

# Consumers 2000: Updating the UN guidelines

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Part One –Global setting for Consumer Policy

## Introduction

... just over a year ago the UN became a Social Council voted to extend the Guidelines on consumer protection in the area of sustainable consumption patterns and look at updating them as well.

ECOSOX decision on July 18 1995 came about as a result of a sustained campaign by Consumers International (backed by many UN member governments) to recognise the importance of the guidelines in the enhancement of consumer welfare. This background paper examines the development and implementation since 1985 of the UN Guidelines. Considers the current state of consumer welfare in developed and developing countries, looks forward to the policy problems confronting consumer administrations and reviews the guidelines to determine their relevance for consumers in the next millennium.

## 2. Ten Years of the Guidelines

### (a) Background

Since April 9, 1985, when the General Assembly of the UN adopted the Guidelines much has changed. The Guidelines provided international framework for the development and evaluation of the consumer policy and the 10 years since their adoption they have often been sighted by governments as an essential reference set for consumer protection. The following review of their history and implementation serves both to document major contributions the guidelines have already made to enhancing the welfare of consumers around the globe and also points to areas in need of revision and extension. The discussion also serves to note the substantial actions already taken both nationally and internationally on their implementation.

### (b) Outline

In essence, the guidelines addressed the interests and needs of consumers worldwide and recognised two interrelated concerns. Firstly, the imbalance that consumers face in economic terms, educational levels and bargaining power, and the importance of promoting just, equitable and sustainable and social development. The guidelines while in the main expressed to provide the framework for governments, also have some obligations directed to consumer groups and producers. In providing a framework for governments they are particularly designed for governments of developing a newly independent country's to use in structuring and strengthening consumer protection policies and legislation. They are deliberately aimed at encouraging international cooperation in consumer policy.

### (c) Review of the Guidelines

Leading up to the debate at the economic and social council in July 1995, two surveys were undertaken of measures carried out by governments in implementing the guidelines. The first in 1992 and the second in late 1994. The UN Department, the Policy Coordination and Sustainable development has since cooperated with consumers international in the sponsoring of a seminar on the guidelines focusing on consumer protection in Africa.

As noted earlier the Guidelines have particular importance and relevance in both developed and developing countries. However, they have particular role in countries where government interest in consumer protection is relatively recent. The guidelines provide an essential check list of issues to be dealt with where as in more developed economies they provide a measuring stick against which existing policies and their implementations can be assessed.

One measure of the areas of the guideline needing future attention comes from the World Congress of Consumers International held in September 1994 in Montpellier, France, where more than 500 world consumer leaders developed resolutions and action plans on issues including consumers in international trade, the environment and sustainable consumption, debt and financial services, information and advertising, the protection and privacy, consumer education, food, health and access to basic needs. The Consumers International Congress called on the UN to continue its work on implementation of the guidelines and pointed to areas needing further attention. Special emphasis was placed on the need for consumer protection measures for economies in transition.

### **3. Implementation by Governments**

Of relevance to the future of the guidelines is an assessment of how governments have acted to implement the guidelines in the past.

Though governments play a lesser role in the protection of consumers in modern market place, no less the role of governments remains vital in the following areas:

- policy making;
- legislation; and
- the development of institutional capacity for the enforcement of consumer laws.

Thus it remains a prime responsibility of governments to provide a legal basis for enforcing basic consumer rights and every country needs to have a irreducible minimum of consumer protection legislation covering physical safety, promotion and protection of consumer economic interests, standards for the safety and quality of food and service, distribution facilities, redress and education information programs. Governments also require necessary machinery for the enforcement of such rules.

A key element of the UN Guidelines is that they encourage governments to development, strengthen and maintain strong consumer policy to protect their population as consumers.

In 1988 and again in 1990 and 1995, the Economic and Social Council has resolved to urge all governments to implement the guidelines and in doing so establish longer international links in this regard. In two separate reports to the Economic and Social Council, governments have reported on a great many measures adopted in implementation. In addition the UN Agency's themselves have sponsored and reported on regional and international symposiums looking at implementation of the guidelines. Most recently in 1995 the Economic and Social Council received reports from 27 governments on implementation of the guidelines. These reports arise from both developed and developing countries and they confirm a continued high level commitment to consumer protection around the world.

#### (a) Global Markets

As can be expected a number of the reports submitted by national governments to the 1995 review of implementation pointed to new consumer problems arising as a result of an increased globalisation of the economy. In addition recent technological developments and problems of the environment and financial markets were sighted as drivers to a future review. In a report to the Economic and Social Council in May 1995 the Secretary-General noted key developments in member countries which included a call from the government of Australia to revise the guidelines to include guidelines for the conduct of global business, from Norway to consider health hazards and patterns of consumption, from Malta to consider international networking in consumer protection, from India to consider the establishment of a specialised agency for consumer protection.

### **4. International Cooperation on the Guidelines**

From their inception the guidelines make it clear that consumer policy can no longer be regarded as an isolated activity of a single nation. The guidelines themselves place emphasis on international cooperation in the field of consumer policy. Indeed consumer problems transcend national borders and the impact of globalisation in increasing transfrontier disputes call for an appropriate policy response. International cooperation also provides the opportunity of avoiding duplication of efforts and to allow governments consumer groups and business to share experiences in testing the training and exchange of consumer information in a way that leads to better outcomes. Since the adoption of the guidelines the UN itself has participated in three regional seminars on the implementation of the guidelines, one in Latin America in 1987, one in Thailand in 1990 and one in Africa in 1996. A number of sub-regional workshops have also been held including one in Vietnam in 1990 and in Malaysia in 1993.

### **5. Implementation by UN Agencies**

Implementation of the UN Guidelines is not solely the responsibility of member governments or businesses and consumer groups. Successive reviews of the guidelines have also called on the Secretary-General of the UN to urge all UN agencies to actively participate in the process as well. In recent years there is substantial evidence of a great increase in interest and activity relating to the guidelines amongst UN agencies themselves. This action tends to be concentrated on those priority areas of the guidelines concerning the help of consumers; in particular food, water, pharmaceutical's, pesticides and chemicals which also touch on

environmental policy. Most notably the UN Commission for sustainable development has a very wide range of activities addressed these issues while elsewhere in the UN system there is much activity. The food and agriculture organisation of the UN has for many years been implementing projects in the area of food safety and standards. It provides advice and technical assistance in food quality control at the national level through training and technical assistance. The joint FAO/World Health Organisation codex alimentarius commission, includes 151 member countries and is active in formulating international standards and codes of practice on a wide range of food commodities and makes recommendations on food safety, pesticide residues in food, additives and contaminants. The codex alimentarius also sets out codes of practice as guidelines of government and promotes the adoption of information disclosure systems in relation to food.

The United Nations educational, scientific and cultural organisation (UNESCO) offers assistance in areas of teacher training and curriculum development for food safety. These efforts are targeted at nutritional health and well being of consumer groups, specially children and mothers to prevent food borne infections and contamination. The WHO/United Nations Children Fund (UNECF) international code of marketing for the breast milk substitutes, adopted in 1981, is aimed at protection of a vulnerable group of consumers and also encourages a high level of ethical conduct of enterprises that produce and distribute breast milk substitutes. Since the adoption of the international code more than 150 countries have reported positive steps in their implementation.

The United Nations environment program (UNEP) regularly publishes a consolidated list of products whose consumption and/or sale be banned, withdrawn, severely restricted or not approved by governments. The purpose of the list is to consolidate all information on products harmful to health and the environment, based on the work of relevant intergovernment organisations that include WHO and UNEP. Further information is provided through the World Trade Organisation, FAO and the International Labor Organisation. In 1994 the fifth edition of the list was published including information on restrictive regulatory measures taken by 93 countries on some 700 pharmaceutical's, agricultural and industrial chemicals and consumer products. The list which is widely used by government and non-government organisations in considering the scope for regulatory measures at the national level has been a major means by which the goals of the UN Consumer Protection Guidelines have been achieved.

The UN Environment Program and FAO are working on the implementation of a program of prior informed consent with respect to agricultural, industrial and consumer chemicals. Where an international shipment of a chemical pesticide that is banned or severely restricted or is known to be causing health or environmental concerns will not proceed without explicit agreement of the designated national authority in the important country.

The UN International Drug Control Program (UNDCP) has a number of projects providing legal assistance to help countries in established regulatory systems for the control of drugs. The focus of this system is to prevent the diversion of drugs from illicit to the innocent market with an obvious impact on consumer safety.

Elsewhere within the UN System there are many agencies active in the area of watered, water resource development and management while the UN conference on Trade and Development (UNCTAD) has a number of projects specifically referable to the protection of economic interests of consumers. In particular the set of multilateral agreed equitable principles and rules for the control of restrictive business practices has been of great use especially amongst developing countries in establishing the basis for competition rules. UNCTAD has prepared a model law on restrictive business practices which contains a provision on consumer protection.

## **6. Future Directions for the Guidelines**

When the guidelines were adopted by the General Assembly of the UN it was specifically recognised that consumer protection could no longer be seen in domestic terms. In the years since their adoption the pressures pushing towards a globalisation production distribution and consumption have emphasised this point. Recent evidence suggests these trends are stronger not weaker. Environmental issues, the global debt crises the spread of financial services and the effects of advertising in the mass media on information available to consumers had a profound effect on consumers. It is noted an increase globalisation on manufacturing production and distribution, the convergence of trade, environment, competition and consumer policies all push in the same direction. Today more than ever before there is a need to provide universally accepted norms of policy and norms for businesses to follow in dealing ethically with consumers in the market place.

At the same time as these developments there is an increasing consciousness that without sound consumer policies the modern market economy will not be effective the concerted push for liberalisation of international trade itself depends on a consistency and confidence in national consumer policies. Governments in both developing and developed countries have stressed the importance of such a framework.

## **7. UN Commission On Sustainable Development**

At a time when there was increasing doubt about the ability of the UN to adequately work on the implementation and extension of the Guidelines, the UN Commission on sustainable development took over the task of implementation. In 1995 the Commission recommended that the Guidelines be expanded to include Guidelines for sustainable consumption patterns.

In its resolution the Commission urged governments and the various organisational bodies of the UN system to undertake specific work on changing production and consumption patterns. The work was to emphasise the importance of changing of exchanging experiences so that a proper international cooperative effort could be undertaken.

The Commission on sustainable development has involved Consumers International in this process and the prospects for provision and implementation of the guidelines in the coming years may well be stronger than in the past.

Meanwhile, in nations of diverse size, wealth and ideology, governments are seeking to divest themselves of infrastructure assets such as electricity generation and water supply businesses. In the place of public funds comes global capital, driven as always by a quest for productivity and profit. This influx of global capital to traditionally public functions brings with it some easily identified risks. To what extent will **all** consumers' access, indeed local business access, to such essential products be maintained? What is to prevent price-gouging on essential commodities? And how will safety and public health be guaranteed?

The UN Guidelines have much to say on these very issues. Their adoption and extension must be a priority if consumers, and especially urban consumers, are to derive any benefit from the privatisation of public utilities.

Technology, as always through history, carries great promise as well as the seeds of danger. As communications technology continues to shrink the globe, and new agricultural technology expands world food stocks, we know there is a downside: new diseases constructed in a laboratory have pandemic potential; other diseases cross species lines in the wake of dangerous agribusiness practices; inherently dangerous factory systems are 'exported' to the Third World by First World capital and on occasions - such as Bhopal - their danger is realised. Meanwhile thousands of unskilled or low-skilled jobs are lost to the advancing machines.

The other side of the technology coin is, however, the rising awareness of industrialised nations of the consequences of their actions (eg the movement for ecologically sustainable development can no longer be denied). And the tools of technology are exploitable by an increasingly information-rich international consumer movement.

All these trends may be seen as part of an overall movement towards a 'global marketplace', with serious implications for all actors in it.

## **8. The Global Marketplace**

Today's corporation - whether defined as 'transnational' or not - competes for markets and profits in a globalised environment. Even if it chooses to operate within a domestic market, it faces foreign rivals. And the modern transnational corporation, or 'TNC', is different from its predecessors: rather than being governed by a 'head office' in a given country, the modern TNC is far more likely to be a number of distant groups of workers linked only by a 'brand'.

These TNCs are in a position to achieve what no government, or set of governments, can: they can contribute to the realisation of a core set of human rights values in every territory in which they operate.

Our argument is that the UN Guidelines provide a workable statement of at least part of that core value set, and that TNCs can be a singularly effective vehicle for spreading such values. This is the other, positive side of what has been called 'Coca-Colonisation'.

Today's First World consumer faces a bewildering array of choices for almost every product he or she purchases. The choices they make tend to be more informed, given the technological revolution, though products are necessarily more complex. But more and more often those choices will reflect the consumer's preference for the corporate good citizen, and for environmentally sound products; all of which means that, over time, corporate adherence to the values expressed in the UN Guidelines should have a dollar value.

Consumer education, one of the most important of the Guidelines, can be a key contributor to improving the welfare of the rural poor.

## **9. Consumer Protection In The Global Market**

Consumer protection used to dwell on the fringes of national and economic policy making. Consumer activism used to be about gaining redress for defective products, and little else. This is no longer the case, as the consumer movement recognises the potential for genuine positive outcomes through the application of market forces and competition policies; and as policy makers come to realise that the consumer interest is one, arguably the best, unifying principle for disparate policy goals.

The language of the debate has changed, and with it the focus of the debate. But this momentum must be maintained. An important step, both conceptually and practically, is to maintain the links between the consumer movement and its two 'bedfellows': environment and labour.

Consumption is the most obvious reason for environmental degradation; and environmental issues influence consumption choices. The bond between the consumer and environment movements is axiomatically unbreakable. And this is recognised at the highest institutional level, the United Nations, where consideration of the renewal and/or updating of the Guidelines for Consumer Protection is conducted under the auspices of the UN Commission on Sustainable Development.

It was organised labour that gave tangible support to the early consumer movement. And it is clearly impossible to consider consumption issues without at least recognising their industrial implications (eg the purchase of products where the producer is involved in unsafe or exploitative use of labour). These links must be maintained, and built into the dynamic alliances proposed below.

Disadvantaged consumers are and must remain the focus of consumer policy, whether they be a disadvantaged group in an affluent country or citizens of a broadly disadvantaged country. The development of low-cost, accessible options for education, redress etc must benefit the impoverished consumer if the Guidelines are to have any meaning at all.

## **10. The Law And Its Limits**

Historically sovereign governments have dealt with 'wrongs' by legislating against them. One problem with this is that a national government's power to deal with wrongdoing against its citizens by persons in other countries is circumscribed. Moreover, differences between the laws of neighbouring countries (and in the global

economy, who is not a neighbour?) can be and are exploited by unscrupulous businesses.

The need for international cooperation in dealing with unfair trade practices and the like is quite clear, and made more pressing by the communications revolution and the rise of the global marketplace.

Another common error is to suppose that by merely enacting a law a government has dealt with the problem that law addresses. The most carefully-drafted law is but ink on paper if it is not accompanied by a mechanism that allows those who are wronged direct, affordable access to a court (or its equivalent) wherein justice is delivered; and/or by a publicly-funded enforcement champion. We may think of these two things as comprising the enforcement infrastructure which implements "good" laws.

But the 'enforcement infrastructure', while essential, must be realistic. To impose total government supervision of every consumer transaction - 'full-on' regulation - is not. It hampers the initiative of business, frustrating it with unnecessary red tape and adding cost burdens which the consumer must meet in the end. And it must invariably lead to the corruption of officials who are, equally invariably, underpaid.

The standard alternative to this had been deregulation - an equally impractical alternative when overall welfare is the objective. Left entirely alone, unethical businesses will become involved in unfair or restrictive practices, in deception and naked exploitation of customers and the manufacture of sub-standard goods; and businesses that were initially ethical will join in such practices just to survive.

The answer is, for the most part, the use of 'responsive regulation'. [ Ayres, I. and Braithwaite, J., *Responsive Regulation* , Oxford University Press, 1992] This approach develops and applies laws only to the extent these are necessary, relying in large part on the corporate self-interest of business to set up voluntary self-regulatory initiatives and internal compliance programs in those market sectors with a reasonable to high propensity to comply with ethical and legal principles. Education and cooperative action become priorities of the public agency responsible for market regulation, on an equal footing with enforcement through the courts.

## **Part Two – Origins of the UN guidelines and the need to review**

### **Origins Of The Guidelines**

The General Assembly adopted guidelines for consumer protection by consensus on 9 April 1985 (General Assembly resolution 39/248). The guidelines provide a framework for Governments, particularly those of developing countries, to use in elaborating and strengthening consumer protection policies and legislation. They are also intended to encourage international co-operation in this field.

The origins of the guidelines can be traced to the late 1970s, when the Economic and Social Council recognised that consumer protection had an important bearing on economic and social development. In 1977, the Council asked the Secretary-General to prepare a survey of national institutions and legislation in the area of consumer protection. In 1979, the Council requested a comprehensive report containing



proposals for measures on consumer protection for consideration by Governments. In 1981, the Council, aware of the need for an international policy framework within which further efforts for consumer protection could be pursued, requested the Secretary-General to continue consultations with the aim of developing a set of general guidelines for consumer protection, taking particularly into account the needs of the developing countries.

Accordingly, the Secretary-General carried out consultations with Governments and international organisations and submitted draft guidelines for consumer protection to the Economic and Social Council in 1983. During the next two years there were extensive discussions and negotiations among Governments on the scope and content of the guidelines, culminating in their adoption in 1985.

## **2 Making The Case For Reviewing The Guidelines**

It is now some 11 years since the United Nations guidelines were adopted by the General Assembly. Since that date there have been radical changes in the market place which necessitate a review, not only to ensure that the guidelines have achieved the outcomes which its drafters had intended, but also to assess just how relevant the guidelines are in today's current market place.

Indeed regular reviews of the guidelines themselves need to be written in as a clause of the guidelines if the guidelines are to be of any relevance to current and emerging consumer concerns in a dynamic market place.

Since the guidelines have been introduced there has been a great deal of change, including:

- a move towards large trading blocks and a global market where borders, and therefore government jurisdictions, are becoming increasingly irrelevant;
- removal of tariffs and other impediments to the free trade of goods between countries;
- massive changes in technology which impact on the way consumers are able to transact business, particularly financial services
- the massive take-up of Internet becoming a means of exchanging information, conducting consumer transactions and being used by business as a form of distance selling;
- privatisation of a range of services, particularly essential services previously supplied by governments; and
- more focus on governments as a provider of services.

The guidelines are themselves couched very much in the terms of John F Kennedy's basic consumer rights. While these are an important and enduring check list for such a document, it is also important to look at the review of the document from a view of the way contestable markets can provide benefits for consumers.

Looking at the *objectives* I think that they have stood the test of time and by and large remain just as applicable today as they did when adopted. Some consideration needs to be given to recognition that consumer welfare can be attained through market based mechanisms such as codes of conduct, charters, and the adoption of effective

complaints handling and compliance systems, which in turn are based on agreed standards or benchmarks. Such an objective would give recognition to the emergence of a global market where borders and legal jurisdiction will become irrelevant and inoperable, but where we are still left with the problem of consumers' interests being affected by failures in the particular market.

Again, the *general principles* have stood the test of time, particularly the legitimate needs which the guidelines are intended to meet as set out in clause 3. However, the general principles put undue emphasis on the role of governments. Governments still have an important role to not only make laws protecting consumers, but ensuring that there is adequate enforcement of these laws. But there is equally a role for industry as the supply side of the market, as well as for consumer groups who represent the demand side of the market equation. Such recognition would recognise the changes in the market place since the guidelines were adopted.

### **Part Three – The case for a review of the guidelines**

#### **The Guidelines Themselves**

The guidelines themselves cover such areas as:

- physical safety;
- economic interests;
- standards;
- distribution facilities;
- redress; and
- education.

While these are basic areas of consumer interest that need revisiting there are new areas that need consideration for inclusion in the guidelines.

#### **2. The International Institutional Framework**

One of the sections of the guidelines which has demonstrated a great deal of foresight by drafters was the need for *international co-operation* where the guidelines emphasise the need for countries to work together on consumer protection issues and to ensure that policies and measures for consumer protection were implemented with due regard to their not becoming barriers to international trade and they are consistent with international trade obligations. In relation to this last issue we have seen a variety of bodies created to ensure that there are no undue barriers to trade and that where the consumer interest requires some form of market place intervention, that these are done so that such regulation is harmonised without the resulting regulation becoming a barrier to trade. Included in these multi-lateral bodies are:

- the World Trade Organisation;
- UNCTAD;
- the OECD Committee on Consumer Policy and its enforcement supervisory network; and
- international rule making bodies such as the International Standards Organisation and CODEX.

The consumer movement has for some time been well organised at an international level, with Consumers International, and prior to that, IOCU, meeting regularly.

While there have been regular meetings of the OECD Committee on Consumer Policy, for a global market there is a need for a truly international body for the consumer affairs officials.

The time is now right for the setting up of an international professional association made up of individual consumer affairs officials to encourage strong networking and a co-operative approach to solving consumer problems and a sharing of ideas so that emerging problems arising out of the creation of borderless markets and technological advances can be dealt with effectively. Such an association should be independent of government and have no government affiliation. Having said that, it would be anticipated that the many governments who are employing members would support the organisation by various means.

Some business organisations are also looking at internationalising themselves in recognition of the global market. The Society of Consumer Affairs Professionals in Business, a body made up of industry people, designed specifically to focus on consumer issues, is looking to do just that.

The next step is for the organisations representing consumers, consumer affairs officials, and business at the international level, to meet to see if there can be a degree of consensus achieved as to how to meet the new and challenging demands in the global market place. This need for a more co-operative approach between the three arms of consumer welfare should be recognised and addressed in the revision of the guidelines.

### **3. Rule Making For The Global Market**

With the inexorable move towards a single global market with governments moving away from prescriptive consumer protection laws in their deregulatory thrust, the stage for rule making has shifted from the local jurisdiction to the international stage.

Bodies now operate for drafting international, harmonised rules to address consumer concerns.

The International Standards Organisation (ISO) is currently drafting rules for environmental management and environmental marketing claims, CODEX Alimentarius is developing food standards, and the World Trade Organisation is trying to remove unnecessary regulation which acts as a barrier to free trade.

The important issue for those involved in looking after consumers' interests is to make sure that they have a clear and adequate "voice" at these forums so that their views are put and put strongly. Again, the guidelines need to address the existence and role of these global rule making bodies and insert some basic criteria or benchmarks for the operation of such bodies. Benchmarks could include such things as:

- the right for adequate consumer representation at each forum;

- the need for rules to address identified market failure;
- the need for rules not to form a non tariff barrier; and
- procedures of the bodies need to ensure that the consumers "voice" is heard.

#### **4. Right To Basic Needs**

The guidelines also look at basic human needs in such areas as:

- food and health;
- safety and education; and
- transport.

While there have been many gains in areas such as the tiger economies of Asia there are still many parts of the globe where such basic needs are not being met.

This can even occur for some consumers in so-called developed countries.

It is important that such basic needs are kept in the charter and that all concerned work towards their achievement. This is the real challenge for the policy makers and market proponents as we enter into the next millennium.

#### **5. Essential Services: Utilities**

Utilities provide essential services, such as electricity, water, gas, postal and telecommunication services to consumers. During the time since the UN Consumer Protection Guidelines were implemented there has developed a global focus on the economic efficiency, ownership and management of utilities. Many countries have embarked on vigorous programs of deregulation or programs aimed at cutting the cost to governments of providing utility services this debate has led to privatisation of utilities in some countries for the introduction of competition to utilities in others.

It is true to say that in most parts of the world governments have committed themselves to programs designed to enhance the efficiency of utilities with substantial implications for consumer policy. The improvements in efficiency are to be welcomed but it is also recognised that a focus on efficiency brings with it the risk that insufficient attention be paid to the needs of consumers.

#### **6. Implication For Guidelines**

The UN Consumer Protection Guidelines need to be revised and extended to cover the consumer policy dimension of government reform of utilities. In considering areas to be covered the following matters should be included. There is an emerging body of experience on the most effective ways of preserving consumer interests in utilities. One way of ensuring consumer rights are respected during the reform of utilities is the imposition on utilities and their acceptance of basic obligations in dealing with consumers. These obligations can be referred to as consumer protection obligations. The relation concept of community and universal service obligations is a further approach. To be effective obligations of this character need to be the result of government directives relating to conditions of supplying specific services and often concern services which would not be provided as a result of decisions made on a

strictly commercial bias or would only be provided over significantly higher price. The obligations will often apply when the service provides an identifiable social benefit sometimes in the form of income support measures or relief to consumers in rural or remote areas.

## **7. Consumer Protection Obligation Approach**

As noted an effective way of protecting consumers while reforming utilities is to elaborate and impose a set of consumer protection obligations. These have the capacity to:

- . the benefit to consumers of competition reforms to the utilities sector;
  - minimise potential adverse impacts of reform on consumers;
  - ensure that the accountability of utilities to consumers is maintained and improved;
  - enhance transparency and planning, decision making and performance;
  - allow consumers access to redress mechanisms in the event of a dispute;
  - provide consumers with sufficient relevant information;
  - facilitate participation by consumers in decisions that will affect them.

The UN Consumer Protection Guidelines should be extended to cover the essential consumer protection obligations on governments and the owners and operators of utilities towards consumers.

- contestability of the provision of utility services;
- laws to provide access to essential facilities to provide competition to the utility provider;
- minimum qualities of service standards (e.g. through such means as consumer charters);
- adequate avenues of redress;
- basic access to essential services;
- appropriate price regulation; and
- effective complaints handling.

## **8. Global And Domestic Competition Rules**

It is important that with the changes in the market place that there is an adequate infrastructure at both the domestic and international level to ensure that there are real benefits flowing from competition to consumers.

At the international level, bodies such as UNCTAD and the WTO have a role to ensure that countries are not setting up protective barriers by other means.

Both at this and the domestic level there is a basic rule which commends itself, i.e. that all conduct which specifically lessens competition should be illegal unless it can be authorised by an authoritative independent third party on *real* public benefit grounds. In relation to this last point, public benefit means just that, i.e. that consumers at large should benefit and that the process not be a charade for protecting sectional interests from competition.

Besides a body of laws covering the usual staple fare of antitrust type conduct (e.g. price fixing, abuse of market power, market sharing, boycotts, anticompetitive mergers) there should also be a strong independent competition regulator with adequate tools in its armoury.

Paragraph 15 of the UN Consumer Protection Guidelines calls on governments to develop, strengthen or maintain measures relating to the control of restrictive and other abusive business practices which may be harmful to consumers. Included in paragraph 15 is a reference to the UNTAD Centre of Multilateral agreed principles and rules for the control of restrictive business practices. This set was adopted by the general assembly as far back as 1980.

In the years since then the development of liberalised global trading conditions and the imposition in many countries of structural adjustment programs has meant that constrained economic activity as a result of restrictive business practices has taken a far higher toll on consumer welfare.

Restrictive business practices in the form of price fixing, bid rigging and monopolisation have robbed consumers of many of the benefits of broader global trade. Consumers faced with governments withdrawing market regulation or the removal of subsidies for essential goods depend more than ever on effective market forces to deliver products of higher quality performance durability and safety at lower prices. It is these very things that are struck down by illicit agreements between competitors.

The UN Consumer Protection Guidelines should be extended to include a specific elaboration of competition policy measures which can be adopted by governments to promote competition in a way that enhances consumer welfare.

## **9. Product Safety And Liability**

It goes without saying that the safety of products is an important aspect and something that is fairly fundamental for consumer welfare. This has been an area where many governments have been relatively active in, but there is a need again to see if an appropriate market response could be nurtured and promoted.

There is a need to set down some basic rules for safe goods.

This has been an area where typically various standards organisations throughout the world have been active, but there are still many areas where some guidance, perhaps through standards, is required. For example, in Australia recently there have been some children killed by cots. Obviously there is a need for some standards in this and other areas where products are causing injury and death.

Recall systems have been developed in some countries, and again this is an area where a process of continuous improvement is needed. In terms of trade in safe goods, there is a need for a mutual recognition of *good* systems and perhaps a role for international standards through the ISO, so that rules on safety matters are harmonised.

Again, it is important that certification and other standards for safety do not become a barrier to competition.

There should also be an emphasis on countries introducing product liability laws to provide consumers with a remedy when defective goods cause injury or death.

## **10. Governments As Providers Of Services**

Until recently not much attention has been given to governments as providers of services because there seemed to be an air of resignation that consumers expected poor or indifferent services from government.

That has certainly changed in recent years.

Recent developments and improvement in delivery of government include:

- corporatisation so that government instrumentalities are run along private enterprise lines;
- the adoption of consumer charters which set down some basic levels of quality service which the consumers of that particular service can expect;
- complaints handling where stated services are not met;
- remedies where damages are incurred as a result of action by government; and
- freedom of information to individuals when government decisions impact on their lives.

## **11. Access To Justice**

Access to justice is an important consumer right which again should be subject to a review of the UN Guidelines.

Access to justice should be such that consumers are able to have justice available to them in an inexpensive, quick and user friendly format. Such access to justice principles should cover such things as:

- the provision of class actions for consumers who have been similarly affected by the actions of a company;
- rules of standing which enable affected consumers to bring actions in the courts;
- the development of alternative dispute resolution mechanisms, including:
  - mediation and conciliation;
  - industry based dispute resolution schemes;
  - corporate complaints handling systems; and
  - small claims tribunals.

## **12. Model Consumer Protection Laws, Enforcement And Compliance Mechanisms**

With the creation and operation of a global market there is a necessity for international bodies such as the UN, the OECD, etc, to devise *model consumer protection laws*, not only to harmonise laws for business, but to provide consumers

everywhere with some form of basic protection (e.g. harsh and oppressive contract laws). Apart from black letter consumer law there is also the need for strong enforcement of those laws.

One of the main reasons all consumer affairs agencies need to have a global market perspective on their operations, is to produce consumer confidence in the global market. Failure to deal effectively with the global consumer problems where anti-consumer behaviour takes place is perpetrated on consumers in a different jurisdiction from the perpetrator may result in an apprehension or refusal by consumers to undertake transactions on-line even though they would prefer to do so – this imposes "external" costs on legitimate market participants or potential participants.

**Enforcement action** is also needed to give both symbolic and actual support to ethical traders so that they are not disadvantaged by the operations of unethical traders.

Another, and perhaps more important, reason is for enforcement to underwrite more market sensitive means for consumers to gain redress, i.e. sending signals to market operators that there is a "line in the sand" which, if they step over, there will be swift and decisive action by the consumer affairs agencies. Not to work quickly and effectively sends the wrong signals to the market.

One of the main outcomes for enforcement action is to quickly shut down once and for all the operation of fraudulent operators, i.e. consumer affairs agencies have to generate a real fear in the cross border, anti-consumer operators' minds that they will be caught and put out of business quickly. Such action needs to be done publicly to ensure that adequate deterrent signals are sent out to those considering getting into the market for a quick return. Where fraud or other unethical conduct has enriched the perpetrators then every effort should be made by consumer affairs agencies to get compensation for those affected. Agencies need to have the right regulatory tools to achieve this end.

The time is now opportune for the development of benchmark criteria for effective enforcement tools for consumer affairs agencies to be put on the agenda. Perhaps for the OECD Committee on Consumer Policy to have a lead role in this area. In other words, a model best practices for enforcement, both in terms of legislative tools and enforcement techniques, which contains sufficient intellectual justification so that consumer affairs agencies are able to cogently argue the case within their host governments for such action.

One of the matters that will need to be given urgent attention reasonably soon is the fast tracking of investigation of alleged fraudulent behaviour with a view to stopping the activities of fraudulent operators before they can do any more harm. This could encompass a whole range of matters including having the adequate administration and legislative tools in the arsenal, using experienced investigators on the investigation, developing an effective strategy or modus for such operations, and enlisting the assistance of network system providers to lock out or expose the activities of fraudulent and scam operators.

There should also be promotion of **corporate compliance systems** so that companies not only lessen the risk of breaching laws, codes and in-house ethical rules but also to



promote themselves as good corporate citizens. The guideline could promote the development of guidelines for effective corporate compliance systems.

### **13. Market Based And Market Sensitive Consumer Redress Mechanisms**

The development in recent months of market based and market sensitive consumer redress mechanisms needs to be addressed.

Properly constructed *codes of conduct* have the advantage of being flexible enough to meet the dynamics of the market place and be part of the quality drive used by many industries. However, to be effective codes need to meet certain essential elements.

At the end of the day if codes of conduct / self regulation are going to be accepted, then credibility with the wider public is absolutely vital, because only with such credibility will there be public acceptance of the code or self regulatory scheme and commitment to it by the appropriate regulators.

These key criteria are as follows:

*Addressing consumer concerns / consultation:* To be effective in addressing consumer concerns a code needs to have rules which address common complaints and concerns about industry practices and which set performance standards for industry. Such rules should address specific stated problems and not be written as broad general principles. To have any credibility at all there needs to be consultation with the appropriate consumer / community / user groups and appropriate regulatory / government agencies.

It goes without saying that the industry members themselves need to be consulted.

Sometimes the use of a reference committee can be a cost effective way of having all relevant interests come together and debate and agree on appropriate standards.

*Code administration:* Unless there is some body responsible for ensuring the implementation and the ongoing administration of the scheme then its success in delivering fair trading terms is severely limited. The code document should set out the administration bodies terms of reference, the minimum number of times the Committee should meet each year, and the mode of appointment of the committee / council.

*Transparency:* Industry based code schemes aimed at delivering fair trading outcomes need to contain appropriate consumer / user representation, and where appropriate, regulatory representation as well. Such representation provides the transparency to the scheme by providing a "public window" on the scheme and its operations. Such transparency is needed to avoid both the perception and the reality that the industry group will only be acting in its members' interest and not the broader public interest.

*Coverage:* The effectiveness of any code will only be as good as the amount of coverage the code has of the relevant industry for which it is aimed at.

*Complaints handling:* The code should include provision for complaints handling by signatories. Performance criteria for effective complaints handling, should form part of the self regulatory scheme.

*Sanctions for non compliance:* Commercially significant sanctions will be necessary to achieve credibility with, and thus compliance by, industry members, and also engender consumer confidence in the code / self regulatory scheme.

*Independent review of complaints handling decisions:* The code should also provide for an independent complaints handling body where a member of the public or an industry member is dissatisfied with the outcome or the way the complaint was dealt with or the sanctions imposed at first instance.

*Consumer awareness:* Unless consumers are aware of the code and its contents the code will be ineffective in achieving its fair trading aims. The code provisions themselves should incorporate mechanisms designed to ensure that consumers and other relevant groups are made aware of the terms of the code and its complaints handling provisions.

*Industry awareness:* In many cases a code fails to operate effectively, not because its principles and procedures are inadequate, but because employees or industry members are either unaware of the code or fail to follow it in day to day dealings. A provision in the code requiring employees and agents to be instructed in its principles and procedures is therefore essential. This is a task which needs to be oversighted by the code administration body.

*Data collection:* Data collection is important, not only from a reporting point of view, but as a valuable source of market information about the origins and causes of complaints, and therefore to enable identification of systemic and recurring problems which need addressing by industry members.

*Monitoring:* Regular monitoring of codes for compliance is essential, not only to ensure the desired outcomes, but to ensure that ethical members complying with the code are not disadvantaged.

*Accountability:* Annual reports on the operation of the code should be produced by the code administration committee, allowing for periodic assessment of the scheme's effectiveness.

*Review:* A code should provide for regular reviews to ensure that the standards incorporated are meeting current community expectations and that the code is working effectively.

*Competitive implications:* Codes should avoid being written in such a way that they have a negative impact on competition. Where it is considered necessary for the success of the operation of the code to include anti-competitive provisions, there needs to be a transparent public benefit justification process.

*Corporate complaints handling systems* are another form of market based redress mechanism that are appearing in the market place. In a competitive market companies

realise that they must listen to customer complaints if they are to maintain hard won customer loyalty. Smart companies also realise that they can use their complaints data as a form of feedback on how their products are performing in the market place and redesign goods and services on the basis of this feedback. The following essential elements for an effective complaints handling system could apply:

- *Commitment*: there shall be a commitment to efficient and fair resolution of complaints by people in the organisation at all levels, including the chief executive or ruling body. This is shown by an organisational culture which acknowledges consumers' rights to complain and which actively solicits feedback from consumers. The policy on complaints handling shall be in writing.
- *Fairness*: A complaints handling process shall recognise the need to be fair to both the complainant and the organisation or person against whom the complaint is made.
- *Resources* There shall be adequate resources for complaints handling with sufficient levels of delegated authority.
- *Visibility*: A complaints handling process shall be well publicised to consumers and staff, and shall include information to consumers about the right to complain.
- *Access*: A complaints handling process shall be accessible to all and ensure that information is readily available on the details of making and resolving complaints. The complaints handling process and supporting information shall be easy to understand and use, and be in plain language.
- *Assistance*: Assistance shall be available for complainants in the formulation and lodgement of complaints.
- *Responsiveness*: Complaints shall be dealt with quickly and the complainants shall be treated courteously.
- *Charges*: Complaints handling shall be at no charge to the complainant, subject to statutory requirements.
- *Remedies*: A complaints handling process shall have the capacity to determine and implement remedies.
- *Data Collection*: There shall be appropriate systematic recording of complaints and their outcomes.
- *Systemic and recurring problems*: Complaints shall be classified and analysed for the identification and rectification of systemic and recurring problems.
- *Accountability*: There shall be appropriate reporting on the operation of the complaints handling process against documented performance standards.
- *Reviews*: A complaints handling process shall be reviewed regularly to ensure that it is efficiently delivering effective outcomes.

**Consumer charters** are being developed in many countries to provide consumers with some basic rights where the service provider, generally government agencies or monopoly utility providers (privatised or government) operate in an environment where there is no competition operating. Essential elements of such charters include:

- identification of users of the service;
- consultation with users and the service provider employees about the service standards;

- development, implementation and observance of measurable quality service standards;
- adequate communication with users both in development of standards and the provision of services;
- complaints handling measures and redress;
- monitoring and review; and
- accountability.

#### **14. Internalising Consumer Protection**

One way consumer welfare could be enhanced by the market place is to encourage and promote the internalising of consumer protection in corporations. This would recognise the increasing convergence of consumer protection, consumer welfare and customer service in competitive markets. In a competitive market companies have to address increasing consumer concerns if they are to survive. Internal consumer welfare mechanisms include, at the industry association level, the setting up of ***Consumer Issues Committees*** whose job it would be to talk to consumer affairs agencies, to relevant consumer / community groups, look at systemic problems from complaints data, study and research trends in comparable overseas industries and to do this on a continuing basis so that the industry and its members can be pro-active in dealing with these issues rather than sitting back and waiting for the government and regulators to come and do the job for them.

At a corporate level, a similar sort of work could be done by in-house ***consumer affairs departments*** whose job it would be to:

- represent a consumer perspective in management discussions;
- be responsible for ‘listening’ to customers (through toll free numbers, using complaints / information requests data as a form of quality control);
- establish dialogue with user / consumer / community groups;
- maintain liaison with regulators as to what they see are market problems;
- look for emerging consumer problems either overseas or domestically;
- ensure that documentation is user friendly and that demand for such information is met;
- being responsible for training staff to make the internal culture more consumer responsive.
- ensure that customers have easy access to information and that complaints are dealt with effectively; and
- monitor technological innovations to ensure that any consumer problems are addressed.

#### **15. Transnational Corporations**

With the move towards the borderless market where companies, particularly transnational companies’ operations can come outside the operations of a country or countries, does this mean that the code is dead?

Many companies are realising that although they are becoming increasingly outside the reach of governments, that information about unethical companies is also increasing through the modern media, including the Net. Many companies are

realising that unethical business is bad business and are looking to promoting ethics to areas which consumer interests should be looking at in this area:

- systems for controlling corruption;
- the promotion of ethics;
- the promotion and development of an international compliance system; and
- the promotion of the concept of a "quality corporation" where a company operates with certain consumer safeguards (complaints handling, redress, codes/charters), provision for information and independent audit of these functions is actively promoted as a body to deal with.

With the concept of a quality corporation taking seed, particularly where many consumer transactions may not leave consumers with domestic remedies, the idea of a good corporate citizen which guarantees consumers some basic rights may fill the void left by the failure of domestic laws to reach certain transaction. Consumers will only then feel confident to deal with these companies, and to this extent it will be a market response to a market problem. The revised guidelines should recognise this emerging phenomenon and call on transnational organisations to implement the consumer protection guidelines to the extent that they are able.

## **16. Corruption**

It is important that the issue of corruption is met head on and that governments devote resources through appropriate infrastructure and sanctions to deal with the problem. If there is no action, or the action is ineffective, then:

- consumers pay;
- it kills public policy in areas of consumer welfare; and ultimately
- the poor pay more.

## **17. Sustainable Consumption**

One of the major consumer issues of the new millennium will be sustainable consumption. If governments and industry and consumers consume at the current rate then eventually we will run out of resources. What is needed in this area is:

- a global charter on sustainable development;
- the promotion of industry goods and practices which have less impact on the environment and non-renewable resources;
- the promotion of verifiable eco-labelling; and
- the promotion of verifiable energy labelling.

It is important in any review to actively promote the draft Economic and Social Council of the UN (ECOSOC) resolution of 1995, i.e:

"Requests the Secretary-General, in cooperation with the development funds and programmes of the UN, the regional commissions and other relevant bodies and agencies of the UN system, to continue to provide assistance to governments, upon their request, in implementing the guidelines for consumer protection; to elaborate targeted guidelines in the area of sustainable consumption patterns and to examine the

extension of the guidelines into other areas such as public utilities and services, including financial services."

## **18. Financial Services**

Technology has been at the cutting edge of radical changes in the financial sector. Important global rules need to be developed for a whole range of issues concerning financial transactions involving technology and the regulatory structure needs to be reviewed to be responsive to the challenges in this most dynamic area of commerce.

## **19. Liability for Loss, Errors and Costs arising from System Faults and Failures**

Where technical faults, capacity shortages or malfunctions occur this could lead to incorrect transactions being recorded, release of sensitive information to third parties or at its most basic a loss of on-line services to the consumer. It is unclear who would then bear the cost of this - the consumer, the network access provider, the telecommunications provider or the on-line vendor?

It is important that the liability of each participant is made clear and that fault can be assigned for different classes of events (either through industry codes, legislation or charters/contracts for consumers). In a sense it is all about ensuring that property rights for the physical attributes of on-line service delivery and transactions can and are assigned. Without this, disputes involving technical problems will be difficult to resolve. Not only will this result in detriment to consumers but it could also contribute to a lack of acceptance of on-line commerce by the public.

## **20. Security for On-Line Transactions**

A critical issue for consumers in undertaking on-line transactions will be the security of payment details such as credit card numbers or bank account details. In the first instance the consumer will need to be sure that their payment is going to the right person/vendor and that the correct amount is paid/debited/credited. This will require appropriate mechanisms for purchasers (and vendors) to define and authorise the transaction they wish to make.

Consumers will not only need to be satisfied that payment information is used appropriately by the vendor but that it is safe from access by third parties. We can all imagine a scenario of a third party intercepting the communication of payment details, and then using that information to make fraudulent transactions on the consumer's account. "Firewalling" of payment and other details in on-line systems is therefore a critical issue for consumer confidence.

The development of effective "firewalls" through credit card encryption has been a high priority for credit card providers seeking to enable their customers to pursue on-line transactions without fear of fraudulent use of their credit details. (The best known being the work of the Visa-Microsoft and Mastercard-Netscape joint ventures.) A related development has been the search for a virtual cash for on-line transactions to overcome some of the security concerns relating to credit card and account details.

## **21. Transaction Records**

Another consumer issue closely related to the security and privacy of on-line transactions is the type and legal status of transactions records. What record of on-line transactions will be supplied to consumers? What legal status will these records have? What type of audit trails will remain for reference in cases of disputed or missing records?

Take the example of someone on a limited income who is trying to budget. Without some form of record of on line transactions, keeping track of spending will be near impossible. And of course, records are also needed to prove purchase for tax, refund or other purposes.

It is important that any such records are universally (and legally) accepted by on-line traders and are supplied as requested to consumers. It is also important that such records are cost effective so that their production/distribution does not impede on-line commerce. Likewise, cost effective means of recording transactions for audit purposes need to be found in an environment where the use of traditional "paper" audit trails may not be practical.

In addressing this and the other consumer protection problems the on-line industry needs to strike the right balance between costs and benefits. The provision of transaction records and electronic audit trails may entail some costs for vendors and providers of on-line services but the benefits may be a many fold increase in the security and public acceptance of on-line commerce. All on-line retailers, service providers and consumers will be the beneficiaries - resulting in a general "public good" benefit - but some individual operators may seek to "free ride" on these initiatives by not conforming to industry norms. It is for this reason that industry associations are well placed to oversee and encourage the adoption of such mechanisms.

To establish confidence in the integrity of on-line traders will be crucial to establishing mass acceptance of this form of commerce and it is an important challenge for the industry. Ways must be found to vet ethical operators or at least to identify those that are bound by appropriate industry standards. It is in this regard that industry codes of conduct are very helpful.

An Internet Industry Code of Conduct could be developed with the sub-clauses dealing with the "conduct of industry members" address such issues as:

- provision of physical, telephone and fax contact details
- provision of particulars regarding the method of charging and likely total costs;
- provision of information on the nature and characteristics of services provided;
- confidentiality of information; as well as
- appropriate business conduct and standards for advertising.

In addition, the code could deal with mechanisms and procedures for dispute resolution and complaints handling.

## **22. Regulatory structure**

In some jurisdictions, regulation is primarily based on product and institution classification. As a result, different rules apply for products that serve the same function for the consumer. Another consequence of such a regulatory structure is that it is not easily able to accommodate changes in technology and the introduction of new products (ie smart cards).

In thinking about regulatory structures, there are a number of features that are important. An effective regulatory structure for consumer protection for the financial services sector would involve:

- minimum necessary intervention - intervention is costly both for businesses and government;
- promotion of competition;
- competitive neutrality - no one business type should be subject to lesser amounts of regulation, or differing rules, than another business type providing the same outcome for consumers;
- inexpensive and speedy consumer remedies;
- consistency;
- maximisation of consumer welfare;
- durability - the structure should remain stable in the face of industry changes and other changes;
- flexibility - the structure should be able to adjust to accommodate changes in industry and changes in technology;
- simplicity; and
- effective mechanisms for addressing market problems.

A new regulatory structure for consumer protection in the financial services sector may be more appropriate to reflect the dynamics of the technology driven financial sector.

This new structure places a lot of reliance on co-regulation. It involves the creation of two new bodies, one statutory and one industry-based, to be responsible for consumer protection in the financial services sector.

An industry-based agency could be responsible for accreditation, compliance, complaints handling, consumer and industry education, and codes of practice. All businesses providing financial services would be required to become members of that body.

The body could consist of industry-based schemes and organisations, with expertise in particular lines of business. These schemes and organisations would be standardised and harmonised under the umbrella of the governing Council. Members of this Council would include industry, consumer and government representatives.

The agency could also have an adjudicatory function.

The adjudicator body could consist of existing industry-based dispute resolution schemes (such as the Banking Ombudsman), and those schemes would be harmonised and standardised to ensure that, between them, they have full coverage of the sector.



The Tribunal with the adjudicatory role could be responsible for transaction regulation and enforcement. That is, responding to the many consumer complaints that are not appropriately dealt with in the court system, but which, nevertheless, require the intervention of a third party to resolve the matter.

A statutory based agency could be responsible for setting policy in the financial services sector, carrying out or commissioning audits of the activities of the agency, approving codes of practice, and conducting compliance inspections of agency members.

Such a scheme incorporating the features noted above has many advantages over product based regulatory scheme. For example:

- The reliance placed on industry-based solutions gives considerable scope to developing effective and market-sensitive solutions to consumer problems;
- Harmonisation of complaint schemes and codes will ensure that all consumers receive consistent levels of protection and obligations;
- Consumers will be able to access a one stop shop for complaints or queries; and
- New technologies and other developments in the sector can easily be accommodated in the scheme.

The strength of this type of scheme is that it would leverage off a considerable amount of effort and good faith by financial services providers to achieve positive regulatory outcomes which met the needs of both industry and consumers. Such a scheme would reduce the regulatory burden on industry and the cost on the rest of us without sacrificing the desired level of protection. The potential dangers with such a scheme - capture of the regulator, industry self-interest prevailing over consumer welfare - are minimised by the narrow specific role of the statutory component of the scheme to audit the industry component. A co-regulatory scheme would not involve any loss of consumers' private rights because existing consumer protection laws would still have general application.

### **23. Services**

The professions provide essential services to the community and constitute an important segment of the national economy. The services of professionals such as accountants, lawyers, architects, engineers and industrial chemists, are necessary inputs to many business activities. The cost and quality of those services therefore have an important bearing on the efficiency and competitiveness of industry. Similarly, professions such as medical, dental and pharmacy services make a necessary and important contribution to the health and welfare of all members of the community.

The professions are often subject to a diversity of government and self-regulation arrangements which vary considerably between individual professions.

The traditional justification for regulation of the professions has been the protection of consumers through measures to maintain the quality of services and the competence and integrity of their providers. It is being recognised increasingly, however, that such

regulation is not without cost to consumers and the community. To the extent that it restricts competition, the service choices available to consumers may be limited, the incentive to innovate and contain costs may be reduced and prices may be inflated as a result.

From the community's perspective, as well as that of the professions themselves, it is therefore important to be able to identify both the benefits and the costs of existing regulatory measures and to assess, as far as possible, for individual professions whether those regulations provide net benefits for consumers after taking account of any costs resulting from restrictions on competition.

A mechanism for weighing objectively the public benefits and costs associated with restrictions on competition needs to be provided. Under such mechanisms a body is empowered to grant immunity from prosecution for certain anti-competitive arrangements if it is satisfied that benefits would be achieved which outweigh the costs involved.

An important issue for consideration by policy makers and the community generally is whether the limited public scrutiny of professional regulation and the non-uniform application of the competition law (including the authorisation process) remain appropriate today.

Many sectors of the economy are now being exposed to deregulation and the discipline of market competition as the preferred means of improving efficiency and competitiveness and of improving the welfare of the community at large. Far-reaching changes are occurring in many economic sectors (rural, manufacturing, transport, communications and finance) as inefficient, protected business and employment practices are eliminated and more open and competitive market environments are established.

The question to be asked is: would there be similar public benefits if some professional services were exposed to a greater degree of competition?

The role of the professions in providing services to consumers, the appropriateness of regulation, and access to redress, are all issues that could be considered in a review.

#### **24. Giving Consumers A "Voice"**

It is important that consumers as the demand side of the market place have adequate means of being heard and giving voice. Meaningful voice means the right to be heard at the government policy making level and on industry bodies.

The guidelines need to address the need for consumers to have the right to be heard as a demand side input into various decisions which affect their everyday lives.