

Third Ad Hoc Expert Meeting on Consumer Protection

Geneva, 22-23 January 2015

Contribution on:

**Draft Resolution for the revision of the
UNGCP**

by

Consumers International

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



Comments from Consumers International on the Draft resolution (DR) on Consumer Protection for consideration by the UN General Assembly: UNCTAD meeting, Geneva, January 2015

Summary

CI believes the draft resolution (DR) and its associated Annex is a welcome and important step forward but significant areas for improvement remain. We look forward to a discussion about the secretariat's proposal to develop a set of high level principles and effective approaches for consumer protection. One of the benefits of this proposal was that it would create greater clarity and be more responsive to new developments. However, we are concerned that the way in which the principles have been introduced to the current text does not provide either of these benefits.

Resolution and preamble:

1. We welcome the reaffirmation of the existing UNGCPs.
2. We welcome the cross-reference to the Millennium Development Goals (MDGs) which needs to be followed by a reference to the emerging Sustainable Development Goals (SDGs) which are likely to be agreed by the time this DR goes to the General Assembly. Such references need to be supported by stronger provisions on consumer access to essential goods and services.
3. We seek the recognition by the UN of World Consumer Rights Day (March 15th) which is widely observed by consumer associations and consumer protection agencies world-wide.

Objectives, definitions and general principles:

4. We believe the definition of '*consumer*' to be too narrow in its restriction to commercial transactions.
5. We support the insertion of new content into the list of '*legitimate needs*', covering privacy. We also advocate the inclusion of Access to Knowledge and access to essential goods and services.
6. We believe there is a need for greater clarity in terms of parity of treatment for consumers in different contexts such as digital/non-digital products or services provided by private and/or state providers

Digital issues and e-commerce:

7. We regret that insufficient weight is attached to consumer rights in terms of usage and transfer of digital products. We find that the proposed text fails to protect consumers against disproportionate penalties imposed by companies on consumers transferring digital products from one format to another.
8. We find the treatment of e-commerce too narrow, the text does not deal adequately with mobile commerce and consumer protection in the context of digital products.

Financial Services:

9. While we strongly support the inclusion of FS within the UNGCP, we consider that various aspects have not been addressed, namely remittances, bank deposit guarantees, financial inclusion, mobile payments and responsible lending;

Other issues:

10. We welcome the reference to Access to Knowledge, but its placing under the heading of *Education and Information programmes* is positively misleading.
11. 'Abusive advertising' is not dealt with in the sense in which it was raised in the 2013 conference, namely targeting of children and advertising for addictive products. As such, it would be better referred to as 'responsible advertising/marketing'.
12. We strongly welcome the reference to conflicts of interest in business and the proposals for written disclosure of potential conflicts and for obligations to be imposed on businesses to work in the interest of consumers.
13. We welcome the envisaged expanded role for private consumer associations to take part in regulatory processes.
14. We advocate that collective redress for consumers be more clearly set out and endorsed as a possible judicial mechanism.
15. We welcome the reference to public utility services, but regret the absence of mention of universal service, social inclusion and consumer participation in regulatory processes and propose that these points be included.
16. We welcome the proposal to include tourism but believe that the envisaged heightened protection should extend to *visitors* including travellers for work purposes.
17. We question why the listed topic of real estate has not been included given the importance of shelter as recognised by the UN on numerous occasions and its proposed inclusion in the SDGs.

Implementation:

18. We welcome the proposals for international cooperation between CP Agencies and cross-border mechanisms.
19. We welcome the proposed international process for the monitoring of the application of the UNGCP. We continue to advocate a standing Consumer Protection Commission under the auspices of the UN and believe that the proposals outlined are a major step in that direction.

Full response

CI believes the draft resolution (DR) and its associated Annex clearly represent a step forward in the revision process and the UNCTAD secretariat is to be congratulated for providing a basis for discussion at the January 2015 meeting in Geneva. We consider that here are significant areas for improvement and below we set out our comments to assist with that discussion. These fall into three categories:

- A) comments on the structure of the UNGCP in the light of recent presentations by the secretariat to conferences at which we have been present, notably at OECD CCP and ICPEN;
- B) comments on the substance of the draft resolution (DR);
- C) Comments on the content of the UNGCP as set out in the Annex.

We attach by way of supplement:

- our 2013 submission containing proposals for amendment in track change format in Annex A;
- our recent response to the secretariat's proposal for a principles-based approach;

A. Comments on structure;

At two recent meetings in October 2014¹, UNCTAD presented new proposals regarding the revision of the UN Guidelines for Consumer Protection (UNGCP). Although, to our knowledge, there has been no general and official communication, our understanding, based on the presentations and subsequent discussions was that the proposal for the Resolution to be put to the UN General Assembly in 2015 would include:

1. A reaffirmation of the existing UN Guidelines for Consumer Protection.
2. A new set of High Level Principles for Consumer Protection.
3. The development of a set of effective approaches that would act as a 'tool box' to support governments in implementing the principles. These could be drawn from existing work done by international bodies or, where there are gaps, developed by suitable bodies. (It was not clear if the intention was for any effective approaches to be developed ahead of the 2015 General Assembly or if they were to be developed after that date).
4. An international system or structure to agree the addition of 'effective approaches' as required.

We saw some merit in these proposals on condition that the current guidelines were reaffirmed so that the positive results of the 1985 and 1999 versions of the UNGCP were not undermined. So we are happy to see that the Annex to the draft resolution does in effect re-affirm the existing UNGCP. However, in addition to the reaffirmation, we also expected in the light of the presentations to ICPEN and OECD:

- A set of High Level Principles that takes in those principles that are in the current Guidelines (in particular "*the legitimate needs*" (currently in GL 3)), and recommendations for how they can be strengthened. We note that the Modalities report sets out a commitment in its para 3 to review *the 'legitimate needs...both as a whole and individually'* and to identify *'policy or enforcement gaps and shortcomings'* including *'issues that are not yet addressed in the UNGCP today'*. The *legitimate needs* are the most quoted passage of the UNGCP and deserve close attention and we have made submissions regarding their improvement in our 2013 evidence to UNCTAD.
- A clear framework for the adoption or development of new 'effective approaches'.

¹ The ICPEN Autumn meeting held in Stockholm and the Consumer Policy Committee of the OECD held in Paris.

Our understanding was that this approach was envisaged by the secretariat. Unfortunately, the current way in which a set of principles has been introduced adds very little to the UNGCP. One of the main benefits of the suggested approach was that this would create a clearer structure for the Guidelines. However, in their current form, the principles risk adding another layer that often duplicates existing content.

B. *Draft resolution :*

Much of the draft resolution (as distinct from the Annex) is acceptable to CI and its members, but there are some features which we wish to highlight. We start by saying that our understanding of the purpose of the un-numbered preamble is to highlight the changes in circumstance since the preceding redraft (in 1999) and which necessitate amendments to the text. To that end we believe the preamble should be broader in terms of coverage referring to such contextual matters as technological changes in transaction methods, intensified concern regarding climate change and the financial crisis. But it should also be briefer in its treatment of specific issues or sectors mentioned. As it stands, this section lacks balance, with financial services and e-commerce being particularly preponderant, while others, such as climate change, go unmentioned.

We strongly welcome the reference to the Millennium Development Goals (MDGs). Unfortunately the substance of the resolution and Annex does not always match up to this reference given that it misses out some aspects which are vital to the MDGs such as access to essential goods and services which are highly relevant to MDG 1 (extreme poverty and hunger) and its third and fourth targets for 2015 and modified MDG 7 (access to safe drinking water and sanitation) and its third target for 2015².

Although welcome as it stands, the reference to the MDGs will be overtaken this year by the emergence of the post-2015 development agenda. As they stand, the Sustainable Development Goals (SDGs) and related institutional arrangements will form this agenda and become the successor framework to the MDGs, to be agreed at the 70th Session of the UN General Assembly in September 2015. As the DR signals its intent to align with the MDGs it must also refer onwards to the SDGs in order to remain relevant and ambitious.

CI is pressing for recognition of the UNGCPs within the proposed SDGs and will monitor progress in that regard. In the meantime, we suggest additional wording following the preamble's reference to the MDGs, to the following effect: *'Noting that this year marks the adoption of the post-2015 development agenda and acknowledging the need for the Guidelines to reflect and pursue the goals and targets of this agenda, in particular in the pursuit of the eradication of poverty and reduction of inequalities, providing*

² MDG 1 : *Eradicate extreme poverty and hunger*; plus its third target *'reduce by half the proportion of people who suffer from hunger'*; MDG 7: *Ensure environmental stability*; plus its third target: *'reduce by half the proportion of people without sustainable access to safe drinking water and basic sanitation'* and fourth target: *'by 2020, to have achieved a significant improvement in the lives of at least 100 million slum-dwellers'* + indicator *'Proportion of urban population living in slums'*. The draft SDGs (see above) contain the following proposed Goal 6: *"Ensure availability and sustainable management of water and sanitation for all"*.

access to safe, healthy and fair products and services, and ensuring sustainable consumption and production patterns'. This is consistent with both the SDGs themselves and **GLs 7 and 8** of the Annex to the DR.

We strongly welcome the reference in the preamble to cross-border mechanisms. We agree that the changing nature of consumer transactions makes it appropriate for reference to be made to e-commerce and digital products because these transactions can cross borders in a way that was not envisaged when the UNGCP were first drafted and were not addressed in 1999. However, we think that the reference to e-commerce is lengthy for the preamble and some of the points would be better made in the substantive text.

We similarly regard the reference to financial services as too elaborate for the preamble, much though we welcome the inclusion of FS within the UNGCP. Detailed reference to a specific sector should be made as appropriate in the main body of the text. Nevertheless, we agree with the secretariat that reference to the financial crisis is needed in the preamble, but we believe that such mention should refer both to FS as a sector and also to the wider implications of the crisis.

Very welcome is the inclusion of privacy, which has clearly emerged as a growing concern since the last redraft. We welcome the inclusion of digital products which should in our view be linked to Access to Knowledge.

Some specific wording merits examination here. One instance which has serious implications for the scope of the UNGCP is in the top paragraph of the second page of the preamble which refers to *'all areas of commerce'*. This links to the definition of *'consumer'* in the new **section II** on definitions in the Annex. The paragraph in the preamble implies that the scope of the UNGCP is limited to the purely commercial. This therefore defines consumers as being only those who are in receipt of goods and services for which they pay in a formal transaction. This is, in our view too narrow. There are many goods and services such as pharmaceutical products and water which are undoubtedly consumer goods but which are not necessarily provided on a commercial basis, but provided or intermediated by public services of various kinds. Other public services such as education are severely affected by Intellectual Property rules which may have the effect of restricting Access to Knowledge. Furthermore, consumer's interaction with commercial service providers such as search engines and social media are frequently of a non-commercial nature, such as information searches. We believe that it would be a grave mistake to exclude such areas and therefore suggest that the word *'commerce'* be replaced by *'consumption'* in the phrase referred to above.

Other matters of wording are:

We suggest an addition: *'and to act on these obligations'* is needed to add strength at the end of the **final paragraph on page 2;**

We find the **paragraph at the top of page 3** very unclear but we believe it refers to a very important issue, namely parity of treatment of consumers regardless of the technology used for transactions. If the intention is to say that CP law should be equally applicable to e-commerce (and we would add digital products) as far as is technically feasible, then we would agree. Indeed we regard parity of treatment as a key objective which we suggested in our 2013 evidence, should be listed as such in **GL 1** of the main Annex.

Turning to the numbered section of the DR, we warmly welcome the emphasis on international cooperation in **paragraphs 5-9**. Together with the relevant text from the Annex (**Parts VI & VII**) this forms a significant advance in the necessary institutional arrangements for the advancement of consumer protection world wide.

Finally, given the importance attached by consumer organisations worldwide (including many of our members and national CP agencies) to World Consumer Rights Day on March 15th every year, we request that the UN give consideration to recognising it officially as a 'World Day'. When we last investigated, our information was that the day was 'available' for such a designation.

C. Comments on substance of the UNGCP as set out in the Annex

Existing UNGCP text

We note with agreement that almost the entirety of the existing UNGCP is incorporated. This means that our strongly expressed view that the existing GLs be incorporated into the resolution has been almost entirely upheld, and we welcome this reaffirmation. However, this raises issues of repetition and redundant text as some of the new text overlaps with existing text. Our recent proposal to the secretariat (which we attach) was that we understood there to be an ongoing process of revision to make the document more manageable and reduce duplication. As yet this is not apparent.

There are some minor changes to the existing text, the most significant being the replacement of 'governments' by 'member states' throughout. This may have been intended as a simple stylistic update but it could prove to be significant in that local or sub-federal governments are **not** member states, but they **are** governments. We assume that lower tiers of government can be considered to be generally bound by commitments made by their national governments, but in the light of the above amendment we propose that text be inserted to make this clear. This point is doubly important in that it applies to governments as **legislators** and **regulators** on the one hand and **service providers** on the other, a dichotomy which the Guidelines have never adequately recognised.

There is a further small amendment to the existing text with regard to **GL 41f**), which is dealt with below in considering adjacent **GL 41g**).

The new text as proposed by the secretariat is overwhelmingly in the form of discrete inserts into the existing text, rather than revision of existing text. This is in contrast to CI's own proposed revision of July 2013 (attached) which both inserted new sections and revised existing text, deleting some as we considered appropriate. It should be noted that in 1999 when reference to sustainable consumption was made, this was done not only in the form of a new section, (currently section G), but also in the form of small insertions into other parts of the text, where appropriate, such as 1h), 3g) and 37 f) and g) which were not in the 1985 version. The existing text should not therefore be regarded as being unable to contain new content, even though it has been reaffirmed.

New text proposed by the secretariat

The inevitable consequence of the two features mentioned above, namely the repetition of existing GLs and the discrete nature of most new inserts, is that there is some repetition, as some of the new material contains matters already covered by the existing UNGCPs. Editing the revised UNGCP would be a complicated process to negotiate but the envisaged process of accretion of new sections makes the

document ever longer and less digestible for users. That is in part why CI suggested, in response to the presentations by Hassan Qaqaya at ICPEN and OECD, that the UNGCP be revised in an ongoing process, principle by principle, so that each section could be revised in turn without a full renegotiation by the full membership with the eventual redrafts being presented for acceptance in due course.

Some of our concerns are missing. CI submitted, in track change format, detailed amendments for consideration by UNCTAD in June 2013. Some of these concerns are incorporated into the revision such as Financial Services, e-commerce, tourism and energy. However, there is no mention of access to essential goods and services, a basic and long standing CI proposal and Access to Knowledge (A2K) is presented in a way which we consider to be highly misleading both in its content and the method of its incorporation (see below).

Among the subjects missing are some which were listed by the secretariat and the presidency after the 2013 conference. Some of them are sub-headings of financial services, namely remittances, bank deposit guarantees, financial inclusion and responsible lending. We were given assurances by the chair of the relevant WG in Geneva in June 2014 that those issues would be addressed. (The FS sub-sectors are dealt with in greater detail below.)

Also missing from the draft is *'abusive advertising'* which was listed following the 2013 conference. While misleading advertising could be said to be dealt with by the Annex, this is not the case with *'abusive advertising'* in the sense in which it was raised in the 2013 conference by Connie Lau special adviser to the UN, namely targeting of children and advertising for addictive products, where WHO positions and the Global Convention on tobacco control could be cross-referred with great ease. To clear up this confusion, we would prefer the UNGCP to refer to: *'responsible advertising and marketing'*. In 2013 we made the following proposal for text:

'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. 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'.³

There are several options regarding where such text could be located. One possibility is after **GL 26** in **sub-section B** on *Consumers' economic interests*. Another option is in **sub-section K** on *Private sector cooperation*. In 2013, we suggested that it should go under Food in the section on *Measures relating to specific areas* – new **sub-section O**.

Detailed comments on the Annex (ie the revised UNGCP)

³ Article 17 of the UN Convention on the Rights of the Child supports the regulation of marketing to children.

For ease of reference we refer to the new GL numbers as presented in the Annex to the draft resolution.

Part I GL 1 Objectives:

The text remains unchanged compared to the existing UNGCP. In our 2013 submission, CI proposed amendments to this section, none of which have been accepted here, namely privacy, equal treatment and service provision by state-owned companies. The first two are dealt with elsewhere but there is no mention anywhere of the need for the UNGCP to apply to goods and services provided by the state.

Part II, Definitions,

This is new to the guidelines. We think it is useful to frame the terms but we have some comments on the content of the definitions.

GL 3 defines consumer protection (CP). The definition contains two problems:

It says that CP consists of *'measures and guidelines by business and professional bodies'*. Taken in combination with **GL 2** it is clearly not the intention to exclude government from CP. However quoted in isolation, GL 3 could be misleading. We think better to combine 2 and 3 as covering a range of measures, both governmental and non-governmental.

Secondly, it says that these measures should create *'a more equitable balance for buyers in the marketplace'*. The term *'buyer'* is not appropriate here as it is narrower than *'consumer'* for reasons already given above, and many consumer transactions take place outside of a market, for example in natural monopolies. Furthermore, using the term *'buyer'* rather than *'consumer'* in relation to CP fails to recognize that some CP is preventative in the sense that regulations may be designed to prohibit bad actors from entering, or remaining in, the market. In much consumer protection legislation, the term *'consumer'* includes buyers and non-buyers (e.g: protection of people from misleading advertising even in cases where there is not a transaction between a person and a business). The term in GL 3 should therefore be changed to *'consumers'* and the sentence should stop there.

GL 4 defines *"consumer' as a natural person'* as is widespread in CP law, but the second sentence suggests that wider definitions may be adopted by member states, which in fact already happens in many jurisdictions. The flexibility is intended to apply to families living on business premises, as CI found in its 2013 survey of CP law worldwide⁴. This flexibility is widespread in Latin America but also features in the European Consumer Rights Directive (art 2.1) and we suggest it will become more prevalent as home based work at distance develops in more and more countries, aided by developments in IT. The use of *'scope of economic activity'* makes little sense as it implies, wrongly in our view, that purchase for consumption is not an economic activity. In fact the UNGCP currently contains a section on the *'promotion and protection of consumers' economic interests'* and some of the stated objectives have a clear economic dimension. So, some redraft is required recognising the predominance of natural persons but also allowing for business activity from home.

Part III, General Principles,

⁴ CI 2013 *The state of Consumer Protection worldwide*.

This contains renumbered **GL 6** on the *'legitimate needs'* (old GL 3). This is the most quoted part of the UNGCP and is often referred to as listing 'consumer rights' although that term does not appear in the text. The redraft inserts three new *legitimate needs*, referring, very topically, to Financial Services, Electronic Commerce and Privacy. We agree with the reference to privacy here as that is a high level principle, although we would prefer 'right' to 'fundamental value' as being more legally precise and recognised by the UN⁵. Furthermore, we regret the absence of the use of the more specific term, *'data protection'*. Both terms have their place in the text. The references to FS and e-commerce seem to us to be too specific for a section on *General Principles*. FS is about a specific sector, and e-commerce is dealt with elsewhere and could here be alluded to as being covered by matters of non-discrimination or parity of treatment alongside the point we have made about equal treatment for consumers of state provided goods and services. (To avoid misunderstanding, we should make clear that we welcome the inclusion of FS and e-commerce, for which we have argued and which has proved to be uncontroversial. Our point here is about where they should go in the UNGCP).

In contrast, what is missing here is reference to both Access to Knowledge (A2K) and access to essential goods and services both of which are high level legitimate needs to which our members attach great importance. A2K is mentioned briefly later in **GL 41**, but unfortunately this later reference is extremely misleading as is discussed below. In respect of these two areas, we have already proposed the following amendments to the *legitimate needs*: *'Access to knowledge, that is, more equitable public access to the products and tools of human culture and learning;* and: *Guaranteed access to essential goods and services'*.

Regarding **GLs 7 and 8** following on from the *legitimate needs*, we suggest that the following insertions be made:

- To the first sentence of GL 7: *'Unsustainable patterns of production and consumption, particularly in industrialized countries, are the major cause of the continued deterioration of the global environment'* we suggest the addition of: ***'and a major contributing factor to persisting inequalities within and between countries.'*** To the final sentence: *'The special situation and needs of developing countries in this regard should be fully taken into account'*, we suggest adding: ***'including access to essential goods and services'***.

And/or:

- We believe GL8 would benefit from the following addition. Into *'Policies for promoting sustainable consumption should take into account the goals of eradicating poverty, satisfying the basic human needs of all members of society'* we suggest inserting: ***'including providing access to essential goods and services, and reducing inequality within and between countries.'***

Part IV: principles for Good Business Practices

⁵ 26 NOVEMBER 2013; GA/SHC/4094 Third Committee Approves Text Titled 'Right to Privacy in the Digital Age'

This is an amalgam of the G20/OECD High level principles (HLPs) and other documents and in general we support it, although we find it is too closely aligned to financial services alone and needs to be made more generic. As indicated elsewhere we argue that good business practices should also apply to government provided services, at least where these are ‘merchant services’ with which consumers have a contractual relationship. Comments in greater detail are:

GL 12a) on *Fair and equitable treatment* says that ‘any **unnecessary** consumer detriment should be avoided’ ‘Unnecessary’ is redundant as *detriment* is clearly a negative term and implies something that should be avoided. Furthermore, it is difficult to define when a detriment is unnecessary or not.

GL 12 b) on *behaviour and work ethic*: we believe the drafters intend to say *Behaviour & **business** Ethics*;

GL 12 c) on *Disclosure and Transparency*; where the second sentence says ‘...so that the products and services are **clear and concise**...’ it appears that ‘*clear and concise*’ refers to the information and not to the products and services themselves. We also think that information should also be ‘*timely*’ and ‘*sufficient*’. We note that the thrust of this section is covered by existing provisions of the UNGCP and is therefore an instance where a rolling programme of marrying the existing text and the new amendments would be appropriate.

GL 12 e) on *Protection of privacy* is very welcome although the term ‘*data protection*’ appears nowhere in the text and we think that is regrettable. We suggest its inclusion here as a reference to the need for ‘suitable provisions for data protection’ and we also argue again that ‘*businesses*’ should explicitly include state owned service providers.

GL 12 g) on *Conflict of Interest* is very welcome and fills a gap in the UNGCP. We consider that ‘*their*’ should be deleted from the phrase ‘...to work in the best interest of **their** consumers...’ as it precludes any assumption that businesses should work in the best interest of consumers as a whole (as opposed to theirs only). The point also inserts *financial services* and *banks* in a text that should be general and not only for those sectors. The point is however a very valid one and so we suggest its retention by deleting ‘*financial*’ and replacing with ‘*business*’, simply deleting ‘*and banks*’ and substituting ‘*business*’ for ‘*bank*’ before ‘*third party*’. The specific references to FS are located elsewhere in the revised guidelines (see below). Again the point about state owned businesses applies.

GL 12 (h) on *Compliance with the law* gives us concern as it comes dangerously close to implying that conformity to the law is voluntary and thus risks undermining much of the rest of the UNGCP. The reason for this is that it should be assumed that business (and indeed consumers) must comply with the law, and furthermore not only that law which is ‘relevant’. We have similar reservations about the already existing **GL 10** which covers the same ground. We therefore suggest that new sub-para h) be deleted.

Part V Guidelines

Sub-Section F: Education & Information: **GL 41** seems to be the only existing GL that has been modified. The new text deletes existing GL 37g) which refers to ‘*environmental protection*’ and ‘*efficient use of materials, energy and water*’. This is replaced as new **41 f)** by ‘*as appropriate, pollution and environment*’ without being signalled in bold as new text. This seems to us to be pointless and retrograde and unnecessarily qualified by ‘*as appropriate*’. We are intrigued to see that it is a reversion to the original 1985 wording which was amended in 1999 when sustainable consumption was inserted.

We suggest that the 1999 text be retained and we have suggested reference to climate change elsewhere.

We are also concerned that **GL 41g)** has been retitled: *Access to Knowledge*. The insertion is very ambiguous as it is numbered as if it formed a part of GL 41 but does not follow logically from the rest of GL 41. Neither does it make sense for it to refer to what follows for that is presented simply as general consumer information. The heading is thus completely misleading whatever the interpretation. A2K includes important issues of intellectual property and access to cultural and social content of consumer products. The new title seems to strain to 'tick the box' of A2K rather than address the issues of substance. It needs therefore, to be dealt with in another form as we proposed in our submission in July 2013.

Sub-Section H domestic frameworks for consumer protection: There is an imbalance in the presentation of this section as it relies heavily on redress mechanisms and dispute resolution, thus seeming to place the burden for action on the individual complainant. As an overall framework, there needs to be greater emphasis on market surveillance by consumer protection agencies, which is dealt with rather well in the next section. The emphasis on dispute resolution and redress leads to redundancy because those two issues are dealt with under **sub-section J**. So we suggest that *domestic frameworks* be an over-arching section with sections I and J below as sub-sections. That would provide balance and reduce redundancy.

Sub-Section I: Mechanisms for consumer protection enforcement: we welcome this text and in particular, reference to consumer organisations.

Sub-section J Dispute resolution and Redress mechanisms: We welcome much of the content, in particular, '*international judicial cooperation*' in **GL 65** and '*collective resolution procedures*' in **GL 66**. However, non-judicial cooperation, such as that between CP agencies, should also be mentioned, as should conciliation and arbitration alongside mediation. The reference to '*collective resolution procedures*' is incomplete in the sense that the document seems to assume that they already exist, whereas their establishment is still a contentious matter in many jurisdictions. We think the GL should be more assertive in that regard.

Sub-section K: private sector cooperation: Once again, we note the absence of reference to the state as a service provider. Such services should be included in the mechanisms listed in the same way as private sector services.

Sub-section L on dispute avoidance and awareness of resolution mechanism: This is the fourth instance of dispute resolution being discussed in only five successive paragraphs. While we have no objection to any of the content of this paragraph there is a serious need for consolidation of these areas. Furthermore despite the repetition, this section fails to emphasise the point of its title, which is that early action 'upstream' within companies can prevent disputes arising in the first place.

Sub-section M on e-commerce: The text is acceptable as far as it goes, but we have serious concerns about what is missing. Reference needs to be made to mobile commerce, which requires a new sub-paragraph, which we would be willing to draft. Mobile commerce is mentioned in **GL 6i)** on 'legitimate needs' (which is in our view the wrong place, for reasons already explained), so presumably the intention is to include it, but the relevant expanded text is missing.

Otherwise, the section on e-commerce makes a good contribution to the UNGCP but there is woefully little on digital CP. There needs to be a clear declaration regarding the equality of treatment among online and off-line consumers, and the offering of digital products to consumers in equivalent terms to those sold in other formats. There is no mention in the new text of open and interoperable standards for digital content products. In our 2013 submission we proposed the following text for consideration under **GL 1 (Objectives)**:

'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;'

Later in the UNGCP we proposed a new section entitled: Electronic commerce and digital products and services, under which we proposed the following text:

'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.'

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.'

Governments, business and consumer representatives should work together to educate consumers about electronic commerce, to foster informed decision-making by consumers 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)⁶.'

We are very disappointed that the new text in the Annex to the DR does not propose to safeguard consumers against abusive measures to penalise consumers in the event of their having shifted formats of digital products in circumstances that most people would consider entirely legitimate, such as from an I-phone to a personal computer or vice versa. Large numbers of consumers unwittingly transgress licence conditions which prohibit such simple transfers and in some cases their terminal's functionality has been damaged in reprisal. In 2013 we proposed the following text to deal with this:

'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'

⁶ This provision is also drawn from the OECD *Guidelines for Consumer Protection in the Context of Electronic Commerce* (2001).

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'.

We stand by that proposal. Regarding digital matters, we consider that the UNGCP run the risk of being out of date by the time they are agreed if there is not a rethink. Since the revision process started there have already been developments which lead us to suggest that there needs to be an overarching digital theme that includes e-commerce, rather than the existing section M that is restricted to e-commerce alone.

To ensure a degree of 'future proofing', the UNGCP need to recognise that digital technologies are bringing profound changes to every market. The consumption of goods and services and the interactions / transactions required to obtain those goods or services are increasingly being mediated through the internet via a digital device. As digital technologies come to permeate every sector it should be recognised that:

- the internet becomes the platform on which every sector rearranges its affairs;
- once distinct categories of product and device (cars, watches, 'phones, thermostats etc.) become computers housed in different boxes;
- the functionality and 'smartness' of these products and devices become dependent on an internet connection, bringing the 'Internet of Things' into being;
- modes and channels of service delivery and provider interfaces are redesigned to exploit these changes, for example mobile banking or smart metering;

These are changes that go above and beyond e-commerce and present far-reaching implications – both positive and negative – for consumer empowerment, consumer data, access to services, competition, pricing etc. Consumer protection has to recognise and respond to these changes – both in terms of the risks they pose and opportunities they present. While it may not be possible to define what appropriate protections are in 2015, UNGCP should at least recognise the need to adapt the longstanding principle of consumer protection for new contexts.

Furthermore, as the Internet becomes integral to the consumer experience, it displays the characteristics of a public utility service. Therefore issues of universal service obligation, access, resilience etc. all apply. This cuts across many different levels of economic development as is apparent in the way that mobile commerce is bringing wider access to financial services to Africa and facilitating transactions in other sectors such as paying public utility bills. Likewise internet access can stimulate and support wider innovation, economic development and connectivity in developing countries to a degree not yet fully recognised, or even apparent.

We repeat: we support the existing text of section M but, with hindsight, we think the restriction to e-commerce is a strategic mistake (which we also made). E-commerce is a sub-set of the wider digital agenda which also covers mobile commerce and consumer rights regarding digital products.

Sub-section N, Financial Services: We strongly support the inclusion of Financial Services and have done since the conference of 2012 where we presented a paper to that effect. While we have few objections to what is included in section N, we are disappointed that despite these issues being raised by member

states at the 2013 conference, there is no reference to remittances, deposit guarantees, financial inclusion and responsible lending.

The list of issues is based on the OECD/G20 HLPs and we support their inclusion. (The reference to G20 is important given the later reference to the need for cooperation with other international forums.) But the UN members states have wider concerns which impinge on service to the poor and large scale money transfer between people (as opposed to institutions) which need to be picked up here. For that reason a mention of mobile payments would also be appropriate in this section, it already features under e-commerce. In proposing to widen the scope, we suggest then that GL 78 should therefore include G20 in the context of the HLPs but also the G20 principles for financial inclusion and the World Bank's work on Good practices for Financial Consumer Protection.

We are also concerned about the reference in **GL 77** to '*...effective and **proportionate** financial consumer protection regimes*'. The term 'proportionate' is superfluous as no sensible advocate would argue for 'disproportionate' regimes. We suspect this is a code for 'minimal' and we suggest its removal.

We think the last word of the GL should be '*consumers*' as opposed to '*groups*'. Some consumers are from groups that are vulnerable on a long term basis (such as disability) but many consumers may be temporarily vulnerable, for example following bereavement or accident. Both sets of circumstances need to be covered.

Finally we think that as FS is clearly a distinct *sector* (as opposed to a distinct *issue*, such as e-commerce), it should be included as a sub-heading of **Section O**. We recall that in our recent submissions to the secretariat we have suggested that the sectoral provisions of the UNGCP could be developed and elaborated.

Sub-section O: measures relating to specific areas: NB: the above comment on FS which we believe belongs here.

GL 87: energy: we strongly welcome the inclusion of energy but we regret the lack of mention of universal service or of climate change. Reference to other UN programmes such as that on access to Energy⁷ would strengthen this new insertion. For example the United Nations in 2011 recognized that access to sustainable energy is an essential prerequisite for meeting the MDGs and the United Nations' General Assembly declared 2012 to be the International Year of Sustainable Energy for All. Furthermore, the proposed SDGs include a goal to '*Ensure access to affordable, reliable, sustainable and modern energy for all*'.⁸

GL 88 tourism: again we welcome inclusion but we would hope to see specific mention here of cross-border dispute resolution which is a major feature of CP in tourism. We would also prefer to see the adoption of the terminology of the draft International Convention on the *Protection of Tourists & Visitors* which was presented to the Hague Conference on Private International Law in April 2013. The term *visitors* is better able to include travellers, for tourism may well be internal and travellers abroad may well be both workers and tourists. It would be inequitable to protect foreign tourists while not protecting foreign workers in otherwise analogous situations.

⁷ (UNDP HDR PR November 2nd 2011)

⁸ proposed Goal 7. "Ensure access to affordable, reliable, sustainable and modern energy for all", from the Outcome document of the UN Open Working Group on the Sustainable Development Goals, July 2014.

GL 89 utilities: we strongly welcome inclusion and suggest that it should run alongside the paragraph on energy. We regret that there is no mention of universal service, social inclusion and consumer participation in regulation and propose that they be included. The first sentence seems to us to be superfluous, given that CP measures vary in all sectors.

Missing from the section on ‘specific areas’ is any reference to real estate which was clearly signalled and listed after the 2013 conference. CI has not made specific proposals in this regard as we have not worked on it in detail, but we do raise it here as it seems to have been ignored. The SDGs clearly refer to human settlements as a priority area and we would suggest that ‘housing’ would be more appropriate as, unlike ‘real estate’ it relates only to household consumers.⁹

Sub-section VI: international cooperation: Section VI on International Cooperation, is very welcome in general. **GL 92** needs clarification to indicate that the processes and investigations under way may involve agencies that are charged with CP rather than named CP agencies. For example, many Central Banks have a CP function as do infrastructure regulators¹⁰, while many CP agencies are actually prevented from intervening in certain sectors of relevance to consumers.

We strongly welcome **GL 97** and look forward to the development of a mechanism for co-operation. The concept of designated respondents is very important and should allow for the referral forward to the proper agency (eg the CP Agency may refer on to the Central Bank) so that consumer interests are not left hanging.

Sub-section VII: International Institutional Machinery. Finally, the general direction of sub-section VII is very welcome, although we would prefer the establishment of a UN standing Consumer Protection Commission. The precise institutional architecture is not for us to define, and it is not clear whether ‘*an existing Commission*’ as mentioned in **GL 103** already exists, but we wish to be clear that the agency should have its own free standing staffing and operational capacity to carry out the list of activities laid down.

We warmly welcome **GL 104e)** which relates to our preceding point about operational capacity. The UNGCP are often seen as a template for legislation, regulation and policy around the world, among governments and consumer organisations and such programmes as are suggested by this sub-clause could be very valuable. We think the wording should be ‘*develop and provide*’.

On **GL 104g)**, though we favour close collaboration with OECD, (being ourselves heavily implicated in the work of both UNCTAD and OECD CCP), it is hard to understand why this additional paragraph is inserted when it is covered by the previous **GL f)**. The UN must try to represent the views of all UN member states, and to that end, there are other regional and multilateral bodies that work on consumer issues (ICPEN, ASEAN, MERCOSUR, CAN, OAS, G20 among others) and they should be given equal treatment.

⁹ Proposed SD Goal 11 is ‘Make cities and human settlements inclusive, safe, resilient and sustainable’, under which the first proposed target (11.1) is ‘by 2030, ensure access for all to adequate, safe and affordable housing and basic services, and upgrade slums’. Proposed SDG target 11c (which is a ‘means of implementation’ target for this Goal), is ‘support least developed countries, including through financial and technical assistance, for sustainable and resilient buildings utilizing local materials’.

¹⁰ The principal objective of the UK energy regulator OFGEM is to protect the interests of existing and future consumers. OFGEM *Powers & duties of GEMA* July 2013. Para 1.4

On **GL 104 i)**, we welcome the idea of a generic periodic review. A five year periodic review may be unduly rigid although we welcome its use as a maximum time. Particular aspects of the guidelines should be able to be reviewed in other periods of time as required. One can envisage recent events such as the financial crisis having been such an occasion for prompt action.

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