](#) established laws and mandatory standards. Consumer organizations should be encouraged to monitor adverse practices, such as the adulteration of foods, false or misleading claims in marketing and service frauds [and share the information with the public and with enforcement agencies](#).

~~17.~~ **21.** Governments should develop, strengthen or maintain, as the case may be, measures relating to the control of restrictive and other abusive business practices which may be harmful to consumers, including means for the enforcement of such measures. In this connection, Governments should be guided by their commitment to the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices adopted by the General Assembly in resolution 35/63 of 5 December 1980.

[22. Competition policy as enshrined in the above UNCTAD Set should evolve towards stronger international collaboration to guard against the maintenance and emergence of international monopolies. Investigations by competition authorities into industry practices should take on not just retail practices that have a direct impact on final consumers but should also deal with upstream issues relating to industry structure and the need for international action to prevent cross-border supply cartels.](#)

⁷⁶ This amendment broadens the existing provision, principally to address the situation where safety information that was conveyed to the consumer at the time of purchase is no longer readily available, perhaps because the item was purchased second-hand or because the original safety instructions were lost. This amendment reflects the existing widespread best practice whereby suppliers will make safety information available online on an ongoing basis, so that even consumers of second-hand goods can operate them safely.

⁷⁷ Tourism is now the world's first or second economic sector, (estimates have varied in recent years). A mention of the need for protection of tourists and visitors is justified given the size and number of transactions world-wide. A draft International Convention on the Protection of Tourists & Visitors was presented to the Hague Conference on Private International Law in April 2013 and was supported by CI.

~~18.~~ 23. Governments should adopt or maintain policies that make clear the responsibility of the producer to ensure that goods meet reasonable demands of durability utility and reliability, including interoperability with other associated goods through conformity with relevant open standards, and that they are suited to the purpose for which they are intended, and that ~~the seller~~ distributors should see ensure that these requirements are met. Similar policies should apply to the provision of services.

~~19.~~ 24. 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. However, governments and international agencies should take measures to prevent predatory pricing which, while conferring short term benefits on some consumers, does so at the expense of long term security and diversity of supply. Such predatory practices should be neither encouraged by governments nor allowed by international trade agreements. Existing rules to this effect should be applied without sectoral exceptions.

~~20.~~ 25. Governments should, ~~where appropriate~~, see to it that manufacturers and/or ~~retailers~~ distributors ensure adequate availability of reliable after-sales service and spare parts.

~~21.~~ 26. Consumers should be protected from such contractual abuses as: one-sided standard contracts, unfair contract terms, exclusion of essential rights in contracts, the use of unnecessarily long or complex wording in contracts, variations or additions to the terms of use of a product or service to which the consumer does not freely agree, contracts of unreasonably long duration, billing for distinct products or services as a bundle that cannot be disaggregated, and unconscionable conditions of credit by sellers. Cancellations and renewals of contracts must be governed by fair terms and conditions. Service contracts which do not meet legal requirements of fairness and intelligibility should not be enforceable by the service provider.⁷⁸

27. Governments should restrict suppliers of digital content products and services from employing technologies that have a significant effect of preventing consumers from using those products or services in ways that would otherwise be reasonable, lawful and safe. These include any network locking technologies that restrict the use of devices to particular operator networks. In the case of products that are sold or later supplied with software that is required for their normal operation, the consumer's use of such software cannot be taken as a waiver of the right to use the product as expressed above, nor as consent to the removal of any functionality that the product possessed at the time of purchase.⁷⁹

28. Standard provisions in non-negotiated product licenses should not prevent consumers from exercising the limitations and exceptions recognised in domestic intellectual property laws.⁸⁰

~~22.~~ 29. Promotional marketing and sales practices, as well as remuneration structures, should be guided by the principle of fair treatment of consumers and should meet legal requirements⁸¹. This requires the provision of the information necessary to enable consumers to take informed and independent decisions, as well as measures to ensure that the information provided is accurate and allows for comparability between like products.

~~23.~~ 30. Governments should encourage all concerned to participate in the free flow of accurate information on all aspects of consumer products, including in the case of digital

78 See *Digital Age*, pages 47-48.

79 See *Digital Age*, page 20 and pages 34-35.

80 This provision is drawn from Article 10.3 of the Trans-Pacific Strategic Economic Partnership Agreement (2005) between New Zealand, Singapore, Chile and Brunei.

81 See for example principle 6 of the *G20 High-level principles on financial consumer protection*, OECD 2011.

content products and services, the effect of any applicable technical protection measures and information on interoperability with hardware and software.⁸²

~~24.~~ 31. Consumer access to accurate information about ~~the environmental impact of~~ products and services, including the environmental impact, should be encouraged through such means as product profiles, environmental reports by industry, information centres for consumers, voluntary and transparent eco-labelling programmes and product information hotlines.

~~25.~~ 32. Governments, in close collaboration with manufacturers, distributors and consumer organizations, should take measures regarding misleading environmental claims or information in advertising and other marketing activities. The development of ~~appropriate~~ advertising codes and standards for the regulation and verification of environmental claims should be encouraged.

~~26.~~ 33. Governments should, within their ~~own~~ national and regional contexts and in an international context, encourage the formulation and implementation by business, in cooperation with consumer organizations, of codes of marketing and other business practices to ensure adequate consumer protection. Voluntary agreements may also be established jointly by business, consumer organizations and other interested parties. These codes should receive adequate publicity.

~~27.~~ 34. Governments should regularly review legislation pertaining to weights and measures and assess the adequacy of the machinery for its enforcement.

C. Standards for the safety and quality of consumer goods and services

~~28.~~ 35. Governments should, as appropriate, formulate or promote the elaboration and implementation of standards, voluntary and other, at the national, regional and international levels for the safety and quality of goods and services and give them appropriate publicity, taking into account both subjective and objective elements. National standards and regulations for product safety and quality should be reviewed from time to time, in order to ensure that they conform, where possible, to generally accepted international standards. Development of standards should include participation of consumer organisations and business organizations.

~~29.~~ 36. Where a standard lower than the generally accepted international standard is being applied because of local economic conditions, every effort should be made to raise that standard as soon as possible.

~~30.~~ 37. Governments should encourage and ensure the availability of facilities to test and certify the safety, quality and performance of essential consumer goods and services. Such testing should be carried out by an appropriate combination of government inspectorates and independent consumer organisations, using accredited certification procedures in an independent manner. Regulators should ensure there is regular surveillance and continuous monitoring to ensure that essential consumer goods and services comply with standards.

D. Distribution facilities for essential consumer goods and services

~~31.~~ 38. Governments should, ~~where appropriate,~~ consider:

(a) Adopting or maintaining policies to ensure the efficient distribution of goods and services to consumers; ~~where appropriate, specific.~~ Specific policies should be considered to ensure

⁸² This language, particularly applicable to cases of digital products, comes from Article 5 of the EU Consumer Rights Directive (Directive 2011/83/EU), available online from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:0088:EN:PDF>.

the distribution of essential goods and services where this distribution is endangered, ~~as could be the case particularly in rural areas~~. Such policies ~~could~~ should include assistance for the creation of adequate storage and all necessary infrastructural facilities to consumer groups and self-help groups for ~~and retail facilities in rural centres, incentives for consumer self help~~ and better control of the conditions under which essential goods and services are provided ~~in rural areas~~;

(b) Encouraging the establishment of consumer cooperatives and related trading activities, as well as information about them, ~~especially in rural areas~~;

(c) Involving consumer representatives in the regulation of essential services, especially natural monopolies. This can be for example, through open hearings and/or an obligation on regulators to accept submissions from consumers.

39. Governments should adopt universal access and service objectives for essential goods and services. Some such services are identified in section 1 of these guidelines as needing to be 'universal'. There should be scope for national designation of certain emerging services (such as the internet) as 'essential'.⁸³

E. Measures enabling consumers to obtain redress

~~32.~~ 40. Governments should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organizations, to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible⁸⁴. Such procedures should include collective redress, and should be available in online and offline modes as appropriate.⁸⁵ They should take particular account of the needs of low-income consumers, and should be initiated at the level of the retail provider before being referred to a higher level body such as an Ombudsman.⁸⁶

~~33.~~ 41. Governments should encourage all enterprises to resolve consumer disputes in a fair, expeditious and informal manner, and to establish voluntary mechanisms, including advisory services and informal complaints procedures, which can provide assistance to consumers.

~~34.~~ 42. Information on available redress and other dispute-resolving procedures should be made available to consumers, including via the Internet. Procedures should be clear and simple in a common language and be easily made available to consumers.⁸⁷

43. The expertise of consumer organisations should be brought to bear in resolving consumer complaints through involvement in dispute resolution forums either statutory or non-statutory. This participation can come either as adjudicators or as supervisory board members for specific dispute resolution schemes. Governments should ensure that information pertaining to the volume, frequency and nature of complaints in the various consumer sectors is collected, analysed and reported on a regular basis. Self regulatory codes and dispute resolution schemes should publish their results company by company and corporate social responsibility reports likewise.

83 See *Digital Age*, page 37.

84 See OECD *Recommendations on consumer dispute resolution and redress*. Adopted by OECD council, 12th July 2007.

85 Alternative dispute resolution is more important with respect to online transactions because they are more often cross-border transactions. See the OECD *Guidelines for Consumer Protection in the Context of Electronic Commerce* (2001).

86 Redress procedures should start with complaints to service providers in the first instance rather than go straight to Ombudsmen. CI is concerned about the massive expansion in referrals to Ombudsmen which are in danger of being overwhelmed, and wish to see retailers taking their responsibilities.

87 See *Digital Age*, page 51.

F. Education and information programmes

~~35.~~ 44. Governments should develop or encourage the development of general consumer education and information programmes, including information on the environmental impacts of consumer choices and behaviour and the possible implications, including benefits and costs, of changes in consumption, bearing in mind the cultural traditions of the people concerned. The aim of such programmes should be to enable people to act as discriminating consumers, capable of making informed choices^s of goods and services, and conscious of their rights and responsibilities. In developing such programmes, special attention should be given to women, who are often the principal purchasers for family needs, and to the needs of disadvantaged consumers, ~~in both rural and urban areas,~~ including low-income consumers and those with low or non-existent literacy levels. Consumer groups, business and other relevant organizations of civil society should be involved in these educational efforts.

~~36.~~ 45. Consumer education should, where appropriate, become an integral part of the basic curriculum of the educational system, preferably as a component of existing subjects. ~~37.~~ Consumer education and information programmes should cover such important aspects of consumer protection as the following:

- (a) Health, nutrition, prevention of food-borne diseases and food adulteration;
- (b) Product hazards;
- (c) Product labelling;
- (d) Relevant legislation, how to obtain redress, and how to contact agencies and organizations for consumer protection;
- (e) Information on weights and measures, prices, quality, ~~credit conditions~~ and availability of basic necessities;
- (f) Environmental protection; ~~and~~
- (g) Efficient use of materials, energy and water;
- (h) Financial services, especially credit conditions; and
- (i) Consumer rights and responsibilities.

~~38.~~ 46. Governments should encourage and work together with consumer organizations and other interested groups, including the media, to undertake education and information programmes, including on the environmental impacts of consumption patterns and on the possible implications, including benefits and costs, of changes in consumption, particularly for the benefit of low-income consumer groups ~~in rural and urban areas.~~

~~39.~~ 47. Business should, where appropriate, undertake or participate in factual and relevant consumer education and information programmes.

~~40.~~ 48. Bearing in mind the need to reach ~~rural consumers~~ isolated and illiterate consumers, Governments should, ~~as appropriate,~~ develop or encourage the development of consumer information programmes in the mass media. Government policy should promote the creation, dissemination and preservation of content in diverse languages and accessible formats, including local content suited to domestic or regional needs.⁸⁸

⁸⁸ This language draws upon the UNESCO Universal Declaration on Cultural Diversity of 2 November 2001, the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 20 October 2005, the UNESCO Recommendation concerning the Promotion and Use of Multilingualism and

49. Bearing in mind the value of the Internet as a channel for consumer education, including long distance learning and knowledge sharing between consumers, governments should facilitate universal access to the Internet through affordable telecommunications and Internet costs with special consideration given to the needs of public service and educational institutions, and of disadvantaged and disabled population groups.⁸⁹

50. Governments and businesses should afford consumers the right to access neutral networks so that consumers would have the right to attach devices of their choice, the right to access or provide content, services and applications of their choice, and the right for this access to be free from discrimination according to source, destination, content and type of application.⁹⁰

~~41.~~ 51. Governments should organize or encourage training programmes for educators, mass media professionals and consumer advisers, to enable them to participate in carrying out consumer information and education programmes.

G. Promotion of sustainable consumption

~~42.~~ 52. Sustainable consumption includes meeting the needs of present and future generations for goods and services in ways that are economically, socially and environmentally sustainable.

~~43.~~ 53. Responsibility for sustainable consumption is shared by all members and organizations of society, with informed consumers, Government, business, labour organizations, ~~and~~ consumer groups and environmental organizations playing particularly important roles. Informed consumers have an essential role in promoting consumption that is environmentally, economically and socially sustainable, including through the effects of their choices on producers. Governments should promote the development and implementation of policies for sustainable consumption and the integration of those policies with other public policies. Government policy making should be conducted in consultation with business, consumer and environmental organizations, and other concerned groups. Business has a responsibility for promoting sustainable consumption through the design, production and distribution of goods and services. Consumer and environmental organizations have a responsibility for promoting public participation and debate on sustainable consumption, for informing consumers, and for working with Government and business towards sustainable consumption.

~~44.~~ 54. Governments, in partnership with business and relevant organizations of civil society, should develop and implement strategies that promote sustainable consumption through a mix of policies that could include regulations; economic and social instruments; sectoral policies in such areas as land use, transport, energy and housing; information programmes to raise awareness of the impact of consumption patterns; removal of subsidies that promote unsustainable patterns of consumption and production, (eg by shifting from consumption subsidy to connection subsidy for essential infrastructure services); and promotion of sector-specific environmental-management best practices.

Universal Access to Cyberspace of 21 November 2003, and paragraph 53 of the Geneva Declaration of Principles at the World Summit on the Information Society (WSIS). See also *Digital Age*, pages 37-39.

89 This language draws upon the UNESCO Recommendation concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace. It also complements the mission of the Broadband Commission for Digital Development, a joint initiative by the International Telecommunication Union (ITU) and the United Nations Educational, Scientific and Cultural Organization (UNESCO), which was established in May 2010 to promote the adoption of broadband-friendly practices and policies as a way of advancing the Millennium Development Goals (MDGs). See also *Digital Age*, pages 39-40.

90 This provision is drawn from the TACD Charter of Consumer Rights in the Digital World. See further *Digital Age*, pages 40-41.

- ~~45.~~ [55.](#) Governments should encourage the design, development and use of products and services that are safe and energy and resource efficient, considering their full life-cycle impacts. Governments should encourage recycling programmes that encourage consumers to both recycle wastes and purchase recycled products.
- ~~46.~~ [56.](#) Governments should promote the development and use of national and international environmental health and safety standards for products and services; such standards should not result in disguised [and unjustifiable](#) barriers to trade.
- ~~47.~~ [57.](#) Governments should encourage impartial [and independent](#) environmental testing of products [with a view to publication of results.](#)⁹¹
- ~~48.~~ [58.](#) Governments should safely manage environmentally harmful uses of substances and encourage the development of environmentally sound alternatives for such uses. New potentially hazardous substances should be evaluated on a scientific basis for their long-term environmental impact prior to distribution.
- ~~49.~~ [59.](#) Governments should promote awareness of the health-related benefits of sustainable consumption and production patterns, bearing in mind both direct effects on individual health and collective effects through environmental protection.
- ~~50.~~ [60.](#) Governments, in partnership with the private sector and other relevant organizations, should encourage the transformation of unsustainable consumption patterns through the development and use of new environmentally sound products and services and new technologies, including information and communication technologies that can meet consumer needs while reducing pollution and depletion of natural resources.
- ~~51.~~ [61.](#) Governments are encouraged to create or strengthen effective regulatory mechanisms for the protection of consumers, including aspects of sustainable consumption.
- ~~52.~~ [62.](#) Governments should consider a range of economic instruments, such as fiscal instruments and internalization of environmental costs, to promote sustainable consumption, taking into account social needs, the need for disincentives for unsustainable practices and incentives for more sustainable practices, while avoiding potential negative effects for market access, in particular for developing countries. [Specific measures may be needed to aid vulnerable consumers in the event of the removal or diminution of consumption subsidies in essential goods and services.](#)
- ~~53.~~ [63.](#) Governments, in cooperation with business and other relevant groups, should develop indicators, methodologies and databases for measuring progress towards sustainable consumption at all levels. This information should be publicly available, [including via the Internet.](#)
- ~~54.~~ [64.](#) Governments and international agencies should take the lead in introducing sustainable practices in their own operations, in particular through their procurement policies. Government procurement, as appropriate, should encourage development and use of environmentally sound products and services.
- ~~55.~~ [65.](#) Governments and other relevant organizations should promote research on consumer behaviour related to environmental damage, [including climate change,](#) in order to identify ways to make consumption patterns more sustainable.

91 This runs alongside and completes the amendment to GL 30; see para 37.

H. Electronic commerce and digital products and services

66. Consumers who participate in electronic commerce should be afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce.⁹²

67. Businesses engaged in electronic commerce with consumers should provide accurate, clear and easily accessible information about themselves, the goods or services offered, and the terms and conditions on which they are offered, to enable consumers to make an informed decision about whether to enter into the transaction.⁹³

68. To avoid ambiguity concerning the consumer's intent to make a purchase, the consumer should be able, before concluding the purchase, to identify precisely the goods or services to be purchased; identify and correct any errors or modify the order; express an informed and deliberate consent to the purchase; and retain a complete and accurate record of the transaction.⁹⁴

69. Consumers should be provided with easy-to-use, secure payment mechanisms and information on the level of security such mechanisms afford.⁹⁵

70. Digital content products should be offered on terms equivalent to those sold in other formats, unless the consumer is clearly informed that different terms apply. This includes the normal incidences of product ownership, such as permanent possession, privacy of use, the ability to gift or resell such goods together with all of the rights with which they were first sold, and the ability to lend or perform them within a family, household or similar limited circle. To the extent required to facilitate these uses of such works, and to allow the consumer to access them at a convenient time and place, governments should allow consumers to time, space and format shift digital content products, to make temporary copies of them, and to bypass technical protection measures applied to them. Hindrance of the exercise of these rights should be prohibited by law. Where possible, consumers should have the opportunity to try a digital content product before final purchase.⁹⁶

71. Governments and industry should support, use and contribute to the development of open and interoperable standards for digital content products supplied to or hosted for consumers. Suppliers who provide a service to host such products online (other than a content streaming service) should also provide the means for consumers to extract them from online storage by that supplier, using open formats and protocols.⁹⁷

72. Governments, business and consumer representatives should work together to educate consumers about electronic commerce, to foster informed decision-making by consumers

92 This reflects the general principle that parity should be given to the consumer protection treatment of online and offline transactions, and is drawn from the OECD *Guidelines for Consumer Protection in the Context of Electronic Commerce* (2001).

93 When transacting online, information that cannot be gleaned as easily as from a storefront transaction must be explicitly provided. This suggested provision is also drawn from the OECD *Guidelines for Consumer Protection in the Context of Electronic Commerce* (2001).

94 When no human being is responsible for accepting an online transaction, special care must be taken to ensure that the consumer intends to form a contract, and has a record of it. This provision is also drawn from the OECD *Guidelines for Consumer Protection in the Context of Electronic Commerce* (2001).

95 Security is also of vital importance in e-commerce transactions. See also privacy, dealt with below. This provision is also drawn from the OECD *Guidelines for Consumer Protection in the Context of Electronic Commerce* (2001).

96 See *Digital Age*, pages 21-23.

97 The User Data Manifesto expresses these principles well: see <http://userdatamanifesto.org/>, and some of the language of this provision is also derived from the 2009 TACD Paris Accord: see http://www.tacd-ip.org/files2/paris_accord_2009_oct20.pdf. See also *Digital Age*, pages 50-51.

participating in electronic commerce, and to increase business and consumer awareness of the consumer protection framework that applies to their online activities. Governments and businesses should be further guided by the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce (2001).⁹⁸

I. Measures relating to specific areas

~~56.~~ 73. In advancing consumer interests, particularly in developing countries, Governments should, ~~where appropriate,~~ give priority to areas of essential concern for the health of the consumer, such as food, water and pharmaceuticals. Policies should be adopted or maintained for product quality control, adequate and secure distribution facilities guaranteeing access to essential goods and services, marketing, standardized international labelling and information, as well as education and research programmes in these areas. Government guidelines in regard to specific areas should be developed in the context of the provisions of this document.

74. Governments should adopt specific measures concerning control of advertising and marketing where consumers are in particular need of protection, especially in the cases of addictive products such as tobacco and alcohol, or where consumers are susceptible to manipulation such as through marketing of food and drink to children especially in relation to unhealthy food.⁹⁹ Governments should also take positive steps towards promotion of healthy patterns of consumption such as nutritional information oriented particularly towards consumers with special needs, children and the elderly.

~~57.~~ 75. *Food.* When formulating national policies and plans with regard to access to affordable food, Governments should take into account the need of all consumers for food security and should support and, as far as possible, adopt standards from the Food and Agriculture Organization of the United Nations and the World Health Organization Codex Alimentarius or, in their absence, other generally accepted international food standards. Governments should maintain, develop or improve food safety measures, including, inter alia, safety criteria, food standards and dietary requirements and effective monitoring, inspection and evaluation mechanisms.

76. The practice of subsidising agricultural exports has been very damaging to food security and to economic development in developing countries, and should be phased out by international agreement and/or by unilateral action in exporting countries. At the same time attention should be paid to the need to maintain adequate food stocks to prevent spikes in food prices. Structural issues in the food production and supply chain should be addressed to prevent exploitation of consumers¹⁰⁰.

~~58.~~ 77. Governments should promote sustainable agricultural policies and practices, conservation of biodiversity, and protection of soil and water, taking into account traditional knowledge. Efforts should be made to reduce wastage of food in the production and distribution chains, including use by final consumers. Governments should encourage and incentivise production and distribution of organic food at affordable prices.

~~59.~~ 78. *Water.* Governments should, within the goals and targets set ~~for the International Drinking Water Supply and Sanitation Decade~~ by successive international commitments in

98 This provision is also drawn from the OECD *Guidelines for Consumer Protection in the Context of Electronic Commerce* (2001).

99 Article 17 of the UN Convention on the Rights of the Child supports the regulation of marketing to children.

100 UN Special Rapporteur on the right to food, Olivier de Schutter, has identified eight priorities for international action in 2013, including the right to food, the reshaping of food chains and establishment and maintenance of food reserves. These are to be considered at the June 2013 meeting of the G8, ie, at the time of writing.

the framework of the UN and others, formulate, maintain or strengthen national policies to improve the access, supply, distribution and quality of affordable water for drinking, and the provision of sanitation services, moving towards the goal of universal service¹⁰¹. Due regard should be paid to the choice of appropriate levels of service, quality and technology, the need for education programmes and the importance of community participation in service provision and regulation. Subsidies should move towards subsidising connectivity rather than consumption.

~~60.~~ 79. Governments should assign high priority to the formulation and implementation of policies and programmes concerning the multiple uses of water, taking into account the importance of water for sustainable development in general and its finite character as a resource.

80. Energy. Governments should formulate, maintain or strengthen national policies to improve the supply, distribution and quality of affordable energy moving towards the goal of universal service¹⁰². Due regard should be paid to the choice of appropriate levels of service, quality and technology, the need for education programmes and the importance of community participation in service provision and regulation. Subsidies should move towards subsidising connectivity rather than consumption.¹⁰³ Governments should promote sustainable usage of energy, through efficiency and conservation measures, and at the same time promote the usage of renewable energy.

~~61.~~ 81. *Pharmaceuticals.* Governments should develop or maintain adequate standards, provisions and **appropriate** regulatory systems for ensuring the quality and appropriate use of pharmaceuticals through integrated national drug policies which could address, inter alia, procurement, distribution, production, licensing arrangements, registration systems and the availability of reliable information on pharmaceuticals, including action on counterfeit medicines. In so doing, Governments should take special account of the work and recommendations of the World Health Organization on pharmaceuticals. For relevant products, the use of that organization's Certification Scheme on the Quality of Pharmaceutical Products Moving in International Commerce and other international information systems on pharmaceuticals should be encouraged. Measures should also be taken, as appropriate, to promote the use of international non-proprietary names (INNs) for drugs, drawing on the work done by the World Health Organization. Governments should also provide an enabling environment for competition in the production and distribution of generic drugs, in order to

101 See UNDP Millennium Development Goal 7 *Ensure environmental sustainability* to which target 10 applies: *halve by 2015, the proportion of the population without sustainable access to safe drinking water and basic sanitation*. Also: UN General Assembly Resolution on water as a human right. A/RES/64/292; July 2010. For the first time, this UN Resolution formally recognised the right to water and sanitation. The Resolution called upon States and international organisations to provide financial resources, *inter alia* to provide safe, clean, accessible and affordable drinking water and sanitation for all.

102 The UN in 2011 recognized that access to sustainable energy is an essential prerequisite for meeting the "Millennium Development Goals". The United Nations' General Assembly in 2011 declared 2012 to be the International Year of Sustainable Energy for All. The 2011 UNDP Human Development Report called for electricity services to be provided for the 1.5 billion people currently off the power grid. (*UNDP HDR PR November 2nd 2011*) UNDP proposed a '*Universal Energy Access Initiative*' for developing countries, incorporating innovative provision.

103 See also the insertion of an amendment into Para 62 to take account of the needs of poorer consumers in the event of the diminution of consumption subsidies.

improve access to universal and affordable health care.¹⁰⁴

82. Financial services. Governments should formulate, maintain or strengthen national policies to improve the supply, and quality of financial services moving towards the goal of universal inclusion in service provision, including the development of international remittance services.¹⁰⁵ Due regard should be had for appropriate levels of service for particular contexts, the need for education programmes and the importance of consumer participation in service regulation and development of innovative and inclusive products. Many of the elements of the guidelines set out above apply to this sector with particular force, notably issues of marketing, fair contracts, disclosure and information provision, redress and regulation¹⁰⁶. The remuneration structures of staff of financial services providers, related authorised agents and product distributors, should be designed to encourage responsible business conduct and the fair treatment of customers.

83. Due attention must be paid to depositor protection against systemic collapse, with the scope and level of protection clearly communicated to consumers.

84. Credit granters should be required to abide by the principle of responsible lending. To this end they should apply due diligence when extending loans to consumers, in particular assessing ability to repay. Failure to do so should lead to nullification of the consumers' obligations.¹⁰⁷ Governments should adopt or encourage the adoption of administrative or judicial procedures enabling the treatment of over-indebtedness of consumers by reducing the liability for debts, by developing plans to pay debts or debt forgiveness for severe cases.¹⁰⁸

85. Allowing competition law to be overridden in the interests of financial stability should be, at most, a short term emergency measure, as it risks the creation of ever larger institutions and may increase the probability of taxpayers and consumers needing to provide support in the future, thus leading to significant distortions of competition. Governments facing financial sector concentration should instigate independent competition inquiries and apply "public interest tests" to the disposal of their stakes in the banking sector. This should include specific objectives for governments and regulators to make competition stronger, so that markets work in the interests of consumers. For example, to encourage new entrants,

104 The right to health is held back by maintenance through the use of pharmaceutical patents, of prices of branded products. However, after such patents expire, legal generic drugs can help to dramatically improve affordability. This suggested provision accords with the Doha Declaration on the TRIPS Agreement and Public Health.

105 For a good example of consumer protection regarding remittances sought by United States consumer groups, please see comments submitted by the National Consumer Law Center (NCLC) to the US Consumer Financial Protection Bureau, available at <http://www.nclc.org/issues/electronic-payments.html>.

106 See OECD/G20 *high level principles on financial consumer protection*, OECD 2011. CI regard the principles as a starting point for a programme of reform, while wishing to go further in certain areas notably depositor protection (see para 83). See also World Bank 2012 *Good practices for financial consumer protection*,

107 For a good example of recent actions to put this policy into effect, in January 2013, the U.S. Consumer Financial Protection Bureau adopted new rules requiring mortgage lenders to assess a borrower's ability to repay as a necessary component of the lending process. More information is available at: <http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-issues-rule-to-protect-consumers-from-irresponsible-mortgage-lending/>.

108 The massive expansion of consumer credit to individuals is a matter of strategic importance to the maintenance of economic and social development. The over-indebtedness of individual consumers has a social impact and collective character, bringing systemic risk to the credit market and affecting the quality of life of consumers. Considering the need to preserve the minimum amount needed to ensure a decent life including expenditure on vital goods and services such as water, light, food, health, education, it is necessary that credit lending should be made in a transparent and accountable manner.

governments and regulators should take steps, such as those pertaining to improving comparability of products and portability of account numbers to ease switching of accounts for consumers.¹⁰⁹

~~62.~~ **86.** In addition to the priority areas indicated above, Governments should adopt appropriate measures in other areas, such as pesticides and chemicals in regard, where relevant, to their use, production and storage, taking into account such relevant health and environmental information as Governments may require producers to provide and include in the labelling of products.

● **IV. International cooperation**

~~63.~~ **87.** Governments should, especially in a regional or subregional context:

(a) Develop, review, maintain or strengthen and harmonize, as appropriate, mechanisms for the exchange of information on national policies and measures in the field of consumer protection¹¹⁰;

(b) Cooperate or encourage cooperation in the implementation of consumer protection policies to achieve greater results ~~within existing resources~~. Steps need to be taken to promote enforcement of consumer protection across borders where consumers have carried out transactions with suppliers in another jurisdiction, such as through electronic commerce or tourism or other contexts. Dispute resolution mechanisms need to be established across borders. Other examples of such cooperation could be collaboration in the setting up or joint use of testing facilities, common testing procedures, exchange of consumer information and education programmes, joint training programmes and joint elaboration of regulations;

(c) Cooperate to improve the conditions under which essential goods and services are offered to consumers, giving due regard to ~~both~~ price (including affordability) and quality. Such cooperation could include joint procurement of essential goods, exchange of information on different procurement possibilities and agreements on regional product specifications.

~~64.~~ **88.** Governments should develop or strengthen information links regarding products which have been banned, withdrawn or severely restricted in order to enable other importing countries to protect themselves adequately against the harmful effects of such products.

~~65.~~ **89.** Governments should work to ensure that the quality of products, and information relating to such products, does not vary from country to country in a way that would have detrimental effects on consumers.

~~66.~~ **90.** To promote sustainable consumption, Governments, international bodies and business should work together to develop, transfer and disseminate environmentally sound technologies, including through appropriate financial support from developed countries, and to devise new and innovative mechanisms for financing their transfer among all countries, in particular to and among developing countries and countries with economies in transition.

~~67.~~ **91.** Governments and international organizations, as appropriate, should promote and facilitate capacity building in the area of sustainable consumption, particularly in developing countries and countries with economies in transition. In particular, Governments should also facilitate cooperation among consumer groups and other relevant organizations of civil

109 CI member Consumers Union is advocating for making bank switching easier for U.S. consumers. It's a concept that is gaining interest and increased discussion at the CFPB. Attached is a link to "Trapped at the Bank," their 2012 report on this report topic. See pages 15-19 for their recommendations:

<http://defendyourdollars.org/wordpress/wp-content/uploads/2012/05/TrappedAtTheBank-Complete.pdf>.

110 See FINCONET, ICPEN.

society, with the aim of strengthening capacity in this area.

~~68.~~ 92. Governments and international bodies, as appropriate, should promote programmes relating to consumer education and information and consumer participation in regulation and redress.

~~69.~~ 93. Governments should work to ensure that policies and measures for consumer protection are implemented with due regard to compliance with international principles that protect human rights and social, cultural and economic rights of all people, and to ensure that they do not become ~~their not becoming~~ unjustifiable barriers to international trade, and that they are consistent with international trade obligations.

94. Governments should participate in the establishment and conduct of a standing Consumer Protection Commission under the auspices of the UN, to monitor the application of these guidelines and to report back on their application to the secretariat who should be given the resources to carry out periodic reviews of the global state of consumer protection.



Consumers International proposals for amendments to the UN Guidelines for Consumer Protection

Annex B: Financial services

UNCTAD Ad Hoc Meeting on Consumer Protection: The interface between competition and consumer policies, UNCTAD, Geneva, 13 July 2012

A major 'emerging issue in consumer protection' from recent years has been the need to ensure that the abuses within the financial sector which have brought the world economy to its present state should not be allowed to recur. Given the scale of the recent crisis this is a vital issue for the UN. I take this opportunity, therefore, to 'stress test' the UN Guidelines for Consumer Protection (UNGCP) against the proposals recently made by Consumers International (CI) for financial services. For the last two years we have been engaged in detailed work following the progress of the G20 2010 commitment to strengthening consumer protection in financial services. The drafting of 'high level principles' was mandated by the G20 to the OECD and after the publication of those principles in October 2011, we are now participating in the arduous process of developing guidelines for implementing them at national level to the greatest advantage of consumers, both in and beyond the G20 countries. Our starting position in this brief analysis is that the UNGCP could be a useful reinforcement of this process, and so we make some suggestions, tentative at this stage, for possible amendments to the text of the Guidelines with regard to financial services. (For this reason the following paper is best read with the existing UNGCP text to hand.)

Our requirements for financial services reform, formally submitted to the OECD Task Force charged with the development of the principles, are listed below, and next to each one we draw the appropriate comparison with the UNGCP. In summary, CI proposed the following:

- 1. CI recommendation to G20: *Universal access to basic financial services: Governments should seek to encourage innovation in safe, effective, low-cost methods for banking inclusion whilst supporting the development of consumer protection. Stronger consumer protection needs to be developed for remittance services.***

The UNGCP make scant direct reference to financial services. We think section H would be appropriate for such reference to be made specifically in the context of access, as with other basic sectors mentioned there. Financial services are far from being a rich country issue as is demonstrated by the recent development of services in developing countries, including 'branchless

banking', remittance services, and the terrible consequences of the current financial crisis which resulted from bad practices in rich countries with negative consequences for developing countries. We suggest the following new paragraph for Section H, which highlights specific sectors:

Proposed new UNGCP text for Section H: *“Financial services. Governments should formulate, maintain or strengthen national policies to improve the supply, and quality of financial services moving towards the goal of universal inclusion in service provision, including the development of international remittance services. Due regard should be had for appropriate levels of service for particular contexts, the need for education programmes and the importance of consumer participation in service regulation. Many of the elements of the Guidelines set out above apply to this sector with particular force, notably issues of marketing, fair contracts, disclosure and information provision, redress and regulation. Due attention must be paid to depositor protection against systemic collapse”.*

- 2. CI recommendation to G20: *Better information design and disclosure:*** *Financial service providers should be required to take more responsibility for ensuring consumers receive clear, sufficient, reliable, comparable and timely information about financial service products. Key information documents should be obligatory for purposes of comparison, and failure to meet the listed criteria should cause a contract to be voidable.*

Clearly the much quoted ‘legitimate needs’ of consumers listed in Art 3 of the UNGCP cover information under sub-para c). Reference to ‘informative marketing’ in Art 15, ‘false or misleading claims’ in art 16, information to enable consumers to make informed decisions and accuracy of information in Art 22, ‘free flow of accurate information’ in Art 23, are all highly relevant. The Guidelines generally meet our requirements then in this respect, but we suggest an amendment in the next section regarding voidable contracts.

- 3. CI recommendation to G20: *Clearer contracts, charges and practices:*** *Regulators should introduce a requirement of comprehensibility, and remove from the market products that do not meet minimum standards. Financial advice to consumers should be separated from sales-based remuneration. Imposition of unfair contract terms (such as waiving statutory protections) unreasonable charges, and inappropriate sales should cause an agreement to be voidable.*

As with information design and disclosure, the UNGCP are generally adequate. Indeed Art 1 objective 1c) (‘ethical conduct’) and 1d) (‘abusive business practices’) are highly appropriate. Art 2 (‘strong CP policy’) is supportive but the legitimate needs are a little vague in this respect, although not in contradiction. We strongly support the existing art 21 (‘contractual abuses’) but suggest an insertion to make it more explicit to the effect that consumers should be protected from: **“the use of unnecessarily long or complex wording in contracts, variations or additions to the terms of use of a product or service to which the consumer does not freely agree”**. We also advocate an addition to Clause 21: **“Service contracts which do not meet legal requirements of fairness and intelligibility should not be enforceable by the service provider.”**

Art 7 (obligations on enterprises ‘to obey relevant laws and regulations’) appears at first sight to be highly appropriate. However, Art 7 is a statement of the obvious as it stands. Indeed its language subtly undermines the force of consumer protection law as it implies that conformity to the law is in the realm of grace and favour granted by companies, or indeed by the state when it is the service provider. We suggest that a new wording for Art 7 and other wording be drafted which points out

that in addition to conformity to the relevant laws, *which is not negotiable*, enterprises may wish to accept obligations of a kind to promote their social responsibility. They could be guided in this direction by reference to such recent documents as ISO 26000. To that end CI proposes a further addition to Art 7: ***“Enterprises should be encouraged to go beyond simple legal conformity and make positive contributions to social responsibility over and above the minimum and in accordance with international guidelines emanating from international standards setting bodies.”*** This is particularly relevant in the context of the development of international standards for financial services such as the G20/OECD principles referred to above.

Remuneration structures are not much dealt with in the UNGCP but it is clear that they have been a major source of consumer detriment in the financial services sector. We suggest that reference be made to this issue in Art 22 by the simple insertion of: ***“including remuneration structures”*** next to the existing reference to: *‘sales practices’*. As a means of updating the UNGCP in the light of technological developments, we also suggest an insertion at the end of section IIIB after para. 27: ***“The above protections should be applied equally to products and services obtained through electronic modes, as well as traditional retail transactions.”***

4. **CI recommendation to G20: Mandatory financial consumer protection bodies:** *Every government should establish national regulators with full authority to investigate, halt and remedy violations of consumer protection law, including, where necessary, the right to define specific practices or products as unfair, deceptive or otherwise illegal. Regulatory bodies should be independent of industry and should ensure that consumer experience and expertise is drawn upon.*

The UNGCP are very unspecific regarding institutional arrangements for CP. Arts 1a) and 2 advocate CP as a principle, but the nearest to advocating that there should be agencies charged with its promotion is the reference in Art 6 to *‘infrastructure to develop, implement and monitor CP policies’*. We argue that this could be used to include regulatory agencies for financial services with a specific remit for consumer protection. Art 16 calls on governments to: *‘intensify their efforts to prevent practices which are damaging to the economic interests of consumers through ensuring that manufacturers, distributors and others involved in the provision of goods and services adhere to established laws and mandatory standards’*. This is welcome and balances the recommendation in Art 26 that governments should promote codes of marketing and voluntary agreements. While we have always accepted that there may be a place for self-regulation, depending on the circumstances, it is clear that the spectacular failures in the financial services sector calls for more vigorous action to be taken. We therefore suggest that the language of section IIIA on physical safety has much to offer the financial services sector despite its very different application hitherto. This is particularly true of Art 14 which refers to product recall. ‘Toxic’ products require equally strong powers and we would advocate wording to that effect to extend to services in general and financial services in particular. There are various options as to where in the existing UNGCP this amendment could be made. Section IIIA, in particular para. 14, could extend ‘sideways’ to services. Alternatively, Art. 18 which equates goods and services could make explicit reference to product recall.

The UNGCP text as it stands, refers to the *‘freedom to form consumer groups’* and their participation in decision-making processes as a *‘legitimate need’* in Art 3. This is a very important recognition for CI Members, and we would wish to put more flesh on this very important bone. This involves proper disclosure of codes and standards and to that effect we propose an addition to Art 8: ***“All laws, regulations and non-statutory instruments such as codes and standards which are related to the protection and advancement of the interests of consumers or the public at large should be freely,***

accessibly and publicly available". This may seem to be a statement of the obvious, but obvious or not, it is not always honoured. We make reference to consumer participation in dispute resolution in the relevant section of the UNGCP, but there is no equivalent section regarding consumer participation in regulation. To correct this oversight we propose an amendment to Art 68 adding: **"and consumer participation in regulation and redress"** to the existing *'programmes relating to consumer education and information.'* Although this section deals with international cooperation, it calls upon national governments and international agencies to act in this respect. Similarly we suggest a new subclause c) by way of addition to Art 31: **"Involving consumer representatives in the regulation of essential services."** This goes wider than financial services of course but we take the view that financial services are indeed an essential service, hence its proposed inclusion in Section H.

A further reference to an important function of consumer organisations is needed where reference is made to testing, and activity which is applied increasingly by our Member organisations to financial services. We therefore suggest an addition to Art 30: **"Such testing should be carried out by either or both government inspectorates and independent consumer organisations, in an independent manner."**

5. **CI recommendation to G20: Effective redress and dispute resolution:** *Consumers should have access to adequate individual and collective redress systems, that are expeditious, fair, inexpensive and accessible. To alleviate the immense strains experienced by existing systems, lessons from disputes should also be synthesised into consumer protection further upstream.*

We find the wording of the UNGCP on this issue to be acceptable as far as it goes. What it lacks is recognition of the role that consumer organisations can and do make to the process of dispute resolution. We therefore suggest the addition of the following to Art 34: **"The expertise of consumer organisations should be brought to bear in resolving consumer complaints through involvement in dispute resolution forums either statutory or non-statutory."** We recognise that such expertise is not always available and this should not be a brake on the development of dispute resolution mechanisms.

6. **CI recommendation to G20: Competition in financial services:** *There is a need to reverse the market concentration, which, accelerated by the financial crisis, has contributed to the creation of institutions that are 'too big to fail'. Independent competition enquiries need to be carried out and public interest tests applied to government stakes in the banking sector and their disposal. There is a need to remove barriers that discourage consumers from switching accounts (for example, comparability of charges should be mandatory and portable account numbers should be introduced).*

Our starting point is that competition policy needs to go beyond issues of retail choice and extend to systemic issues, for example, in the case of financial services, those raised by recent packages of state aid to the sector as a result of the financial crisis.

There are relatively few explicit references to competition policy in the Guidelines but what reference there is, is extremely weighty for it consists of a direct referral to the 'UNCTAD set' as well as explicit reference to competition in Art 19 which reads: *"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."*

Other sections make indirect reference to competition policy. For example Art 1d) sets out as an objective: *"To assist countries in curbing abusive business practices by all enterprises at the national*

and international levels which adversely affect consumers.” Art 1g) To encourage the development of market conditions which provide consumers with greater choice at lower prices” also suggests a competition slant.

It could also be argued that the ‘*legitimate needs*’ make indirect reference to competition when they refer under Art 3b) to “*The promotion and protection of the economic interests of consumers.*” This is, however, so general as to be of limited applicability in particular cases. A rather more specific link, between information and competition, is drawn by Art 3c): “*Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs.*” This has proved to be very important to us in actual negotiations such as those around the recent development of high level principles for consumer protection in financial services, and the OECD guidelines for multinational enterprises. In both cases we encountered significant resistance on the part of industry to mandatory comparability of products. Indeed comparability has had to be imposed by government on several occasions, such as the American ‘truth in lending’ regulations or the French imposition of price comparability in banking services in 2010. We therefore suggest a simple addition to Art 22: “***and allows for comparability between like products.***”

As already noted, we propose a new Section H sub-section on financial services, incorporating the access and systemic issues referred to above. Following on from the new paragraph under 1 above we suggest:

Proposed new UNGCP text for Section H: “*Allowing competition law to be overridden in the interests of financial stability should be, at most, a short term emergency measure, as it risks the creation of ever larger institutions and may increase the probability of taxpayers and consumers needing to provide support in the future, leading to significant distortions of competition. Governments facing financial sector concentration should instigate independent competition inquiries and apply ‘public interest tests’ to the disposal of their stakes in the banking sector. This should include specific objectives to make competition stronger. For example, to encourage new entrants, governments and regulators should take steps, such as those pertaining to comparability of products and portability of account numbers to ease switching of accounts for consumers.*”

- 7. CI recommendation to G20: *Measures to promote stability and safety of consumers’ deposits and investments: Including separation of investment and retail banking divisions, bank ‘living wills’ with guarantees for protecting consumer deposits, and reform of insolvency procedures so that the rank of creditors is changed to put depositors at the top. Consumers should be assessed for credit-worthiness before loans are extended to them. Ratings agencies should be answerable to prudential supervisors.***

The UNGCP have little to say about systemic stability other than the general exhortations in Arts 1 to 3. We have already suggested wording referring to systemic stability in our proposals for a new section H: “***Due attention must be paid to depositor protection against systemic collapse.***”

Regarding assessment for credit-worthiness, the lack of which was a major contributor to the financial crisis, existing Art 21 makes reference to ‘*unconscionable conditions of credit by sellers*’. This was doubtless drafted with a view to ruling out usurious credit, which of course we support. We feel that consumers also need to accept the need for assessment of their own ability to repay loans, thus reinforcing the notion of responsible consumption. We therefore propose an addition to Art 21 to the effect that: “***Credit granters should be required to apply due diligence when extending loans to consumers, in particular assessing ability to repay.***” More systematic use of credit referencing in turn raises issues of privacy, and we therefore suggest a new art to follow Art 8:

“Governments and businesses should ensure effective consumer control of personal data, through collection of personal data (including internet usage information and IP addresses) only when strictly necessary and in an open and transparent way, and wherever practicable and lawful, through free, informed and positive consent (opt-in). Consumers must have the right to obtain access to data held about them and to verify and rectify such information.”

CI is also suggesting an entire new section on ***“Consumers in the digital age”*** to update the Guidelines in the light of recent technological developments and to address issues of intellectual property which are largely outwith the remit of the Guidelines as they stand. As this issue is not specifically about financial services it is not dealt with further here except to note that it too will make reference to privacy issues.

- 8. CI recommendation to G20: A new international organisation to support work on financial consumer protection:** *A permanent international organisation to enable national financial consumer protection bodies to share good practice, issue public alerts, and develop minimum standards and guidelines.*

CI is active in the discussions about the development of FINCONET, the international network of consumer protection agencies working in financial services, which broadly aims to achieve the above objectives, and whose strengthening we very much welcome. As far as the UNGCP is concerned, Section IV deals with this up to a point, especially where it refers to *‘products’* a term which encompasses services as well as goods, and therefore financial services. We would suggest the use of the same term (or the term ***‘goods and services’*** in Art 63 c). Such an amendment would in effect recognise that certain services (not just financial services) are essential. We also think this section would be strengthened by a clearer reference to the development of international standards, as dealt with in Section IIIC.

Conclusion.

We are prompt to recognise that the UN Guidelines are widely used by our members, world-wide, not just as a grand declaration but as a guide to discussion of the nuts and bolts of national legislation and practice across the whole of consumer protection or regarding specific sectors. They have done a very important job, and so we take very seriously any discussion of their amendment, and look forward to cooperating with UNCTAD in that respect. Any set of Guidelines has to move with the times and cannot be preserved in aspic. For this reason, in the light of the current financial crisis, but also on the underlying need for universal access, there is a strong case for inclusion of financial services in the Guidelines as a specific sector. But many of the cross-cutting principles which constitute the bulk of the Guidelines are also applicable to financial services, and so my presentation today has dealt with the full text and not just with the insertion of a brief section on this particular sector. We have other amendments in mind concerning other principles and sectors, which we will raise as we participate in this important process. This is just our opening contribution.

Robin Simpson, UNCTAD, Geneva, 13 July 2012



Consumers International proposals for amendments to the UN Guidelines for Consumer Protection

Annex C: Data protection

Personal information of consumers is a valuable commodity, exploited both by industry (for example through targeted advertising), and by governments (for example in law enforcement and tax collection). But such exploitation must be subject to limits that respect the consumer's privacy, as Article 12 of the Universal Declaration of Human Rights states that *"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence..."*

The digital and online environment have turned personal information of consumers into even more of a commodity, making it practical to replicate databases of consumer information almost instantaneously and at next to no cost, and to thread together different sources of personal information into a composite record (through a technique known as data mining).

The Internet has also enabled businesses that don't strongly protect consumer privacy to flock to jurisdictions in which privacy is not well protected by law ("data havens"). The issue is not helped by the fact that the country where most Internet content is hosted – the United States – has amongst the weakest privacy laws of developed countries.

Among our concerns that relate particularly to the online and digital environment are the following:

Online behavioural advertising. Online platforms such as Facebook and Google are provided free to the end user, in exchange for advertising revenue. But some such platforms go further and allow their users' online behaviour to be tracked without their informed consent, for purposes of creating advertising campaigns specifically targeted to them. As such, consumers are being tagged, unknowingly, with stereotypes such as "shopaholic," "penny pincher," "lonely heart" and "hardcore gamer".

Online anonymity. In some contexts, consumers have a legitimate interest in preserving their anonymity online. These include whistleblowers, contributors to discussion forums on sensitive topics (eg, rape survivors) and consumers in countries with governments that don't allow consumers to discuss religious or political matters freely or to express their sexuality. Some governments (eg, South Korea and China) and businesses (eg, Blizzard Entertainment) are now requiring Internet users to register with their real names in online fora.

Data retention. An important emerging issue relates to the retention of consumer data by online service providers and intermediaries. For example the EU data retention directive (2006/24/EC) requires Internet Service Providers to retain the user ID of users, email addresses of senders and recipients, the date and time that users logged on and off from a service, and their IP address. In other countries such as the US and Australia, data protection laws are in development. Consumers are unlikely to want, or to know that their online activities go on their “permanent record,” and therefore have an interest in how long their personal data will be retained.

Deep packet inspection. Even more insidious, in our view, is the practice of deep packet inspection (DPI), which records details of the actual content that Internet users access online, including particular songs, movies and protocols. For example, since November 2009, UK ISP Virgin Media has been using DPI to measure copyrighted material passing through its network, without informing its users. This led to a complaint from Privacy International to the European Commission, which remains pending.

Proposed CI amendments to the UN Guidelines (GLs) address privacy and data protection issues are as follows:

Proposed addition of letter (i) to para 1, so that one of the Objectives of the UN Guidelines is to: *“safeguard consumers against the collection, use, disclosure or loss of their personal information without their consent”.*

Proposed new GL 69 states that: *“consumers should be provided with easy-to-use, secure payment mechanisms and information on the level of security such mechanisms afford”.*

Proposed new GL 11 provides: *“Governments and businesses should ensure effective consumer control of personal data. Collection of personal data (including internet usage information and IP addresses) should be made through free, informed and positive consent (opt-in), and only when strictly necessary, in an open and transparent way and wherever practicable and lawful. Confidential personal data should be protected against unauthorized use, and in any event, its use should be minimised. Those affected by any personal data breach must be promptly notified of the details of the breach and of the available means of redress.”*

Among the sources that we drew upon in developing these amendments were the 2008 OECD Civil Society Background Paper, the TACD Charter of Consumer Rights in the Digital World and the EU Data Protection Directive Directive (Directive 95/46/EC).

As can be seen, the provisions that bear on data protection are located in several places throughout the text. In this context we would like to make the point that in our view the treatment of data protection cannot be accomplished simply through the e-commerce section, as the principles of privacy and data protection that are applicable online are equally applicable offline.

As such we strongly support a more holistic review of the Guidelines that does not shy away from the modification of existing text or the insertion of new paragraphs wherever necessary anywhere in the text.

Consumers International, June 2013

