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**A CONSUMER POLICY HANDBOOK FOR ECONOMIES IN TRANSITION**

**ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**

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# **A CONSUMER POLICY HANDBOOK**

**FOR ECONOMIES IN TRANSITION**

## FOREWORD

The primary purpose of this handbook is to assist both governments and consumer organisations in Central and Eastern Europe (CEECs) and the New Independent States of the former Soviet Union (NIS) to address the issues involved in the relationship between consumers and the providers of goods and services. It provides, in a simple and direct way, an account of the thinking that has informed actions of those in OECD countries concerned with these issues, and raises issues for consideration.

In OECD countries, governments have found it necessary to regulate, with varying degrees of complexity, both the direct relationship between consumers and suppliers -- the civil contract -- and the behaviour of suppliers more generally, through administrative or criminal law. This handbook discusses both types of measures, as well as self-regulation by providers of goods and services.

The handbook is directed essentially towards the "everyday" consumer marketplace -- the purchase and use of what are commonly described as consumer goods. This is not intended in any way to deny the importance to consumers of other types of goods and services -- most notably, publicly provided services like health care and education. The issues raised by consumer interest in such services, however, need separate consideration.

The handbook has been prepared by a consultant to the Secretariat, Mr. Maurice Healy, within the framework of the work programme of the Centre for Co-operation with the Economies in Transition (CCET). This programme, launched in 1991, aims at providing focused assistance to the CEECs and NIS in their efforts towards market-oriented reforms. The handbook is published on the responsibility of the Secretary-General of the OECD.

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## *Chapter I*

### **GENERAL PRINCIPLES**

Any discussion of consumer policy starts with the proposition -- first elucidated by the Scottish philosopher Adam Smith in the 18th century -- that the sole and end purpose of all production is consumption. A more modern formulation might be that the purpose of economic activity is to allocate resources, as accurately as possible, to the satisfaction of consumers' needs.

This leads directly to the idea of consumer sovereignty -- if the purpose of economic activity is to allocate resources to consumer needs, then there is considerable logical, moral and political force in the proposition that the right person to make the decision about the allocation of resources to his or her own needs is the consumer himself or herself. Economic theory suggests that perfectly competitive markets are the best way to achieve this . The consumer, theoretically blest with perfect information, chooses between competing suppliers. Economic rewards go to those suppliers who most effectively provide consumers with what they want at the lowest possible cost. Considered like this the working of a competitive marketplace should provide economic democracy to go alongside electoral democracy: the sum of the decisions of individual consumers should provide a totality which reflects their collective will.

Unfortunately in real life things are more complicated. The conditions for perfect competition exist only in text books. In practice most consumer markets are highly imperfect with the result that individuals are not able to command what the market provides through their buying decisions. There are a number of reasons why markets may fail to allocate resources accurately to consumer needs:

- some consumers have inadequate resources. The poor have fewer votes in the election of the marketplace;
- monopoly or collusion between suppliers may deprive consumers of the opportunity of choice;

- if resources are scarce, short term self-interest may drive consumers to behaviour which is not in their long-term interest;
- if transactions in the marketplace do not acknowledge all the resources involved, consumers cannot choose accurately. Much of contemporary anxiety about environmental issues results from the fact that the environment is treated as a free resource in many transactions;
- some goods are essentially public -- that is, once provided there is no way of charging individuals for their use. Street lighting is an obvious example. If such goods are to be provided, the costs have to be spread among all individuals, whether or not they all, individually, want them;
- consumers may have inadequate information. In this case their decisions are highly likely to lead to an inaccurate allocation of resources to needs.
- some suppliers may behave fraudulently.

It is against this background that market economies have evolved systems for regulating the way their marketplaces work. This regulation is the arena of consumer policy.

## **1. Aims of consumer policy**

At the OECD seminar on consumer policy held in Vienna in 1991, it was concluded that consumer policy has two major objectives:

"to inform the consumer of goods and services in such a way that his purchasing decisions contribute to the functioning of competitive markets, and to protect him where his position in the market is not strong enough to allow him to play this role."

This definition, or something close to it, now commands a wide measure of agreement. For instance, the UK National Consumer Council says in its Strategy plan that the purpose of consumer policy is:

"to help consumers make more and better decisions in their own self interest"; and

"to protect consumers, and to help them protect themselves, from those who have the power to prejudice them arbitrarily."

Perhaps the most elegant formulation is that of a US regulator of public utilities, George Edgar of the Wisconsin Public Service Commission, who said that:

"the purpose of regulation is to protect customers who don't have options and to allow customers who do have options to make them."

Expressing the aims of consumer policy in this way demonstrates its two contrasting themes. First, the aim is to enable consumers to have positive choices in the marketplace and to help them make those choices as effectively as possible. Secondly, it is recognised that consumers are often unequal partners in the process and that it will sometimes be necessary to give them specific protection from exploitation.

## 2. Principles of consumer policy

Those involved in consumer policy in OECD countries have, over the years, evolved a number of principles which are used to test the way individual markets work. The principles provide a tool for examining market failure from a consumer perspective and so for diagnosing corrective action if it is needed. Sometimes attempts are made to express these principles as rights -- see, for instance, President Kennedy's Special Message on Protecting the Consumer Interests of 1962. While it may be useful and, in some cases, necessary, to provide consumers with specific legal rights in specific situations, it is probably more helpful to regard the application of the principles as an indicator for action rather than as a declaration of some inherent structure of rights. They are, in effect, a description of the conditions that are needed if markets are to be driven by consumer decisions.

The principles are:

- access
- choice
- information
- redress
- safety
- equity
- representation.

**Access:** Clearly the first condition for the satisfaction of consumer needs is that consumers should access to the goods and services they need. In practice direct regulation of the marketplace is often marginal in achieving this. The essential thrust of an open market economy is that it provides direct incentives to suppliers to seek out unsatisfied consumer needs and to attempt to supply them. Where there is some systematic market failure which leaves particular groups of consumers disadvantaged, any solution is likely to lie in political action to address the underlying social problem. If some consumers, for instance, are too poor to command the attention of the marketplace to their needs, then the answer will lie, not in marketplace regulation, but in social security policies. Such questions are outside the scope of this handbook.

**Choice:** Choice is the engine of consumer power in competitive markets. Where the balance of power between consumer and supplier is even, choice both enables consumers to guard their own interests and provides the incentives for industry to operate efficiently. The prerequisite for consumer choice to operate effectively is effective competition between suppliers, leading to the need for regulation by competition agencies.

**Information:** If market economies are driven by consumer choices, they will be led into inefficiency if consumer choices are not accurate - that is, if they do not reflect consumers' real needs and desires. It is not surprising, therefore, that much market regulation is concerned with the control of information for consumers. Three different objectives for regulatory activity can be seen:

- is information accurate?
- is information relevant? Regulation may be concerned to see that particular items of information are provided for consumers.
- can consumers understand it? Regulation increasingly addresses the way information is presented.

In addition to the regulation of marketplace information, governments in market economies are also concerned to see that consumers are provided with education (in schools and elsewhere) and with advice. Advice may be directed towards helping consumers before they make choices (an area where independent consumer organisations play an important role) or towards helping individuals who have problems.

**Redress:** It is usual to deal with redress in the context of considerations of justice and equity. However it is also important to place it in an economic context. The purpose of markets is to allocate resources to consumer needs. If consumers are deceived or defrauded, then resources will not be allocated accurately. So markets will not be efficient without sanctions for abusive behaviour. Markets also work better if those who use them can act confidently in the knowledge that they will get what they believed they were paying for.

Any system of market regulation therefore involves the establishment of procedures to enable consumers to enforce the rights that they have obtained through contract or statute. These rights must therefore be ultimately enforceable through the courts.

However there are problems in dealing with consumer matters in the courts. Many consumer disputes are for relatively small sums of money and consumers may not want to expose themselves to the risks and expense of litigation to recover them -- especially as they will often, as individuals, find themselves facing in a dispute organisations with vastly greater power, influence and experience of procedures that they have themselves.

So many OECD countries have established simplified court procedures of various types to deal with consumer disputes. There has also been a number of developments designed to create dispute resolution mechanisms outside the courts -- arbitration schemes and industry ombudsmen, for example.

**Safety:** In a perfect world consumers would have the knowledge to choose products and goods with the standards of safety appropriate for their needs. However it has always been clear that markets do not generate information about safety very well. As a result there is general acceptance in OECD countries of the need to legislate for basic levels of safety. There is also general acceptance of the principle that consumers should be compensated if their reasonable expectations of safety are not met. And particular attention may be paid to ensuring that the law makes appropriate provision to secure liability for death or injury caused by unsafe products.

**Equity:** In consumer policy considerations of equity normally arise in one of three ways:

- consumers should be protected from acts of arbitrary discrimination by suppliers;
- so far as possible consumers should not be disadvantaged by the difference in power between them and suppliers;
- so far as possible arbitrary cross-subsidisation of one group of consumers by another should be avoided.

**Representation:** Given the imperfection of many markets, it may be necessary to create some structure for the representation of the interests of consumers, either generally or in some specific context - public utility monopolies, for instance. The consumer interest, which is a diffuse interest of all members of society, is always likely to be more weakly represented than that of producers, which tends to be more concentrated.

## *Chapter II*

### **GENERAL MARKET STRUCTURE: ACCESS AND CHOICE FOR CONSUMERS**

It may be helpful to restate briefly the general market conditions which are desirable for effective competition and so for the provision of wide access to goods and services by consumers and for their ability to make real choices for themselves.

First, openness to international trade is central to providing consumers with a wide range of choice. It is also central to the encouragement of efficiency within an economy -- the most effective incentive to domestic business to improve its standards of efficiency and quality is for its domestic consumers to be able to compare those standards with those of imported goods and services. Where it is thought necessary to protect domestic industry for structural or political reasons, clear targets should be set for the industry to improve its performance and it should be made clear that such protection can only be guaranteed for a transitional period.

It is worth re-emphasising the importance of openness to international trade in the context of domestic consumer policy measures. It is the task of regulatory authorities everywhere to see that their domestic markets are protected from dangerous products and that consumers are provided with good information before buying. However, it is vital to ensure that such measures do not deprive consumers, whether by accident or design, of access to competing imported goods of perfectly adequate quality which are made to different standards to those in force in the domestic economy.

Secondly, it will be necessary to create regulatory measures and institutions to ensure effective competition in the domestic market. It is not the purpose of this handbook to discuss the detail of competition policy and the structures needed to enforce it. However it may be useful to restate the objectives of any such policy from a consumer point of view.

There are two main objectives:

- to prevent businesses, through the power of dominance or through collusion, from indulging in behaviour which abuses consumers, either by imposing excessive prices on them or by restricting their ability to purchase;
- to prevent businesses, again through the power of dominance or through collusion, from behaving unfairly to competitors. In particular behaviour which unfairly prevents new competitors from entering the market should be controlled.

The objective of regulation should be to prevent abusive behaviour; size and market dominance in themselves are important only so far as they provide the power and opportunity for anti-competitive behaviour.

Types of behaviour which are often controlled include:

- collusion;
- price fixing, either individually or collectively;
- refusal to supply;
- restrictive contract conditions.

Whatever the controls on competition, it is inevitable that some effective monopolies will continue to exist. In particular, the current state of technology demands that many public utilities are, to a considerable extent, monopolies. Given the vital nature of the services supplied by such utilities - water, gas, electricity, telephones, post, railways - it is essential that they are effectively regulated. In some countries they are publicly owned and subject to political control. In others, they are commercial operations subject to economic regulation.

From a consumer point of view the objectives of the regulation of public utility monopolies are threefold:

- to control price levels in the absence of competition;
- to control standards of service, since price controls are ineffective if the enterprise can manipulate its service standards;
- to provide some way for the interests of consumers to get special consideration, since consumers are unable to influence the way the enterprise behaves through their own detailed choices.

### *Chapter III*

## **CONSUMER POLICY OBJECTIVES AND INSTRUMENTS**

### **1. Relationships between consumers and suppliers: equity and redress**

In a market economy the process of buying and selling is essentially an agreement freely arrived at between the two parties. The seller provides goods or services which the buyer places a value on; the buyer pays the seller for that value. It is -- or should be -- a process of cooperation. Since the transaction is essentially a private one, it is the civil law which decides the rights and responsibilities of the two parties. And, again since the transaction is a private one, it is for the two parties to settle any dispute about those rights and responsibilities between themselves.

The basis of this relationship is the contract. Contracts between buyer and seller are made with enormously varying degrees of formality - the word-of-mouth contract to buy an apple in a street market is a very different matter, for instance, from the legal complexities of buying a house or a car. Nevertheless it is an integral part of the functioning of market systems to ensure that common principles underlie all transactions however different their circumstances.

In different OECD countries, different legal traditions have produced somewhat different ways of dealing with these issues as a matter of legal practice, but there would seem to be little controversy about the basic principles, whether they have been arrived at through the development of common law or through enactments based on legal Codes.

Somewhat different considerations apply to the buying and selling of goods and to the buying and selling of services.

With contracts for goods, it is accepted that what is being sold should be worth buying - -- that is, that it should be of basically satisfactory quality. If it is not, then a fundamental term of the contract is broken. In some circumstances, the buyer will be entitled to reject the goods

and get his or her money back. In others, the buyer will be entitled to damages for loss which has been suffered because the goods did not meet expectations of reasonable quality. Nothing prevents the sale of goods which are not of such a standard, provided that the buyer is able to see that is what they are.

This point follows from the next contract term which is considered fundamental -- that goods should comply with any description that is given of them. Again if this condition is not met, buyers have the right to return the goods in some circumstances or to damages in others.

Finally goods must be fit for any purpose for which they are specifically sold.

With contracts for services, the basic assumption is that services will be provided to consumers with reasonable skill and care. There is also a basic assumption that, unless the contract contains specific conditions about price and time, the work will be done in a reasonable time and for a reasonable price.

Clearly these basic assumptions would be worthless if contractual agreements contained terms which could override them. So it is usual for the law to provide that:

- liability for death or personal injury cannot be excluded by contract term or notice;
- liability for other types of loss or damage may be excluded or limited only if it is reasonable to do so.

The law often also makes specific provision for liability for death or injury caused by unsafe goods or services -- often known as "product liability". Liability may be strict -- that is, an injured consumer does not need to prove negligence by those who provided the unsafe goods or services. The precise limits of liability may be defined. And the relationship between liability and failure to meet some duty defined by law may also be defined.

### ***Unfair contract terms***

However it is generally also recognised that, because of the inequality of bargaining power between individual consumers and corporate suppliers, the law should give further protection to consumers from unfair contract terms. Precisely how this should be done is still a matter of difference between different jurisdictions and there are some differences of principle between common law jurisdictions and those based on civil codes.

It is likely that the best model for general application will emerge from the discussions currently under way within the European Community about its proposed Directive on unfair contracts. The European Commission's proposal is that if a term of the contract has the effect of making the contract unfair, the contract will be void. The Commission distinguishes between

standard-form or pre-printed contracts and those which are individually negotiated. In both types of contract a term would be unfair if it:

- causes, to the detriment of the consumer, a significant imbalance in the rights and responsibilities which arise for both parties under the contract;
- causes the performance to be significantly different from what the consumer could reasonably expect;
- is incompatible with the requirements of good faith.

In addition, in individually negotiated contracts, a term would be unfair if it

- causes the performance of the contract to be unduly detrimental to the consumer.

This provision would also apply to standard-form contracts, if the use of such a contract term was the result of inequality of bargaining power between the parties.

It is thought useful, in some circumstances, to give consumers an opportunity to reconsider an agreement into which they have entered, if it is reached under circumstances which put the consumer at a disadvantage or the agreement deals with particularly complex or important matters. So, for instance, sales which are made on the consumer's own doorstep or otherwise away from a normal business setting may be made subject to a "cooling-off" period of, say, seven days during which consumers can change their minds without penalty. A similar "cooling-off" period may also apply to contracts for credit or for life insurance.

### ***Guarantees***

Contracts normally create rights and responsibilities between the two parties who are involved. In consumer transactions these are normally the consumer and the retailer. There is much to be said for this principle. The retailer has taken the consumer's money and is normally relatively close to the consumer. If something goes wrong, it is usually easiest for the purchaser to make contact with someone whom he or she has already been in contact with. However, there can be problems.

It is increasingly common for the manufacturers of branded goods to give some form of guarantee. This usually comprises an undertaking to make good some or all defects in the product during some specified time. Some guarantees can be a very useful addition to a consumer's legal rights against the retailer. Others are virtually worthless. For the most part, consumers have to judge for themselves whether to place any value on guarantees when they buy or whether to rely on them to resolve a problem after purchase.

However, regulators can legitimately seek to ensure two things:

- it should be made impossible for the terms of a manufacturer's guarantee to prejudice the consumer's contractual rights against the retailer or to make any claim to do so;
- it should be made clear that the terms of a guarantee are legally binding on the organisation giving the guarantee whether or not it has a direct contractual relationship with the consumer.

Attempts have also been made, most notably in the "Lemon Laws" about faulty cars introduced in some states of the USA, to specify minimum standards for the treatment a consumer has a right to expect if there is a fault. This approach is effectively the imposition by law of a minimum standard of guarantee on the goods covered by the legislation.

In practice, a good guarantee from a manufacturer may be the simplest way for a consumer to get faults put right. But the existence of manufacturers' guarantees does give retailers the opportunity to attempt to persuade consumers that they have no legal rights against the retailer. It is important that consumers should be clear about their rights in this event -- a matter for on-going consumer education. If the practice becomes common, it may be necessary to consider specific legislative action against it.

### ***Redress procedures***

This handbook has already drawn attention to the economic importance of effective redress procedures -- if markets are to be driven by consumer choices, consumers have to be able to enforce those choices if they are deceived. There is little point in giving consumers legal rights or in relying on the mutual self-interest implied by a contract, if consumers cannot enforce their rights or their agreements.

There are a number of special characteristics about disputes between consumers and suppliers.

First, consumer disputes are normally disputes between an individual and an organisation. Resources are likely to be unequal, sometimes enormously so. Not only is the financial strength of the two parties likely to be different, but the organisation is also likely to be far more experienced in dealing with formal procedures.

Secondly, many consumer disputes are about sums of money which, while important to the individual consumer, are still relatively small. This compounds the first problem -- an individual consumer may well not wish to risk time, effort and money in a formal legal conflict with a large, powerful organisation about a fairly small sum of money.

This is of greater importance than the effect on a single individual -- a number of frauds or inefficiencies, individually unchecked, may add up to a major and significant misallocation of resources.

Finally, most private individuals, whether rightly or wrongly, regard the courts with considerable awe and are extremely reluctant to become involved in formal legal proceedings.

Many OECD countries have, therefore, evolved special procedures for dealing with small consumer disputes. These are often known as small claims courts, although they may simply be a separate procedure within the ordinary court system.

The main characteristics which are desirable in such a system are:

- the courts should be accessible to individuals -- good, clear information should be given about procedures; help and guidance should be available on how to deal with them;
- procedures should be as informal as possible; hearings should be conducted in a way which puts as little stress as possible on the parties; it may sometimes be helpful to have hearings outside normal working hours;
- formal legal representation should be discouraged as far as possible; in particular, the successful party should not be able to recover legal costs from the loser;
- it may be helpful if the adjudicator can act to help the parties resolve the dispute by mutual agreement;

Beside these efforts to provide special court procedures for consumer disputes, a number of dispute resolution procedures, of varying degrees of formality, have grown up outside the court system. These include arbitration arrangements set up by businesses or trade associations, sometimes with the involvement of consumer organisations. In some OECD countries fully independent arbitrators -- sometimes called industry Ombudsmen -- have been established. While these developments are not normally the direct result of legislation or regulation, their introduction has often been welcomed by governments. To be successful, they need to have certain characteristics.

These characteristics include:

- the businesses concerned must be committed to the success of the scheme;
- the scheme must have sufficient resources to deal properly with the complaints it receives without cost to the complainant;
- the formal organisation of the scheme must adequately ensure the independence of the arbitrator;

- the arbitrator's judgements must effectively bind the businesses involved without removing the consumer's right to recourse to the Courts;
- there should be a substantial involvement of people independent of the businesses in the administration of the scheme;
- there should be adequate provision for public accountability, for instance by the production of annual reports.

In addition to the provision of good dispute resolution procedures, whether in the courts or outside, there are two further areas where legislative action may be helpful.

Where a business has been convicted of a criminal or administrative offence, one or more consumers may have suffered a loss. In such a case, there will be a very considerable saving, both of consumer's time and of public resources, if the court can make an order for compensation to the consumer in respect of any loss. This may avoid the consumer having to go to the trouble and expense of civil litigation when it is already clear that a business is at fault.

Finally, it is possible that a single course of action by a business may cause loss or damage to a number of consumers -- sometimes to a very large number. It may well be useful to have procedures for collective or representative actions to save the same essential case from having to be contested many times. Those who suffer injury or loss in a transport disaster, for instance, may combine together to seek compensation. More controversial are systems for recovering from producers who fail some legal duty sums which are small for each individual affected but large in total. Such recoveries may be used to fund some public interest activity.

## **CONTRACTS AND REDRESS CHECKLIST**

**Are fundamental principles of contract laid down by law?**

**Do contracts for the supply of goods ensure satisfactory quality, fitness for purpose and accuracy of description?**

**Do contracts for the supply of services ensure a reasonable standard of care and performance within a reasonable time and at a reasonable price?**

**Are there provisions to control unfair contract terms?**

**Are there provisions to prevent the exclusion of liability for death or personal injury?**

**Are manufacturers' guarantees binding on those who give them?**

**Does legislation ensure that guarantees cannot detract from existing contractual rights?**

**Are there adequate provisions for small claims in the courts?**

**Are alternative dispute resolution procedures outside the court system available? If so, are they satisfactory?**

**Can criminal courts order compensation for consumers when the law has been breached?**

**Is there provision for collective or representative actions?**

## **2. Regulation of market behaviour**

It is accepted in all market economies that it is impossible to protect consumers from all types of abusive behaviour. However excellent the structure of law, and however efficient its enforcement, there are bound to be occasions when consumers are tricked or pressured into unwise buying decisions. There will always be a responsibility on consumers to look after themselves.

Nevertheless there is a strong case on economic grounds, as well as in equity, for using the sanctions of criminal law to outlaw behaviour which undermines the standards of the market place. In a competitive situation, abusive behaviour by some competitors will put businesses with higher standards at a disadvantage. To put it at its crudest, money extracted from consumers by deceit by the unscrupulous cannot be spent on worthwhile goods or services provided by reputable businesses.

It is normal, therefore, in OECD countries for the criminal law to provide sanctions against market abuses, particularly in situations where consumers are at a disadvantage through ignorance or otherwise.

Fraud is normally held to be a criminal offence to be investigated by the police.

It is also usual to treat wrongful indications of weights and measure as a criminal offence, although in modern conditions the control of weight and measure is a highly complex and technical matter. Legislation about weights and measures is normally enforced by officials with special qualifications and training.

In some administrations there are controls over the supply of credit (in addition to the complex of regulation about credit information -- see below). Such regulation includes specific protection against unfair credit terms, protection against repossession, assignment, granting security and third party financing.

There are obvious risks in any situation where advance payments or deposits are taken. So it is common to have legislation to control the behaviour of businesses involved in activities like travel agency, insurance broking and estate agency (the buying and selling of houses and apartments).

There is also concern about losses made by consumers when firms to which they have made prepayments go bankrupt. Consumers are not usually in a good position to judge when a firm with which they are dealing is in difficulties and there is particular concern about the behaviour of some individual company directors, who appear to take prepayments recklessly and who may resume trading in closely-related businesses, having gone bankrupt.

In recent years, the explosion in the capacity of information technology has led to detailed regulation of the uses to which personal information about consumers may be put. Personal

information now has considerable commercial value in marketing and in the procedures followed by lenders to prevent bad debt.

There is a Council of Europe Convention on data protection and the European Commission is considering a draft directive.

There have been a variety of regulatory responses to the need to control market abuses. In common law countries, action is usually taken to define and outlaw specific abuses. This approach involves regulators keeping in close touch with market practices. It also needs efficient enforcement procedures, since action can be successful only if a specific offence can be proved.

In other countries it is more common for offences to be described more generally. The courts will have more discretion in interpreting the intention of the legislators. Perhaps the most thorough-going application of this approach is in Scandinavia, where quite general duties to avoid abusive behaviour are created by legislation. It is then the task of enforcement officials to take steps to apply these general principles to specific instances of market behaviour, either taking action directly themselves with the businesses concerned or seeking judgements from specially established market courts.

Regulation often relies on the definition in practice of concepts such as "reasonable" and "unfair". These may be interpreted by the Courts in individual cases or regulations may define them in more detail.

Whatever system is adopted, the essential problem is to provide a framework which is flexible enough to deal with the ingenuity of those who wish to exploit abusively modern rapidly changing marketplaces, without imposing too great a burden of administrative complication on legitimate enterprises.

To achieve this objective some definition of abusive behaviour is needed. The subject has recently been discussed at length in the United Kingdom in a report by the Office of Fair Trading, **Trading Malpractices**. That report discusses the action taken in a number of OECD countries. The definition proposed by the OFT is:

- where the consumer was subjected to undue pressure to enter the transaction;
- where the consumer's inability or incapacity (due to his age, health, ignorance, illiteracy, understanding) was taken advantage of;
- where at the time of the transaction there was no reasonable probability of full payment; and
- where the terms and conditions of the transaction were so harsh as to be inequitable.

## **REGULATION OF MARKET BEHAVIOUR CHECKLIST**

**Are there adequate provisions to control fraud? And effective ways of enforcing them?**

**Is there effective weights and measures control?**

**What controls are there on those who take prepayments from consumers?**

**Is there a need to control the provision of credit?**

**Is there a workable definition of abusive behaviour and an appropriate structure for dealing with it?**

### **3. Information for consumers**

The regulation of the information provided to consumers is a major part of the activity of market place legislators in OECD countries. As with consumer policy generally there are two main purposes:

- to arrange that consumers are provided with the information they need to make good choices;
- to protect consumers from wrong and misleading information.

The economic importance of better and more accurate consumer choice is obvious -- without good information consumers will be unable to direct their resources most effectively to meet their needs. But there are other important reasons for ensuring that consumers can have confidence in the information provided in the marketplace and for seeing that information is clear and relevant.

Fair competition is impossible if consumers cannot distinguish real advantage when it is presented to them. And if consumers have learnt to distrust the information supplied by business successful innovation will be more difficult and the market will not provide the rewards it should to those who have genuine advances to offer in efficiency or in new or better goods and services. In the long run standards will improve more slowly, if consumers are not easily able to recognise higher standards.

For these reasons it is widely accepted in OECD countries that improving the transparency of markets is an important aim of consumer policy.

#### ***Weights and measures***

The foundation of the regulation of market information is the control of the accuracy of weights and measures. It is taken for granted that effective systems should be in place to see that information is provided to consumers about the quantities of what they are buying. This involves regulation to see that goods are sold with quantity markings that are accurate, relevant and clear. In addition, there are normally enforcement systems to check the accuracy of the quantity declarations and to see that scales and weighing machines used for goods sold loose by quantity are accurate.

#### ***Trade descriptions***

It is also general in OECD countries to legislate that those parts of the descriptions of goods and services that may be important to consumers when they are making a choice shall not be inaccurate. Descriptions covered by this sort of legislation include:

- statements about standards, quality, grade, value, composition, style, model or history;
- status, approval or affiliation of a trader ;
- sponsorship, approval, endorsement, performance characteristics, accessories, ingredients, quantities or components;
- availability of goods, services or components;
- the origin of goods;
- the rights and obligations that arise under the transaction.

### ***Prices***

Information about prices is clearly crucial to consumers. It is particularly important that, when some special price advantage is being offered, consumers should be clear what it is and should be able to rely on it. This is also an area where there is often a great deal of bad practice and confusion.

So regulation may prescribe that it is an offence to give a misleading price when goods or services (including housing and accommodation) are being sold or otherwise provided. Regulation may also lay down that price information must be provided in certain situations where it is felt to be particularly important for consumers. For example, prices for foodstuffs may have to be displayed at point of sale.

### ***Unit prices and standard sizes***

Sometimes also considered is the compulsory provision of unit pricing for prepackaged goods. It is difficult for consumers to judge the comparative value for money of goods which are packed in quantities that are not simple multiples of the basic units of weights and measures. With unit pricing consumers are told the price per unit -- per litre or kilo, for example -- as well as the price of the pack. Another way of dealing with the same problem is to regulate the sizes in which products may be packed - standard sizes. There are controls over the sizes in which many basic foodstuffs can be sold in most OECD countries.

### ***Advertising***

Advertising is a central part of the relationship between consumers and suppliers in market economies. It is the major means by which suppliers try to persuade consumers to buy their products and, for this reason, a major source of information about goods and services for consumers. There is much discussion of the social and cultural results of the ubiquity of

advertising in market economies, but from a consumer point of view the essential need is to prevent advertising being misleading.

It is normal, therefore, for there to be some general provision of regulation that advertising should not be misleading. In addition there are normally specific controls for goods or services that pose particular problems for consumers, such as cigarettes, medicines and credit. There may also be controls on advertising directed at vulnerable groups of consumers, such as children.

In some OECD countries, part of the detailed regulatory process may be self-regulation. The advertising industry adopts a detailed code of advertising practice and sets up institutions of self-regulation to enforce the codes. In some countries this is recognised as an effective way of administering the detailed control of advertising. To be effective self-regulation needs to meet certain criteria:

- the industry must support it whole-heartedly;
- there must be a clear and principled code;
- the self-regulatory authority must have sufficient resources to be effective;
- it must have effective sanctions if the code is not complied with;
- there should be a significant element of independence from the industry in the authority's decision making processes;
- there should be an appropriate provision of public accountability through the publication of decisions or in other ways.

### ***Food***

Because food is so essential a product, there is very detailed regulation of the information that is provided. The essential principles are that consumers should be able to recognise what a food product is and that they should be able to see from its label what is in the product. In addition it may be thought necessary to regulate the way in which the information is presented so that it is clear to consumers. In recent years, with greater public concern about the relationship between diet and health, some OECD countries have begun to regulate for the provision of information about the nutritional qualities of food products on the label.

The most important characteristics of food labelling regulation include:

- control of the general description of the food;

- provision for ingredients to be declared and control over the way in which that is done;
- provision for the declaration of quantities of major characterising ingredients;
- control over therapeutic claims;
- control over the nutritional information that is provided.

### ***Credit***

The ability to borrow money to finance purchases is an important part of the way market economies work. There can be considerable benefits both to consumers and to business. However, credit can lead to extremely serious consequences if something goes wrong. Beside any direct controls over the provision of credit ( see above), it is normal to regulate the way in which information about credit deals is provided.

The first concern of regulators is to see that consumers are given all the information they need about what they will have to pay. So lenders must provide information about:

- the amount and frequency of periodic repayments;
- the total amount being borrowed;
- the total cost of the transaction including interest.

One of the difficulties that borrowers face is that it is very difficult to compare the costs of credit when repayments are being made over different periods of time or at different intervals - weekly or monthly, for example. To deal with this problem, regulators have provided ways of expressing the comparative cost of credit through standard calculations. These take into account the total period and frequency of repayments and any charges which are an integral part of the contract. The resulting percentage -- an indication of the true cost of credit -- must be included in the information given to the prospective borrower.

Beside information about cost, standard warnings may also be given to prospective borrowers, to ensure that they understand the seriousness of the transaction they are undertaking and the risks involved in it.

### ***Dangerous products***

Many household products used by consumers carry some inherent degree of danger. Cleaning materials and garden insecticides are examples. Where the products are sold direct to consumers, standard warnings must be given both about the risks involved, with instructions on

how to use the product safely, and about the action to be taken if there is a mishap. Some of the warnings are given in the form of prescribed symbols.

### ***Textiles***

It is helpful for consumers to know the material of which clothes and other textiles are made. And, since inappropriate care treatments - washing, drying, ironing, dry-cleaning - can ruin textile products, consumers need to know how to look after these products.

Some countries have legislated for the provision of information about the materials used in textile goods on labels attached to the goods. There is also an internationally agreed scheme for the provision of care information, again on labels attached to the goods.

### ***Country of origin***

Consumers may be interested to know where the goods they are buying are made. In some cases, the country of origin may be a useful indicator of some quality characteristic of the product. It is clearly undesirable that consumers should be misled about the country of origin.

So trade description legislation may provide that descriptions of products - including brand names - should not mislead in this way. In modern trading conditions, products may be processed in several countries. This may make it difficult to determine country of origin, unless there are clear rules.

It is also common for there to be requirements to declare country of origin for some goods. Although there is a consumer interest in the declaration of country of origin, in practice this type of legislation often results from pressure from domestic industry in the countries concerned and is protectionist in character.

### ***Quality standards***

The information that goods comply with authoritative quality standards is valuable for consumers. As international economies become more interdependent, it is also important that consumers in one country are given accurate and understandable information about the compliance of imported goods with standards set in their country of origin. Quality marks are normally protected by trade description legislation. There is also a gradual development of international agreement on the mutual recognition of quality standards and the expression of compliance with them.

## **INFORMATION FOR CONSUMERS CHECKLIST**

**Is the accuracy of weights and measures regulated?**

**Must descriptions used for goods and services sold to consumers be accurate?**

**Are there controls to prevent misleading price indications?**

**Must basic products be sold in standard sizes? Are there any provisions for unit pricing?**

**Is the labelling of food regulated?**

**Are there controls over the provision of information in the selling of credit?**

**Is there appropriate labelling of dangerous products?**

**Are textiles properly labelled?**

**Is there any need to control country of origin marking?**

**Is information about quality standards adequately protected?**

#### **4. Advice and education**

Much consumer policy is aimed at seeing that consumers are able to deal properly with the situations that arise when they are considering a purchase, making the transaction or dealing with the consequences, should anything go wrong. But, of course, these transactions take place in the context of the consumer's knowledge and experience of the marketplace. There are a number of ways in which consumers can be helped to act more effectively. These include providing consumers with information about the products on the market, with help in dealing with problems when they arise and with general education about the way markets work and what consumers' rights and responsibilities are.

##### ***Research and comparative testing***

No individual consumer can hope to be continuously in possession, in a modern technological marketplace, of all the information which he or she needs to assess all the products on offer. In OECD countries, there have grown up organisations which assess comparatively goods and services, using appropriate scientific and technical testing procedures, and publish the results for consumers. In many cases, these organisations are independent both of government and of industry. But in other countries, for a variety of reasons, no viable independent organisation has emerged. In some of these countries, governments have decided to establish or support comparative testing organisations.

In addition, even where viable independent comparative organisations have established themselves, they may well not have the resources to carry out research on questions which affect consumers generally. Some governments have decided to support organisations which are capable of addressing general policy matters on behalf of consumers and to provide them with the resources needed to carry out the necessary research.

Where governments are considering the establishment of organisations to represent the consumer interest, it is particularly important to consider their ability to carry out or have access to adequate research about consumer experience.

##### ***Price information***

In market economies prices often differ from retailer to retailer. If consumers are to buy most effectively, they must spend resources of time and money seeking the best prices for the goods or services that they want.

Where comparative testing organisations exist, they are a source of comparative information. In addition, some administrations have made attempts to collect and disseminate price information on a local or regional basis. It is difficult to do this without some structure of local advice centres.

### ***Local advice agencies***

Individuals face many problems in modern society in their role as consumers. They also face problems in other facets of their activity as citizens. People may need advice about housing difficulties, entitlement to welfare benefits, how best to resolve disputes of various types and money problems, as well as the everyday problems of the marketplace. Many people will find themselves unable to afford professional advice in these situations.

To deal with this, different OECD countries have established a wide range of arrangements for making advice available to individuals who need it. These have grown up in response to local needs and following local traditions of administration. Some use only paid staff; in others volunteers play an important part.

The characteristics of a successful service are :

- the service should be easily accessible;
- its purpose and function should be clear to its potential users;
- so far as possible, it should be able to deal with its users' problems directly, without referring them on to other agencies;
- the service should be adequately resourced and its staff and volunteers properly trained.

### ***Consumer education***

It is generally agreed in market economies that children need education in how to behave effectively as consumers, along with other training in life skills. They need to understand their rights and responsibilities and to assimilate a considerable amount of information about how to find their way around the marketplace and to use goods and services safely and effectively.

Consumer education, therefore, normally finds some place on the school curriculum. There are questions about whether it is better to organise consumer education as a separate subject or whether it is better to use material relevant to consumer education throughout the curriculum - -- studying the use of language in advertising in language classes and credit interest rates in mathematics, for instance. These are probably best decided in relation to local conditions and resources.

### ***The mass media***

Television, radio, newspapers and magazines are an important source of information, advice and education about consumer matters. Regulators may seek to interest the mass media both in general questions of consumer protection and in specific cases.

## **ADVICE AND EDUCATION CHECKLIST**

**Do effective organisations to carry out comparative testing exist?**

**Is there any structure for research into consumer experience?**

**Are there agencies to provide local advice to consumers?**

**Does the education curriculum recognise consumer education as a subject and give it adequate treatment?**

## 5. Safety

If markets worked perfectly, there might be no need to regulate safety. Consumers with perfect knowledge about the safety of the products on offer would decide for themselves what suited their needs best and their decisions, by themselves, would be sufficient to ensure that unsafe products would get no sales and would find no place in the market.

However the practical outcome is different. Each individual supplier of goods has little incentive to draw attention to any risks that are inherent in his product. And individual consumers, faced with the complex technology of the modern marketplace, simply do not have the information they need to assess the risks involved in every purchase they make. Indeed, the risks may sometimes become apparent only after a product has been on the market for some time.

In many cases, also, it is no more expensive to design and make products to high safety standards than not to. Moreover the loss to a consumer caused by a safety defect in a product may be far greater than any benefit they get from using it.

Perfect safety is impossible. Many products on sale widely every day carry considerable risks - a knife is by its nature bound to cut. Research shows clearly that consumers want to be protected from dangers that they cannot reasonably foresee or guard themselves against. It is difficult, for instance, for consumers to protect themselves from electrocution by a washing machine -- is better to avoid the possibility of its doing so. So the objectives of safety policy from a consumer standpoint are:

- to see that products commonly regarded as safe are in fact safe;
- to see that consumers have clear information about unavoidable risks;
- to see that products which do carry risk are designed as safely as possible;
- to take action to deal with products which do not meet these criteria.

Regulation to ensure high standards of safety involves both criminal or administrative law and the civil rights of consumers.

Legislators are concerned to make it an offence to put on sale to consumers products which are dangerous. There are specific regulations covering products which are known to involve a high degree of risk, like heaters, and ones where safety is particularly important, like children's toys and car seat belts. More recently, a number of administrations have been considering imposing a general duty on suppliers of goods not to put on sale unsafe products -- safe being defined as not meeting the standard of safety that consumers are entitled to expect.

Regulations covering specific products are usually detailed and based on prescribed specifications for the product. These are based on standards produced by approved standards-making bodies. Where a general duty is imposed, no specific standards are usually invoked, but compliance with relevant standards is taken into account in deciding whether the duty has been complied with.

The authorities are given various powers to deal with dangerous products if they are found on the market. These include:

- a power to issue warnings or to order them to be given by the supplier of the goods;
- a power to ban the supply of dangerous products or to order their recall by the supplier;
- a power to seize apparently dangerous products while their safety is investigated.

In some cases, these regulations are extended to some types of second-hand goods.

### ***Compensation for injury or loss***

As part of the effort to ensure high standards of safety, it is now the common practice of OECD countries to impose on suppliers -- both retailers and manufacturers or importers -- a duty to compensate consumers for injury or loss caused to them by faults in the products they buy.

This duty cannot be avoided by any term in the contract between consumer and supplier. The supplier remains responsible even if he is not at fault. There is some controversy about whether the supplier should remain responsible even where it would have been impossible for him to have known about the defect in the product which gave rise to the consumer's loss or injury.

### ***Information about unsafe products***

It is helpful to have the fullest possible information about likely causes of danger so that appropriate action can be taken to avoid injury or death, instead of having to wait to take action until after an incident has occurred.

Administrations therefore make arrangements to exchange information about hazardous products, both internally between local enforcement agencies and internationally across borders.

Some administrations also set up procedures for collecting and analysing accident data, so that the risk factors in dangerous situations can be explored and specific dangerous products identified.

## ***Food and hygiene***

The risks involved in faulty hygiene practices in the manufacture, distribution and use in the home of food products are clearly considerable. It is normal for legislation to impose a duty on all those involved in the production, processing and sale of food products to sell to the consumer only products which are safe and wholesome. Regulation may include:

- powers to inspect premises where food is being produced or processed and to take action if standards are unsatisfactory;
- powers to take samples of food products and to take action if standards of hygiene or wholesomeness are not satisfactory;
- powers to ensure that labels carry the information necessary for consumers to store and prepare the products safely.

These powers are exercised locally by specifically appointed officials.

The need for consumers to have good information about the safety of food has led to the compulsory date-marking of nearly all food products. The date marks give dates by which food should be consumed. For short life products the date is a "Use by" date, while for products with a longer safe storage period a "Best before" date is given. These indications involve considerations of food eating quality as well as safety.

## **SAFETY CHECKLIST**

**Is there a general duty on suppliers not to put on sale unsafe products?**

**Are there adequate provisions to control the safety of specific products, where that is necessary?**

**Do the enforcement authorities have adequate powers to take any necessary action?**

**Do suppliers have a duty to compensate consumers for injury and loss caused by defective products?**

**Are there effective arrangements to exchange information about dangerous products?**

**Are data about domestic accidents collected and analysed?**

**Are there adequate mechanisms to control the safety of food products?**

## 6. Consumer representation

This handbook has discussed earlier the need to provide ways in which the interests of consumers can be properly represented. The consumer interest is a diffuse interest of everyone in society and is therefore likely in many situations to be weakly represented in contrast to the interest of producers, which is more focussed and often better resourced.

Of course the interests of consumers should be best represented by independent consumer organisations, set up by consumers and properly representative of them. Where independent consumer organisations have established themselves, they play an important role in representing the general interests of consumers. Specific groups of consumers -- like pensioners or car owners -- may also come together to act as advocates for their own interests.

Nevertheless, in virtually every country the task of dealing with all the questions which are involved in the representation of the general interests of all consumers has proved to be beyond the resources of the organisations which have emerged independently. Governments have therefore set up various mechanisms for enabling more effective advocacy of the consumer interest. These range from free-standing bodies with authority of their own, through various forms of advisory bodies with varying degrees of independence of action to the appointment of specific state officials with power to initiate action on behalf of consumers.

In many countries consumer questions are a large enough part of the whole machinery of government for there to be a specific ministerial responsibility, supported by an appropriate official department.

Given the scarcity of resources, it is important that the mechanisms set up by government complement and cooperate with whatever bodies have established themselves independently.

There are two broad areas where officially supported consumer representation seems particularly appropriate. The first is in policy advocacy of questions which affect the interests of consumers generally. The second is in the representation of consumer interests in monopolies - particularly public ones.

There is a special case for the provision of some form of consumer representation in public utility monopolies such as water, gas, electricity, public transport and postal and telephone services. Not only is the consumer deprived of effective choice because of the monopoly nature of the service, but he or she also is bound into the service because what it provides is essential for life or at least for effective participation in modern society. In this situation consumer representation has two main functions:

- to deal with policy issues about the efficiency and quality of the service provided;

- to help individual consumers who have difficulties or disputes with their monopoly supplier.

There will also be a need to appoint people able to represent the interest of consumers to official bodies considering questions which affect consumers. Some will be provided by any independent consumer organisations which have established themselves, but it may be necessary for governments to seek out suitable independently-minded people to fulfil the role. In some cases it may be helpful to consider how they can be trained and supported.

### **CONSUMER REPRESENTATION CHECKLIST**

**Are there mechanisms for policy advocacy on behalf of consumers generally?**

**Is there representation of consumer interests in the administration of public utility monopolies?**

**Are there arrangements to ensure that the consumer interest is adequately represented on appropriate official bodies?**

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