
Forum

The following is an edited version of a speech given by Commission Deputy Chairperson, Allan Asher, to the International Marketing Supervision Network in Vienna in December 1995, about the protection of consumer rights in the global marketplace.

Consumers' access to justice in the global marketplace

I would like to suggest that we are now entering a third and pivotal stage of the evolution of consumers' access to justice. How well we tackle the challenges surrounding this third stage will be instrumental in determining the degree of protection which consumers in the global marketplace receive in the next millennium.

The first stage of this evolutionary process, in the 1960s and 1970s, saw the enactment of consumer protection legislation in many countries, accompanied by widespread education campaigns to teach consumers about their new rights and how to enforce them. At the international level, the United Nation's Guidelines for Consumer Protection were established to provide guidance on the rights which all of the world's consumers should be entitled to.

By the 1980s, however, the limitations of this rights-based approach to consumer protection were becoming all too apparent — namely, if consumers cannot afford to enforce them then they are of limited value only. In Australia, as in many other countries, the reality is that most consumers do not access the court system to enforce their rights.

This led to what I have termed the second stage of the evolution of consumers' access to justice, namely the development of the numerous alternative dispute resolution schemes which were established in the 1980s and 1990s. During this stage also, cooperative arrangements developed between business, regulators and consumers, which gave rise to many significant initiatives such as in the area of improved complaint handling procedures at both the company and industry level.



The third stage, if done properly, should further strengthen existing initiatives. By the third stage, I mean ensuring access to justice for consumers in the global marketplace. I want to make it clear at the outset that I think there are some enormous benefits to be gained by consumers from the advent of a truly global marketplace. It should result in increased choice, improved quality and lower prices for the goods and services in the marketplace.

But it is inevitable, as with current markets, that from time to time things will go wrong. There will be problems ranging from the non-delivery of goods which have been ordered and paid for, to the arrival of goods which are sub-standard or do not meet their description. The difference between these problems and traditional consumer problems will be that the manufacturer and supplier may well have no connection to the country in which the consumer resides.

This will mean additional disincentives for consumers seeking access to redress. They may have to deal with such problems as

'language difficulties; geographical distance; difficulties in obtaining a response from a foreign producer; ignorance of a foreign legal system; lack of information about rights; the cost of international telephone calls and so on.'¹ Without encouragement to do so, many may not even think to contact their local consumer affairs agency for assistance believing that there is nothing which they could do.

The challenge is to ensure that the benefits of the global marketplace are delivered whilst ensuring that where competition doesn't correct market imperfections consumers can still gain access to justice.

Obviously there is no one simple step we can take to ensure access to justice in the new marketplace. We will need to work at many different levels, such as:

- the creation of international rules or standards for acceptable conduct;
- the creation of global cooperative networks for regulators and consumer groups; and
- working with individual businesses and industries operating in the international marketplace to establish fair and accessible alternative dispute resolution systems.

Ironically, the communications revolution which has given rise to the global marketplace is likely to be our greatest ally in tackling the challenge which lies ahead of us. Our other great ally is likely to be that great underpinner of the new era, competition policy.

The Commission is currently looking at the issues involved in ensuring protection for consumers in the global marketplace. Some of the thoughts we have had can be grouped under the three strategic approaches mentioned above.

Creating internationally recognised rules and standards

Normally when we think of consumer rights we think of the laws created by national and State parliaments. In the era of the global marketplace, however, we are going to need to discover new rule-making bodies.

There is, in fact, a multitude of alternatives which can be used to create international rules and standards. While not all end products will necessarily have the force of law, some will, and there are other factors, such as competition policy, which can be brought into play where traditional mechanisms are lacking.

Five such alternatives to the parliamentary route for international rule making are:

- the United Nations;
- international standards setting organisations, such as the Codex Alimentarius and the International Standards Organisation (ISO);
- regional and other governmental cooperation bodies, such as the WTO, OECD, APEC;
- international industry organisations/peak bodies; and
- international non-governmental organisations, such as Consumers International.

United Nations

In the consumer protection area there have certainly been some disappointments associated with the UN — from my perspective the failure to get passed either the UN Code of Conduct for Trans-nationals or the UN Guidelines on Global Business was an enormous

1 Monique Goyens, 'Cross-border disputes: a legal quagmire' in *Consumer Policy Review: Access to Justice*, published on behalf of Consumers' Association by Blackwell Publishers, Vol. 3, No. 2, April 1993, p. 92.

disappointment. However, there have also been some great triumphs, such as the UN Guidelines on Consumer Protection. These guidelines have been used as leverage to get consumer protection regimes established in a multitude of countries. Thus, while they do not have the force of law, I think it is indisputable that they have contributed significantly to the network of consumer protection operating globally.

At present these guidelines are under review. I think it is imperative that we all contribute to this review. We should also be asking ourselves how we can use these guidelines to help ensure that consumers have access to justice in the international marketplace.

International standards setting organisations

Similarly, while standards produced by the ISO may not have the force of international law, they are often adopted by governments or become recognised as international best practice so that companies who want to compete in the relevant marketplace have a great incentive to adopt them.

The International Standards Organisation has generally been associated with technical standards and safety standards. Its expanded role is reflected in the ISO 9000 series which deals with international standards covering quality systems.

Standards Australia has also expanded its role and has recently released an exceedingly innovative and important standard on complaints handling (AS 4269-1995). It deals with elements which are essential to a good complaints handling system, such as visibility, accessibility, fairness, responsiveness and charges. It also stresses the importance of data collection so that systemic complaints can be identified and addressed at source.

In respect of the ISO and other international standards setting bodies, regulators in the area of consumer protection and consumer organisations need to ensure that they have a voice in these standards-setting exercises so as to ensure that the standards produced do

indeed provide adequate protection for consumers.

Regional and other governmental cooperation bodies

In the area of cooperative government bodies, organisations such as the WTO and some of the bodies responsible for regional economic cooperation can also contribute to the establishment of international consumer protection norms. While at first glance the charter of the WTO might suggest that its functions may be to remove protections which consumers currently have, a good case could be made that the WTO should be seeking to establish global norms so that consumer protection requirements cannot be argued to be a barrier to trade.

One example of a governmental cooperative body already working to establish international consumer protection norms is the OECD's Consumer Policy Committee. On its work program at present is the development of standards in areas such as distance selling, consumer protection in dealings with utilities, and improved product safety regimes. Just as the privacy principles developed by the OECD some years ago are now being used as global norms, I am hopeful that the work of this committee will have a similar impact.

Another example in this area is APEC's current work to establish mutual recognition on conformity of assessment. A pilot project is under way whereby APEC members are inspecting each other's testing laboratories and quality assurance systems — where a country agrees that the other's conformity assessment procedures meet its own standards, a system of mutual recognition will be introduced. The system, however, will not stop countries inspecting imports as they see fit, and should a country be shown to have relaxed its standards it can be taken off the list.

International industry organisations/peak bodies

International peak industry organisations could also be involved in establishing international codes of practice for certain industries or issues.

The International Chamber of Commerce, for instance, is currently developing a code in the privacy area. Such bodies could be encouraged to develop the same range of codes as are being developed domestically, covering areas such as financial services, distance selling and advertising on satellite TV.

Of course, for such codes to work, strong industry bodies with wide coverage and the power to impose meaningful sanctions on members who breach a code to which they are a party are required. However, as global commerce continues to increase, the incentive for individual companies to form organisations to promote their common interests will increase and thus too will the power of such bodies to help establish industry standards to protect both the interests of the industry, by promoting confidence in it, and the interests of consumers.

International non-governmental organisations

The final group of potential rule-making bodies consists of international non-governmental organisations. For example, in 1995, Consumers International (CI) released a Consumer Charter for Global Business which aims at encouraging ethical behaviour and a more consumer-centred approach by large transnational corporations. It covers such areas as ethical standards, competition issues, marketing practices, product standards, labelling of products, the provision of information, complaints procedures and guarantees. While the provisions are drafted in a very general and non-prescriptive way, the charter provides an excellent, ethical and consumer-friendly basis for global business.

Corporations will be able to apply to CI to adopt the charter. CI will decide whether to accept the corporation as charter member after investigating its activities to ascertain whether it is complying with the content and spirit of the charter.

This important initiative has the potential to give an enormous marketing advantage to ethical corporations. As well as providing protection for the world's consumers, the charter should also benefit global trade by

helping to give consumers the confidence needed to participate in this new marketplace.

Global cooperative networks for regulators and consumer groups

The second strategy mentioned — the creation of global cooperative networks for regulators and consumer groups — is already happening, and with modern technologies such as the internet, such cooperation can be expected to flourish and grow.

Modern technologies will enable the establishment of international databases which all agencies will be able to access easily. The OECD's product hazard alert system, which is an on-line information system, is already in place and showing benefits. This system will be replaced by an open access internet system which, amongst other things, will provide a product hazard alert system and an information sharing system for judgments, interesting articles and other non-confidential information.

Electronic communication alone, however, cannot create fully effective cooperative networks. Cooperation occurs when a common bond is developed through regular contact, including personal contact, and through discussing common problems and shared ideas. Just as many countries have national enforcement networks, I think we also need regional and international enforcement networks.

An example of such a network is the OECD's International Marketing Supervision Network which was established about three years ago. To date, I would have to say that it has been a disappointment; however, I believe that with the addition of a permanent secretariat, greater commitment from participating countries and, say, a system of interchanges for enforcement officers between different countries, it has the potential to become a dynamic body.

Of course, to really succeed in the role of consumer protection officials in the global marketplace, a network which is truly global and not restricted to OECD membership is

needed. In this regard, I have proposed the establishment of an International Society of Consumer Affairs Officials (ISCAO), an idea modelled in part on the Society of Consumer Affairs Professionals (SOCAP), the predominantly private sector network of consumer affairs professionals.

ISCAO would be an international professional association made up of individual consumer affairs officials involved in administering consumer protection laws. This organisation would be independent of government and have no government affiliation. It would aim to encourage strong networking and a cooperative approach to solving consumer problems and sharing ideas so that emerging problems arising out of the creation of borderless markets and technological advances could be dealt with effectively.

The aims of the organisation could include creating a global network of consumer affairs officials; encouraging best practices in consumer policy regulation and administration; developing global consumer protection policies; encouraging the development and harmonisation of consumer protection laws; encouraging agencies to exchange research, open up training programs to overseas officials and commit themselves to the use of technology for inter-agency communication; advocating cost-effective consumer remedies; and encouraging business to adopt consumer-responsive, market-sensitive mechanisms for dealing with consumer problems.

I am particularly hopeful that such networks, both human and technological, will benefit consumers in developing countries, which have often been the dumping ground for some of the developed world's most dangerous products as well as those past their used-by dates.

Regulatory agencies are not alone in planning these new global networks — the consumer movement is also doing so through Consumers International. Regulators also need to ensure that they liaise with these new international consumer networks, since the consumer movement is often the first to know about an unsafe product or practice. By sharing our knowledge and experience we can

exponentially expand the effectiveness of both regulators and the consumer movement.

Because of modern technology, networks need no longer be confined to regulators and organised groups. Individuals can create, and are creating, their own networks to advance the cause of consumer protection. For example, several internet home pages warn of consumer scams on the internet. As well as a home page run by the US Federal Trade Commission, there are also pages run by what appear to be private individuals with net users from all over the world contributing. What could be better than having literally millions of net users acting as watchdogs for each other and at the same time, if we are smart, tipping off the regulators.

Working with business

Enforcement agencies will never have sufficient resources to take up all consumer complaints at the domestic level, let alone the international level. Therefore we need to be looking at smarter and more resource-effective means of ensuring access to justice.

One of the areas where I see the greatest potential for success is working with international peak industry bodies and with individual companies operating on the global stage.

In this context I would refer to a Canadian Professor, Nancy Adler, whom I heard on the radio in Australia recently. She had two very interesting points to make about the globalisation of markets. First, she talked about the expanding power of transnational corporations vis-a-vis governments as state borders become more and more meaningless in a practical sense and, secondly, she talked about the need to foster ethical CEOs since so much power, in terms of the future directions of the world, is within their control. Whilst she wasn't talking specifically about consumer protection enforcement, I think that her observations are exceedingly relevant to this area.

We should be looking to identify those CEOs who are interested in promoting global business ethics and work with them as well as seeking to

imbue a similar ethos in other CEOs. There are already organisations in place which are supportive of these goals, such as the co-round table (CAUX), which is a forum of 20 or so transnational CEOs whose objective is to develop a global code of ethics for business, and the Minnesota Centre for Social Responsibility in Business.

One of the approaches which I believe holds the most promise is to work with international peak industry bodies to develop internationally recognised codes of conduct, charters and dispute resolution schemes. We should be aiming, for example, to have global financial services Ombudsmen to resolve disputes involving cross-border transaction.

Ethical businesses have a legitimate interest in ensuring that reasonable standards are met within their industry. Unless consumers have confidence in the integrity of the global market they won't use it. The proactive work of direct marketers to establish international protections for distance selling provides a good illustration of this as do the chargeback arrangements that exist in the merchant agreements of everyone who deals with VISA and Mastercard.

While I believe that we should be working with such peak bodies, and encouraging organisations such as the OECD Consumer Policy Committee, Consumers International and the Society of Consumer Affairs Professionals to work with them, I also think that there is benefit in simultaneously working with individual companies.

It is possible to have an enormous effect by targeting just a few companies. As we know, transnational corporations control a large part of global trade and foreign investment. In 1993 there were, I am told, approximately 37 000 transnational companies in the world, having between them some 170 000 affiliates and subsidiaries. However, 1 per cent by number of transnational corporations own 50 per cent of those 170 000 affiliates that operate around the world. Thus, if we targeted just some of those 1 per cent, that is, a more manageable sounding 370 transnationals, to implement effective fair trading codes with suitable alternative dispute resolution mechanisms we could have an enormous effect

on establishing acceptable international norms. And once such norms are in place in even some of these transnationals, competition is likely to ensure that they will be emulated or surpassed by others.

These have been just a few suggestions for steps we can all take to ensure that consumers in the global marketplace have access to justice. The creation of a global marketplace has already begun, and unless enforcement agencies, policy makers, business and the consumer movement are prepared, we will not be in a position to properly assist in safeguarding the interests of tomorrow's consumers.