Consumer Policy Toolkit

OECD

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Foreword

One of the principal functions of governments of market-based economies is to establish and maintain economic frameworks that promote innovation, productivity and growth, for the ultimate benefit of consumers. To this end, they have passed laws and created authorities to protect consumers from fraudulent and misleading commercial practices and unsafe products and to promote transparent markets that enable consumers make informed decisions. On the supply side, they have focused on preventing industry concentration and anti-competitive business practices that restrict choice and inflate prices.

When and how authorities should intervene to improve market outcomes is a challenge that the OECD's Committee on Consumer Policy and Committee on Competition have been addressing through longstanding multilateral dialogues that bring senior government officials together to share experiences, examine areas of common interest and determine effective approaches to emerging issues.

In 2005, the Committee on Consumer Policy undertook work to examine, among other things, how policy thinking has been affected by changes in markets and the findings emerging from behavioural economics. The Committee organised two roundtables to discuss the economics of consumer policy, after which it decided to develop a toolkit to assist consumer policy makers in developing new consumer policy and in applying existing policy instruments effectively.

*The Committee's work has culminated in this toolkit, which focuses on issues for which consumer authorities are generally responsible. The Committee on Competition has published a companion volume (*i.e. Competition Assessment Toolkit*) focusing on competition issues. The* Consumer Policy Toolkit *is organised as follows:*

- *Chapter 1 discusses the benefits that recent technological advances and market liberalisation have given consumers. However, it points out that the more dynamic markets, while providing great opportunities for consumers, also present significant risks due to the pace of change and increased complexity. Moreover, new forms of fraud have arisen, requiring increased vigilance by consumer protection authorities and a need for more international engagement and co-operation.*
- *Chapter 2 outlines the economics of consumer policy, focusing on the economics of information and how imperfect and asymmetric information can lead to market failures. It highlights where policy interventions can most effectively benefit consumers and the overall economy. The chapter also discusses behavioural economics and how it can contribute to consumer policy making.*
- *Chapter 3 presents techniques that policy makers can use to detect consumer problems. It provides methodologies for assessing the degree to which consumer are being harmed (*i.e. *consumer detriment), which is a critical aspect of such analyses.*
- *Chapter 4 reviews the policy tools that governments can use to address a problem, ranging from raising awareness and voluntary industry actions to mandated information disclosures and restrictions on products or industry practices.*
- *Chapter 5 provides a six-step guide to the development of consumer policy, either in developing new policy instruments or in considering how most effectively to implement existing policy*

instruments. The process outlines the steps which an effective policy process should include, and provides consumer policy makers with advice on the considerations that consumer policy makers should take into account.

The nature of the challenges facing consumers and the authorities responsible for promoting consumer interests have changed over time, and are expected to continue to evolve. As they do, the Committee will review and refine the toolkit to respond to emerging trends and issues.

The Committee on Consumer Policy approved and declassified the report in March 2010.

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Preface

As policy practitioners we are all aware of the growing challenges we face today in protecting consumers. With rapidly changing consumer markets that demand higher levels of knowledge and skill on the part of consumers and where public expectations of the protections available to consumers are growing, policy makers are increasingly expected to respond with greater speed and effectiveness.

It is with these challenges in mind that my colleagues on the Committee on Consumer Policy decided to develop this policy toolkit. By drawing on our collective experience in addressing the challenges of the new marketplace and by tapping into recent research in both conventional and behavioural economics and in policy making, we have developed a toolkit that we hope will assist, in a very practical way, policy makers to respond more effectively to the challenges facing consumers in today's marketplace.

The toolkit has been a collective effort on the part of many individuals from the Committee's national delegations who undertook to research and draft various parts of the toolkit and gave generously of their time to bring this project to a fruitful conclusion. They were ably assisted by staff of the Committee's Secretariat who helped keep the project on track, and made their own significant analytical and drafting contributions. I would also like to take this opportunity to express the Committee's gratitude to Ms. Louise Sylvan, a former member of the Australian delegation, who provided considerable leadership in the early stages of the project and helped shape its overall approach and direction.

As public policy professionals charged with responding to the needs of consumers in today's marketplace, we hope you will find what follows both thought-provoking and helpful.

Michael Jenkin
Chair
OECD Committee on Consumer Policy

Paris, June 2010

Executive Summary

Consumers play a vital role in economies, accounting for more than 60% of the GDP of OECD countries. When they are empowered, consumers can improve economic performance by helping to drive competition and business innovation. This, however, requires an effective consumer policy regime in which consumers are protected from unfair marketplace practices, are in a position to make well-informed decisions and both business and consumers are aware of their rights and responsibilities.

The OECD's *Consumer Policy Toolkit* is a practical guide that is designed to aid policy makers in using a systematic approach to identify and evaluate consumer problems and to develop, implement and review effective consumer policies so that consumers can play their role in ensuring a dynamic economy. It focuses on policies for which consumer authorities are typically responsible. This does not include competition issues, which are addressed in a related OECD report (*Competition Assessment Toolkit*).

Changing market and consumer landscape

Consumer markets for goods and services have undergone profound transformations over the past 20 years. Regulatory reform, more open global markets, the development of new technologies and the growth of consumer services have been agents of change. In many instances these developments have provided significant benefits to consumers. However, relatively little attention has been paid to the challenges these developments have posed for both consumers and consumer policy makers. For example, the modern marketplace contains a broader range of increasingly complex products. Moreover, there is significant differentiation among related products and services, making it more difficult for consumers to compare and assess the value of what is on offer. And while increased global trade and the development of the Internet have provided new opportunities for consumers, new forms of fraud have emerged that require consumer protection authorities to be more vigilant and active in co-operating with foreign colleagues.

Consumers themselves have also changed. Children and young adults – who often lack experience as consumers– are more significant forces in markets, as are the growing number of older adults who sometimes face unique marketplace challenges. While consumers are better-educated overall, many still lack the arithmetic and literacy skills that are required in today's more complex, information-intensive marketplace.

Increased understanding of markets and consumer decision making

Economics is useful for helping to identify areas where government intervention in markets serving consumers may be warranted, and it can provide guidance as to the types of intervention that will be most effective. Standard economic theory presumes that free markets will usually produce the best outcomes for consumers. There are, however, circumstances in which markets can fail to deliver optimal outcomes. A lack of competition is a case in point. Another important source of market failure occurs when consumers do not have sufficient information about the products and prices available in markets. For example, consumers cannot make well informed decisions when they are presented with information that is incomplete, misleading, overly complex or too voluminous. Behavioural economics has demonstrated that, among other things, the manner in which information is presented and the way that choices are framed can significantly influence marketplace choices, sometimes in ways that are not in the best interests of a consumer.

Identifying and evaluating consumer problems

Detecting and evaluating consumer problems and determining whether the level of consumer detriment that arises requires government action are key challenges for policy makers. In this regard, consumer authorities have several techniques at their disposal. Countries have drawn extensively on consumer complaints to help guide their work, but other important avenues are also being pursued. Satisfaction and dissatisfaction surveys, focus groups and in-depth quantitative research have been carried out to analyse developments in markets. Moreover, in recent years, some countries have invested considerable time and resources in developing more sophisticated procedures for analysing and screening markets in a more systematic manner.

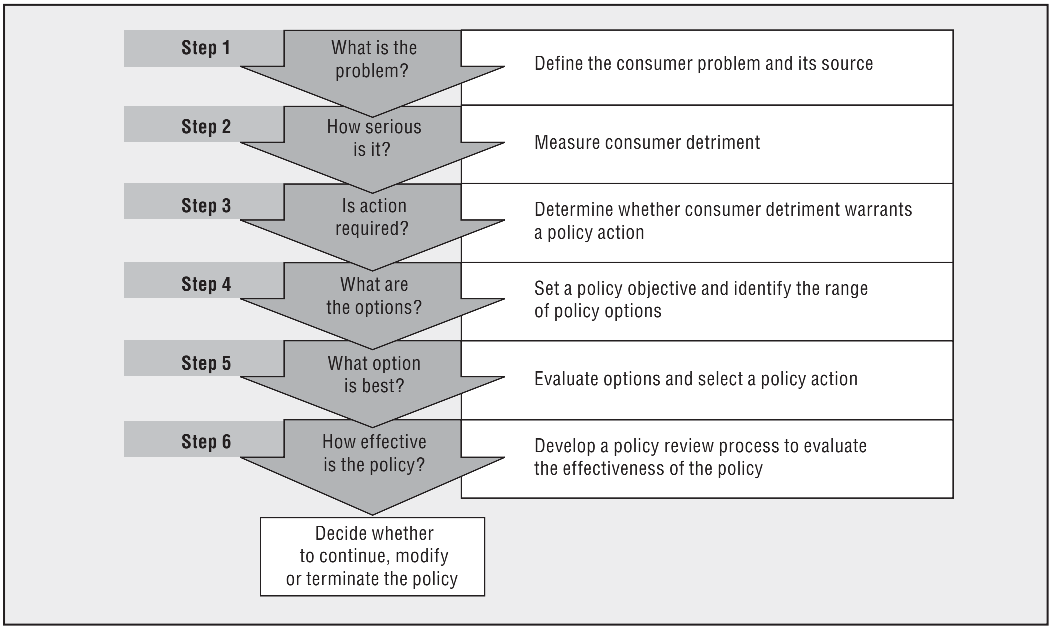
Developing and implementing consumer policy

Consumer protection authorities have several policy tools available to address marketplace problems. These range from those that focus on consumer empowerment (demand-side measures), such as enhancing the quality or type of information provided for products and ensuring consumer contracts are not unfair, to those that focus on modifying firm behaviour (supply-side measures), such as mandating product standards or encouraging the development of codes of conduct.

Policy makers may feel pressure to make decisions quickly in order to meet public expectations. Impromptu policy making can, however, result in hasty decisions that have unanticipated, negative consequences for consumers and other stakeholders. To avoid this, consumer authorities should adopt rigorous, evidence-based approaches to policy making. The toolkit was developed to assist in this. Drawing on new understandings of how consumer markets function and how consumers make decisions, the toolkit provides a framework to guide policy makers in deciding when to intervene in a market to address a problem. It reviews the types of tools that are available and the circumstances and ways in which the tools could be used most effectively.

The toolkit presents a comprehensive six-step process for decision making which can be used at all levels of government, to address local, national or international issues (Figure 0.1).

Figure 0.1. **Consumer policy making steps**



Step 1: Defining the consumer problem and its source

Defining the problem and its source will help identify the institutions and stakeholders that could be involved in any potential policy development process. Sources of problems commonly addressed by consumer policy makers include firm behaviour (*e.g.* misleading advertising), information failures, consumer's behavioural biases and market and/or regulatory failures.

At this stage, decision makers need to determine:

- Whether the consumer authority is the most appropriate entity to address the source of the consumer problem as a whole, or certain aspects of the problem.
- Whether the problem would be better handled by another entity. This would occur if the problem, or likely policy tools for correcting the problem, fell outside the consumer authority's mandate.
- Whether there is reasonable scope for correcting the problem at its source.
- Whether correcting the problem would conflict with other public policy objectives.

If the consumer authority decides to examine a problem further, it should examine how consumers are being harmed (Step 2).

Step 2: Measuring consumer detriment

Consumer detriment arises when market outcomes fall short of their potential, resulting in welfare losses for consumers. Identifying and measuring the nature and magnitude of consumer detriment (how consumers are being harmed and the number of, and extent to which, consumers are being harmed) is a crucial component of evidence-based policy making.

Elements of detriment include both financial and non-financial impacts, such as direct financial losses, time loss, stress and physical injury. Although quantification is oftentimes difficult, it is essential that detriment be assessed, even when it is only possible to do so in a qualitative manner. Possible sources of information for assessments include focus groups, complaints data, consumer surveys, market screening and econometric analysis.

A good appreciation of consumer detriment provides a policy maker with the evidence to build a case, if warranted, for a market intervention (Step 3), and is also helpful in establishing an effective policy objective (Step 4).

Step 3: Determining whether consumer detriment warrants a policy action

The decision whether to intervene should consider a number of questions:

- *What is the scale of consumer detriment?* An intervention may be warranted if the detriment is small, but felt by a large number of consumers, or alternatively, if the detriment experienced even by a small group of consumers is very large.
- *Who is experiencing the consumer detriment?* For example, disproportionate impacts on certain groups, such as children, the elderly or the socially disadvantaged, should be considered.
- *What is the anticipated duration of the consumer detriment?* How detriment is likely to change over time should be evaluated. If it is expected to worsen, it may strengthen the case for intervention.
- *What are the likely consequences of taking no policy action?* The political, social and economic consequences of taking no policy action should be considered.
- *Are there other substantial costs to the economy?* Is the consumer problem creating detriment for other stakeholders? Is it, for example, distorting competition among firms?

Considering these factors, a consumer authority should decide whether *i)* a policy action should be considered (proceed to Step 4), *ii)* more evidence is required before proceeding to policy development (return to Step 2), *iii)* a better understanding of the nature and/or source of the consumer problem is necessary (return to Step 1) or *iv)* no action is required, in which case the investigation would be terminated.

Step 4: Setting a policy objective and identifying the range of policy options

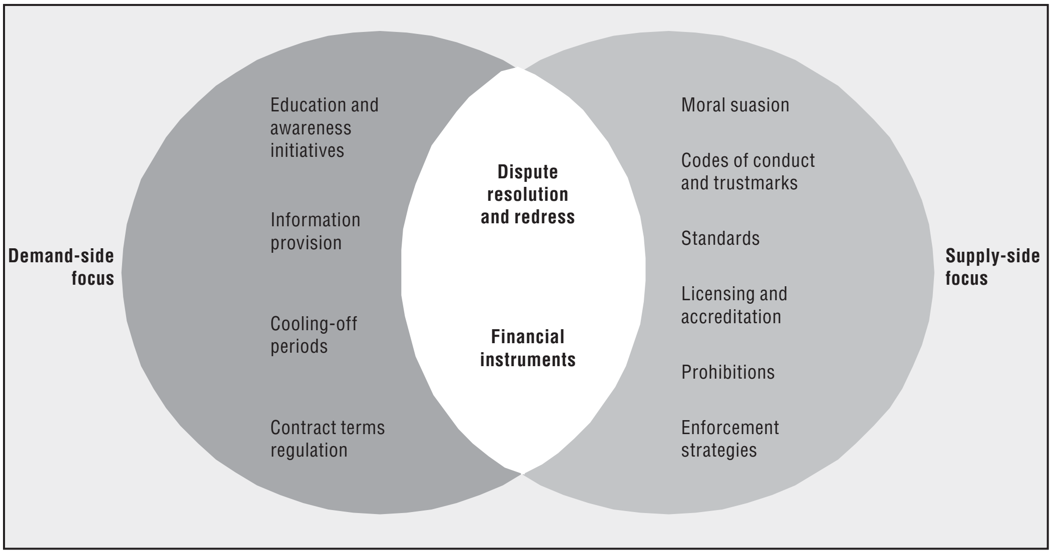
Setting the policy objective

A clear policy objective should be specified, in terms of what the policy intends to achieve for consumers and the market more generally. Appropriate success indicators, targets or metrics should be determined to aid future reviews of the effectiveness of the policy (Step 6) and should be focused on market outcomes for consumers (not intermediate results). If metrics are employed, efforts should be made to establish a baseline prior to implementing a policy.

Identifying the range of practical policy actions

Efforts should be made to identify the full range of practical policy options (those that can be realistically implemented). These would include those that focus on consumer empowerment and those that focus on modifying firm behaviour, as well as those that have elements of both (Figure 0.2). Both new policy actions, as well as better enforcement of existing policies, should be considered. At this stage it is also appropriate to identify who would be responsible for implementation and enforcement, the cost of maintaining the policy and how it would be communicated to stakeholders and the public.

Figure 0.2. **Consumer policy tools to target the demand and supply side of markets**



Step 5: Evaluating options and selecting a policy action

Once policy options have been identified, the aim is to determine the most appropriate and cost effective method for achieving the policy objective (from Step 4). In most cases, a benefit-cost analysis should be carried out, covering both quantifiable aspects and those areas where quantification may not be practicable (*e.g.* community values and ethical considerations). The scale and depth of an analysis should be determined on the basis of the likely consequences of the policy under consideration. Not every action by government requires in-depth analysis. For example, an immediate product ban following a death or serious injury to consumers would not always require a cost-benefit analysis. On the other hand, in some instances, it may be worthwhile to carry out surveys, field trials and research aimed at deepening an assessment. This would likely be the case for policies that entail high costs on some stakeholders and are of a relatively permanent nature (*e.g.* locked in by legislation).

Consultation with stakeholders, which include consumer organisations, affected firms and/or industry associations, could take place at any point in time during an investigation. It is particularly important to consider at this step, however, as it can help to ensure that options are expressed clearly and adequately address all relevant issues. It may also help reveal consequences that are not anticipated or intended by policy makers.

Finally, the effects of each option on other policy areas, such as competition and the environment, should be considered.

Step 6: Developing a policy review process to evaluate the effectiveness of the policy

Regular reviews of consumer policies serve to determine if the objectives (set at Step 4) are being achieved in a cost-effective manner. The review process needs to factor in changes in the nature of the consumer problem, changes in the marketplace, and potentially unforeseen or unintended consequences of the selected policy action. The review should take place after a policy has been in operation for a reasonable period of time.

Post implementation evaluations can range from interim monitoring to full-scale reviews. The methods for carrying out reviews are similar to those used for prior assessment of expected costs and benefits. The reviews should be used to determine whether a measure should be maintained, modified or eliminated, whether enforcement should be strengthened, whether an alternative policy action should be considered, or whether reassessment of the nature and/or source of a problem would be beneficial (Step 1).

Chapter 1

The Changing Consumer and Market Landscape

This chapter reviews key market and consumer trends that have been observed, primarily focusing on the main problems that consumers and consumer authorities are confronting. The more demanding markets for consumers have raised related challenges for policy makers; those responsible for consumer protection must quickly respond to a rapidly changing and highly sophisticated marketplace.

Introduction

The markets for, and the marketing of, goods and services have undergone profound transformations over the past 20 years. Regulatory reform, more open global markets, new technologies, and the growth of services as an increasing component of economic activity have been agents of change and in many instances have provided significant benefits to consumers. However, relatively little attention has been paid to the challenges these recent developments have posed for consumers – often making it more difficult for them to compare and assess the value of products and services.

Consumers themselves have also changed. Children and young adults are more significant forces in markets, as are the growing number of older adults. While better educated overall, many consumers today lack the quantitative and literacy skills necessary to cope with more complex, information-intense marketplaces. These and other changes in socio-economic conditions can have implications for consumer policy. Such trends are being followed by consumer authorities both within their countries and through co-operation with their colleagues in foreign countries, with a view to addressing emerging issues in timely and effective ways.

Changes in markets

One of the most distinctive changes in markets over time has been the expansion in the choice of goods and services available to consumers. This growth has been spurred by regulatory reform, trade liberalisation, and advances in information and communication technology. At the same time, there has been a pronounced change in the structure of economies, with services accounting for more than 70% of GDP in many OECD countries in 2006. This is up by more than four percentage points in only ten years in five of the seven G7 countries (*i.e.* France, Italy, Japan, the United Kingdom, and the United States) (OECD, 2008a).

Regulatory reform

Most OECD countries have liberalised important sectors over the last two decades, thereby promoting more competition. The energy, financial services, telecommunications, and transportation industries are cases in point. The liberalisation has generally been beneficial for consumers, promoting greater diversity and more choice in products, lower prices, and more innovation in the types of goods and services offered.

At the same time, more choice has meant that consumers have had to learn more about markets in order to make good decisions. Utilities are a case in point. Prior to market liberalisation, there were few or no choices to be made, so consumers were not required to develop knowledge about the market. With deregulation, additional firms entered the market. As the electricity and gas that they were offering were identical, the firms sought to differentiate their offers by bundling related products or offering various contract terms and conditions which were difficult for consumers to compare. The challenges facing consumers included complex terminology that could be confusing, contracts that bound consumers for long periods, high exit costs, and/or difficulties in assessing the costs and benefits of choosing fluctuating *versus* fixed-price contracts for supply.

In addition, consumers have had to deal with new firms, some of whom have used deceptive practices to increase business, thereby prompting intervention by consumer protection authorities. In the telecommunications market, for example, companies found ways to switch the service providers of consumers without their authorisation (a practice known as "slamming") or falsely described the purpose and content of documents that consumers were asked to sign, and/or found ways to add charges or services that were not requested by consumers to their subscription (a practice known as "cramming") (see OECD, 2008b). In the utilities market, false claims of energy savings and reductions in energy costs and false environmental claims have been used by some companies to boost business.

As a result, consumers who once were accustomed to buying a standard good or service provided by a regulated monopoly firm now function in a market environment that requires careful analysis and assessment of what they are buying, from whom they are buying it, and the length of the contract commitment. Greater choice in a deregulated market sometimes requires consumers to deal with complex information, since they must now make decisions that will affect their welfare and finances, often in markets in which they have limited experience and expertise. Further complicating the situation is the incentive that firms may have to purposely design products that are difficult to compare. Evidence suggests that many consumers end up making sub-optimal decisions in some complex markets, completely forgoing potential savings by choosing not to switch to a firm that would be lower cost or, because of a lack of understanding, choosing to switch to a plan that is actually higher cost (Wilson and Waddams-Price, 2005).

As further discussed in Chapters 2 and 4, accurate information that consumers can easily access and assess is the key to good decision making and contributes to a fair and efficient marketplace.

Trade liberalisation

Despite the recent contraction in world trade, the long-term trend is positive. Over the last few decades freer international trade, more efficient international transportation services and new information and communications technology (notably the development of the Internet as a global trading platform) have created more open international markets for goods and services. Tariffs, for example, have fallen from an average rate of 14.5% globally in 1995 to 9.9% in 2007, helping to fuel increases in cross-border trade (World Bank, 2008). World trade in merchandise (as measured by import volumes) grew from USD 5.2 trillion to USD 14.1 trillion during the time period, while trade in services grew from USD 1.3 trillion to USD 3.1 trillion (UNCTAD, undated).

Increased trade has promoted competition, thereby boosting consumer welfare worldwide. For example, imports generally benefit consumers by providing a wider array of products in the marketplace. In most instances, these imported products are purchased through domestic retailers. Oftentimes, the domestic retailer provides a guarantee for the imported good and the return/exchange policy is that of the retailer, regardless of the origin of the product. In these circumstances, international trade does not appear to limit a consumer's ability to seek redress after making a purchase. On the other hand, consumers may face challenges or have some concerns when purchasing an imported product, even via a domestic retailer. For example, a consumer's willingness to purchase a product made in a foreign country may be affected by a concern about the quality or safety of the products and/or the conditions under which the products were made. There may, for example, be questions about weak environmental policies in a foreign country, worker exploitation and/or inadequate or lax product or labelling standards. Such concerns can be triggered by a single or limited number of events.

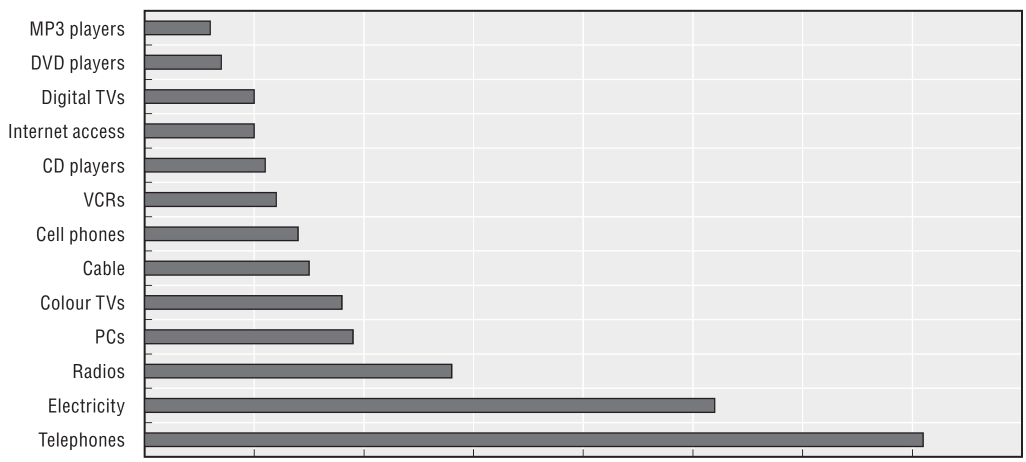
With the development of e-commerce, there are also opportunities for consumers to benefit by making purchases directly from foreign sellers. However, consumers' ability and willingness to do so often depends in great measure on the confidence that they have in entering into a transaction with a vendor about whom they may know relatively little. The situation is further complicated since it may be difficult to resolve disputes or seek redress from a foreign seller when transactions are not concluded in a satisfactory manner or when problems with the good or service surface after a sale.

As further discussed in Chapter 4, consumer authorities are aware of issues related to cross-border trade and have been working together in various forums in order to address problems encountered by consumers. Furthermore, the OECD itself has also been very active during the last decade in promoting instruments that address consumer issues related to cross-border trade.

New technologies

The development and rapid diffusion of information and communication technology (ICT) have significantly affected the array of goods and services that people buy and the manner in which they buy these products. Not only have the attributes of a typical consumer market basket in the OECD countries changed profoundly, but new technologies are being brought to market sooner and are being adopted faster by consumers. For example, whereas it took 71 years for the telephone to be adopted in over half of American households, it took a bit less than ten years for this penetration to occur with Internet access (see Figure 1.1).

Figure 1.1. **Number of years it took for major technologies to reach 50% of American homes**

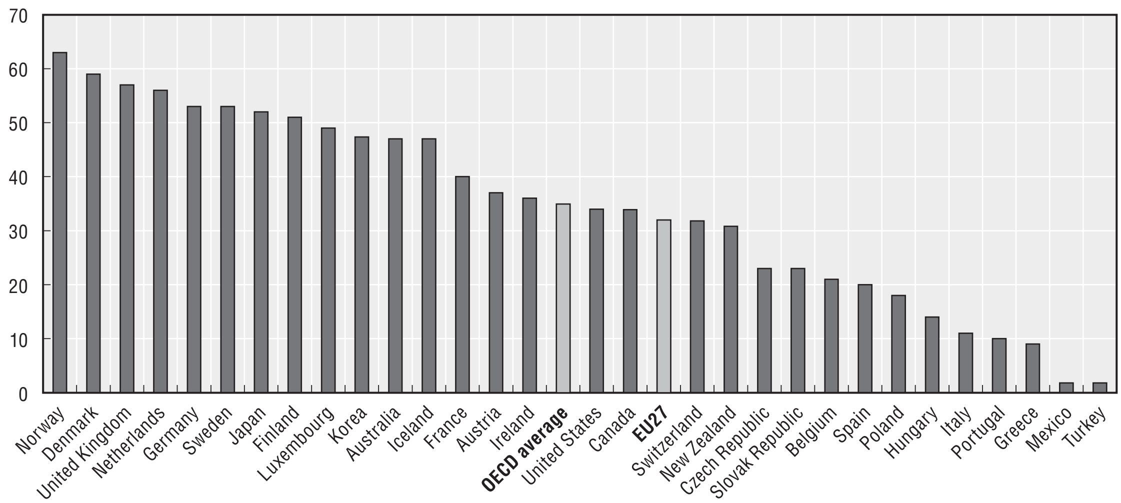


Source: Thierer, Adam and Grant Eskelsen (2008), *Media Metrics: The True State of the Modern Media Marketplace*, The Progress and Freedom Foundation, Washington, DC, Version 1.0, 15 July, *www.pff.org/mediametrics/*.

The rapid development of new products has been highly beneficial to consumers. The Internet, for example, has developed into a global trading platform, transforming the way consumers learn about and purchase goods and services. Some 58% of households in the OECD area had home access to the Internet in 2007 (OECD, 2008c), while about 35% of adult individuals in the OECD ordered or purchased goods on the Internet in 2008 (see Figure 1.2).

Figure 1.2. **Individuals who ordered or purchased goods or services on the Internet**

As a percentage of adults, 2008 (except as noted)



Note: Data are for 2008, except as follows: Australia, 2007; Canada, 2007, New Zealand, 2006; Switzerland, 2005; United States, 2003. The OECD average represents the simple arithmetic average of available data.

Source: OECD (2010), *ICT Database*, OECD, Paris, accessed on 11 January 2010.

Airline and hotel bookings by consumers using the Internet have grown sharply, while a broad range of other items, including cars, food, appliances and electronic equipment, are also being sold online. Moreover, mobile phones have become ubiquitous in today's society and wireless providers are actively working to facilitate the development of new mobile commerce services. The new opportunities have given rise to new challenges, however, as Internet fraud has become a substantial problem. In the United States, 221 226 Internet-related fraud complaints were filed with the United States Federal Trade Commission in 2007; it is one of the leading complaint areas (USFTC, 2008). Other key challenges include deceptive "upselling" (selling consumers who are purchasing an item online additional products or services without adequately disclosing what the consumer is buying or how much it costs), spam (unsolicited commercial electronic messages), phishing (the process of counterfeiting a legitimate website in order obtain credit-card numbers, banking information, passwords and/or other sensitive information), spyware (software that collects information about a user without that user's knowledge or consent) and malware (*i.e.* malicious software, such as computer viruses, worms and Trojans). Ferris Research has reported that the global cost of spam alone increased from USD 50 billion in 2005 to USD 100 billion in 2007 (as reported in International Telecommunications Union, 2008).

Enhancing the benefits that the Internet can bring to consumers will require that privacy and security concerns be addressed. A 2007 study by the UK's Office of Fair Trading estimated that 3.4 million people were prepared to use the Internet, but not willing to shop online because of a lack of trust or fears about personal security, and that their missed savings could amount to between GBP 175 million and GBP 350 million each year (UKOFT, 2007a).

Beyond fraud, the new technologies introduce new technical and legal issues. In the case of mobile commerce, consumers are using devices with small screens that have limited availability to display information. Moreover, minors now comprise a significant component of mobile phone users, which raises issues when, for example, they enter into commercial agreements by misrepresenting their ages or purchase products or services that are not intended for minors. Finally, the role and obligations of service operators, mobile commerce vendors and related parties are unclear.

Finally, the rapid development of new products has been accompanied by a related acceleration in product obsolescence. The development of faster and more sophisticated computer hardware, for example, has spurred advances in new software, and *vice versa*. Older computers and operating systems may, as a result, not be able to run new programmes, rendering them obsolete. In the field of mobile devices, the first phone-enabled version of a popular handheld e-mail device, for example, required early adopters to use cumbersome headphones and wires to make and receive a phone call. Within months, a new series that had a built-in speaker and microphone was released (Manes, 2003). Knowing when or even whether to buy a product is thus an ongoing challenge for consumers, as there is no way to know at what time an innovative product will be introduced on the market or when a product may become obsolete. Toshiba's decision to abandon development and manufacture of the high-definition DVD (HD DVD) optical storage format in light of the success of Blu-Ray technology is a case in point (full product support and after sales service was, however, maintained for those who owned HD DVD devices) (Toshiba 2008).

Growth in services

Another major change in markets concerns the growing role of services and the impact that ICT has had on the way that many services are delivered. Today over half of household consumption in many OECD countries is composed of services, which differ from goods in a number of key areas (OECD, 2007). They are intangible and often difficult to evaluate before a purchase (experience goods), and in some instances even after purchase (credence goods). Many require consumers to rely on the expertise of the service providers. Medical treatment, car repair and home maintenance services (electricity and plumbing) are examples of such services. Moreover, many service contracts bundle the provision of specific service options with goods (for example, cell phone handsets and service plan contracts), thereby blurring the traditional distinction between goods and services.

Another key difference between goods and services is that services cannot be returned and when problems occur, redress is often difficult to obtain. These characteristics can make services more vulnerable to fraudulent and misleading practices, especially in markets with low entry and exit barriers, such as home renovations. As a result, consumers must trust the person or company that they are buying the service from. Such trust can be built on the basis of reputation and/or the licensing or accreditation of firms. Governments can play a role in the latter, while also potentially helping consumers when problems arise, by, for example, *i)* providing guidance on selecting a service provider; *ii)* establishing legal rights and protections for consumers; and *iii)* supporting advisory services and/or mechanisms for resolving conflicts. Consumer policy tools available to governments are discussed in Chapter 4.

The nature of some services is being transformed by ICT. One of the most prominent examples concerns the market for financial services. Twenty years ago most people needed to visit a bank to deposit or withdraw cash; they wrote paper cheques, received monthly bank statements in the post, and were physically involved in fairly simple, routine, and recurring transactions, such as mailing monthly bill payments. Since then, financial services deregulation and technological advances have combined to fundamentally transform the relationship between consumers and their financial institutions, and how individuals conduct their financial operations. For instance, consumers are increasingly banking, paying household bills and purchasing complex saving and investment products online, as well as conducting financial transactions using automated teller machines and debit cards, and thus rarely need to visit a bank.

The increased convenience has, however, given rise to a number of important issues for consumers. The first concerns additional costs. For example, a decision by the Canadian Competition Tribunal in 1996 opened up the market for automatic banking machines (ABMs) to non-financial institution providers. Many of these ABMs, commonly referred to as "white label" machines, operate in lower-traffic areas. In order to be profitable, they may impose a "convenience fee" on consumers, in addition to regular account fees. Most traditional financial institutions have also implemented a "network access fee" to non-customers using their networks. While consumers now have more available options to withdraw money, they must be careful as to where they withdraw their money as it can cost more than CAD 6.00 to use an ABM that is not owned by their financial institution (Financial Consumer Agency of Canada, undated).

Actions have also been taken in the United Kingdom on bank charges. In 2006, the Office of Fair Trading raised questions about the level of charges assessed on credit card holders who failed to pay a minimum payment on the due date, exceeded a credit limit or failed to honour a payment made. Following the intervention, credit card issuers agreed to reduce their default charges, with the majority reducing the charges by almost one half (UKOFT, 2006a). In further work an in-depth study of retail bank pricing investigated the fairness of similar charges on cheque accounts (UKOFT, 2007b and UKOFT, 2007c). In Hungary, the Competition Authority (*www.gvh.hu*) conducted several investigations in 2006 and 2007 that examined commercial practices used in marketing credit cards. Fines were imposed when it was determined that investigated companies failed to include basic material information and conditions that had to be met in order for consumers to qualify for credit that advertised as interest-free (GVH, 2009).

In Chile, efforts are being made to curb practices whereby department stores impose fees on credit transactions which are in excess of contractual and legally permissible rates (SERNAC, 2009). In Belgium, the Federal Ministry of Economic Affairs recently presented a legislative proposal to fight consumer credit abuses. The proposal includes the following measures: *i)* prohibition of advertisements for credit bundling; *ii)* limitation on cash advances, or "cash credit"; *iii)* increased fines for infringements of consumer credit rules; *iv)* use of a standard information form for credit offers; and *v)* mandatory disclosure in consumer credit advertisements that reminds consumers that credit costs money (FPS Economy, 2009).

The transparency and complexity of markets for financial services are also raising challenges. The European Commission carried out a study in 2009 on retail services that found widespread problems with the way banks inform and advise their customers. Specific problems included information which in many cases is difficult to understand, opaque bank fees and problems with advice. (Van Dijk Management Consultants and Centre for European Policy Studies, 2009). In the United Kingdom, a recent study revealed *i*) a low level of transparency on fees related to bank charges (*e.g.* insufficient fund charges); *ii*) complexities in the manner in which these fees are imposed, resulting in difficulties for consumers in predicting when they will be incurred; and *iii*) a significant proportion of consumers incurring charges who appear to have underestimated both their level and frequency (UKOFT 2008a, UKOFT, 2008b). In response, governments in some jurisdictions have determined it is in the public interest to eliminate or reduce certain banking fees and have taken actions to do so. In Finland a series of reforms have been made to better protect consumer interests. Short message service (SMS) lenders, for example, will no longer be able to charge loan fees in lieu of interest; the way fees were being imposed was deemed an unfair contract term (Consumer Agency and Consumer Ombudsman, 2009). Moreover, penalty interest ceilings have been introduced on loan payments that are more than six months overdue.

A similar set of problems arises from the convenience of systems used by mobile phones, utilities and other industries that automatically deduct payments from consumers' checking accounts or automatically bill their credit cards. While increasing billing and payment efficiency, the absence of a step under which consumers confirm billing could cause many to be less vigilant. As a result, additional charges that could be easily avoided could go unnoticed, as could billing mistakes.

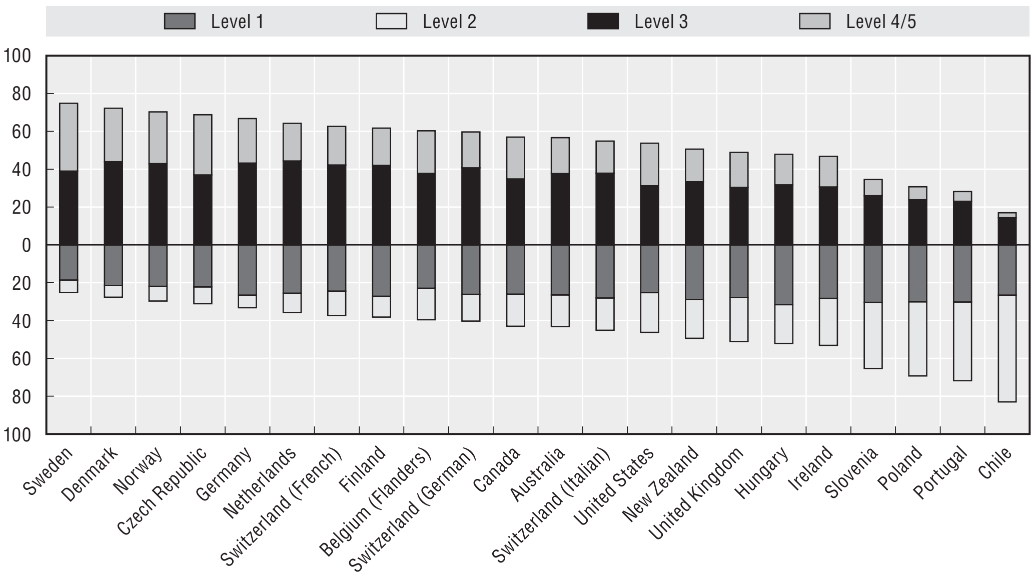
Another important issue concerns the security of transactions carried out electronically. Most traditional banks now offer online banking services and strongly encourage customers to do online banking, assuring their customers that security is high. There are, however challenges in this regard. A 2007 survey in Canada found that many security requirements are too difficult for regular users to follow, and that some marketing-related messages about safety and security are misleading (Mannan and van Oorschot, 2007). It is important that the obligations and responsibilities of consumers, financial institutions, and vendors be clearly established to avoid confusion and misunderstandings when incidents occur. This is of growing importance in light of the increasing collection, trafficking, and illicit use of financial information in many OECD countries. It is an area where governments have been active, through legislative, education, and awareness-raising activities.

ICT advances have also contributed importantly to the development of new financial products that can be tailored to meet individual consumer needs and changing circumstances. The products are, however, often complex instruments that require consumers to make difficult decisions that weigh short-term benefits and costs against long-term considerations. This new reality clearly raises the issue of whether consumers – even those who are financially savvy – have adequate information, tools, and skills to assess these new products. The mortgage-related financial crisis that rattled world financial markets in 2007-2009 indicates that many may not, suggesting that governments and other stakeholders need to be more active on this front.

Higher education and literacy requirements

With the proportion of the population obtaining a university education generally rising in the OECD area (OECD, 2004, OECD, 2008d), one would expect consumers to be well-equipped to deal with today's more challenging, information-driven economy. Unfortunately, literacy levels are relatively low. Surveys carried out during the 1990s in many countries revealed that only a small proportion of respondents had skills needed to deal with many standard consumer contracts, such as car rental agreements and insurance contracts (see Figure 1.3, levels 4/5.) A larger number (level 3) were judged as having skills suitable for coping with the demands of ordinary life and work. But in all countries, there was a sizeable population of persons who were ill-equipped to cope with modern-day challenges (levels 1 and 2).

Figure 1.3. **Percentage of population aged 16-65 at each quantitative literacy level, 1994-1998**



Source: OECD and Statistics Canada (2000), *Literacy in the Information Age: Final Report of the Adult Literacy Survey*, OECD, Paris. See also OECD and Statistics Canada (2005), *Learning a Living: First Results of the Adult Literacy and Life Skills Survey*, OECD and Statistics Canada, Paris and Ottawa.

One sector of particular concern with respect to literacy is the market for financial services; in this sector, the principle of disclosure is often the basis of consumer protection. Therefore, the ability of consumers to make good choices depends on their capacity to read and understand detailed information. However, an assessment on the readability of common financial documents in Canada found that nearly all of them were "difficult" or "very difficult" to read. Furthermore, the authors found that the primary purpose of disclosure documents appeared to be to meet regulatory requirements, rather than providing plain-language information to consumers (Colbert, Carty and Beam, 1999). Other authors are more critical; some suggest that modern financial service contracts are dangerous to consumers in part because disclosure is designed in a manner to confuse rather than inform (Warren, 2008). With respect to credit cards, one observer notes that a typical contract in the 1980s was a single page long; as of the early 2000s these contracts had grown to more than 30 pages, with much of the additional language adding terms – all of which favour the credit-card companies – that are difficult to understand (Pacelle, 2004).

The increasing need for consumer literacy skills, combined with the low level of financial literacy of some consumers, clearly poses challenges for policy makers wishing to address information shortcomings in markets. As discussed in Chapters 2 and 4, mandated information disclosure, the provision of technical tools such as online calculators, and the promotion of plain-language contracts can be helpful for consumers, but their value will be limited if financial literacy is low. Moreover, while education can improve the situation, its limitations need to be recognised. Work carried out by Meza, Irlenbusch and Reynier (2008) suggests that attempts to improve financial capability (*i.e.* knowledge and skills) may not result in improved outcomes as what people choose to know and what they do with their knowledge may primarily depend on their intrinsic psychological attributes and may, therefore, vary considerably despite educational efforts by governments.

Changes in consumers

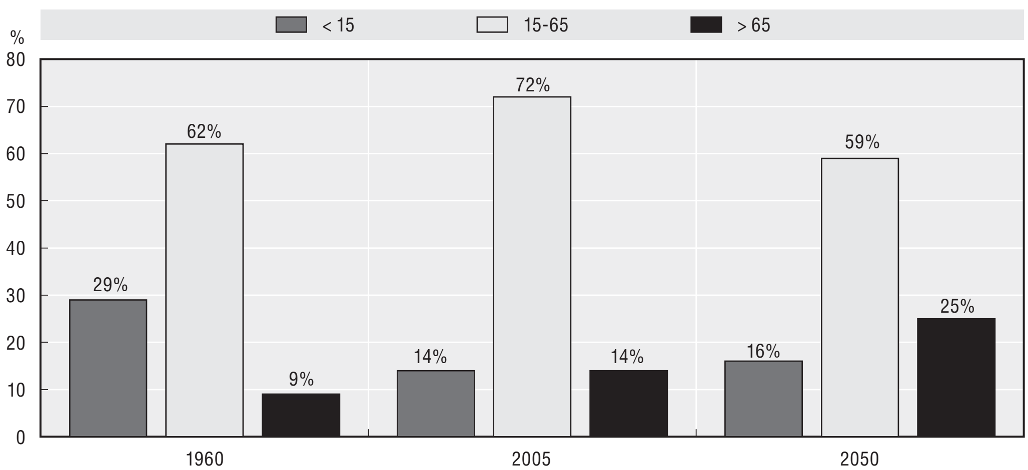
Just as the market for consumer goods and services has changed over the last 20 years, so have the characteristics that define consumers. Sharper distinctions can be drawn between different groups of consumers, and there is greater diversity among these characteristics. The key changes relate to demographics, the management of individual household finances, and time constraints.

Consumer demographics

The age structure in OECD countries has been changing, and is expected to further evolve over the coming years. As shown in Figure 1.4, the percentage of consumers aged 65 and older has increased significantly during the past 40 years, while the share of younger persons has declined. This trend is expected to continue through 2050, with the share of senior citizens accelerating to over 25% by 2050. In absolute terms, the number of seniors will climb from about 74 million (in 1960), to 336 million in 2050. This is capturing the attention of consumer authorities. Korea's Framework Act on Consumer protection, for example, contains specific provisions calling for preferential measures to protect the elderly and other certain other groups deemed vulnerable (Korean Government, 2007). Research on ways to assist the elderly in making good choices, obtaining redress and ensuring safety are being carried out by the government (Korea Consumer Agency, 2009).

One issue concerns the increased vulnerability of senior adults to certain sales techniques, such as door-to-door marketing. In Japan, problems that senior adults, in particular, were experiencing with respect to excessive purchases of goods and services

Figure 1.4. **Age distribution (in years) of OECD population in 1960, 2005 and 2050**



Source: United Nations (undated), *World Population Prospects: The 2006 Revision, Population Database*, medium variant, United Nations, at *http://esa.un.org/unpp/index.asp*, accessed on 8 December 2008.

resulted in the introduction of new regulations in 2008 (METI, 2009). The regulations enable consumers to withdraw from contracts arising from door-to-door sales within a year of the sale.

The ability of senior adults to adopt and/or adapt to new technology is also a concern. Although many can and do adapt, a sizeable number do not. While some firms and industries have launched initiatives to help out in this regard (UK Ofcom, undated), this is an area that will require ongoing attention as the inability or reluctance to identify and use goods and services that could be beneficial may have significant negative consequences on older persons. In addition, the ability to use new technology could help senior adults to overcome the challenges many will face as their mobility decreases (Statistics Canada, 2002).

The issue surrounding the ability to adopt and use technology is not, however, confined only to elderly persons. In Canada, for example, a provincial assessment carried out in 1999 on students in grades 5, 8 and 11 revealed that while students had a good broad and global understanding of technology, knowledge and skills when using specific technologies, such as the Internet or a "tech" product, generally fell far below the levels that educators had expected (Saskatchewan Education, 2001). The challenge for policy makers in this regard will be to recognise the extent to which different societal groups do, or do not, keep up with technological advances, and to explore ways to ensure that those who do not benefit from the new technologies are not left behind. In Germany, the German Railway (Deutsche Bahn AG) had planned to encourage travellers to use self-service ticketing machines, by imposing an extra charge for tickets bought at the personalised service desk in train stations. The measure was abandoned, however, when it become apparent the self-service machines were very difficult to access for physically-challenged persons (Federal Ministry of Food, Agriculture and Consumer Protection, 2009).

With rising family incomes, young people, whose spending is almost wholly discretionary, have become increasingly important consumers, despite their declining share of the population in many OECD countries. While they may have relatively significant discretionary spending capacities, young people may not have the skills and knowledge required to make well-informed and well-reasoned choices. Overconfidence, for example, often makes young consumers more susceptible to poor decision making or fraud. A US report on the use of credit cards by college students, for example, concludes that many students are responsible for making important financial decisions for the first time in their lives yet are naïve about managing a budget. As a result they may be at greater risk of incurring substantial debt (including credit-card debt) compared to more experienced consumers (United States General Accounting Office, 2001). Furthermore, adolescents may be vulnerable as they are susceptible to fashions, trends and styles, and may be influenced to purchase "hip" or popular items. These factors may partially explain the heavy adoption of cell phones by youth, with empirical evidence from all regions in the world showing that adolescents have been the most eager to embrace this technology (Geser, 2006).

Moreover, young adults, defined as those who are under 30 years old, face a number of decisions with major financial consequences that they may be making for the first time and that could have long-term consequences on their well-being. These include renting or purchasing a home, buying a car, having children, pursuing costly higher education or starting to save for retirement. The fact that these young adults are increasingly encountering problems related to significant consumer debt further complicates the situation, potentially raising challenges for policy makers (Box 1.1).

Box 1.1. **Loans and savings by youth in Chile, Denmark and Finland**

Chile

The National Consumer Service (SERNAC) and the National Institute of Youth (INJUV) carried out a study in 2007 on the indebtedness of Chilean youth (SERNAC, 2009). The study indicates that some 1 237 191 young borrowers (33.2%) between 15 and 29 years of age were in debt. The highest youth indebtedness levels were found in department store credit cards (28.5% had at least one card and 69% of them had debts) and in bank credit cards (7.8% had at least one card and 57.7% of them had debts). Most Chilean indebted youth were between 25-29 years old (51.4%); some 51% had only finished secondary education, while 29.8% had attended college. Most of the debt of young borrowers was concentrated in housing, education and payment of credits. On average, some 45% of young borrowers' debt (*i.e.* USD 371) was in default. It should be noted that credit is not viewed in a negative way in Chile; it is often viewed as a positive indicator of economic growth. That said, overall level of indebtedness, caused in large measure by lack of knowledge of the credit system, is still worrying to consumer authorities.

Denmark

In 2008, the Danish Money and Pension Panel conducted a study of 18-25 year olds' loans and savings (Money and Pension Panel, 2009). Among other things the study shows that some 49% of young Danish persons took out a loan in the two years covered by the study. At the same time, some 76% accumulated savings. Young borrowers reported an average debt of DKK 58 000. Typically, men had more debt than women. About one in three young borrowers (corresponding to 16 per cent of all 18-25 year old Danes) have taken out a less favourable loan, with some 86% of young borrowers not making inquiries about other loan offers before obtaining their loan. Further, some 73% of young Danish people did not know or had little knowledge of the annual percentage rate of their loans (APR) and 64% bought goods on credit, thinking that these types of loans have low interest rates.

Finland

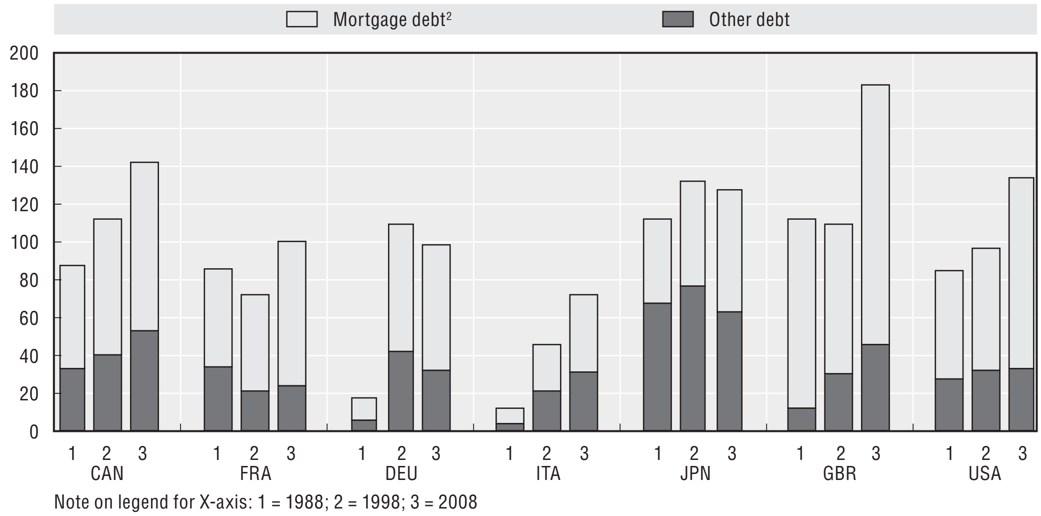
In 2008, the Finnish National Research Institute of Legal Policy published research on payment difficulties associated with SMS loans (Valkama and Muttilainen, 2008). The research revealed that 20-24 year olds are the biggest single group (43%) among SMS loan debtors. Research data from District Courts also showed that the average age of individuals facing payment difficulties because of SMS loans are 26 years old. Another study on indebtedness by Statistics Finland, segmented by age group, showed that the rate of indebtedness was highest (189% of income) among households in which the reference persons were between the ages of 25 and 34.

Sources: Money and Pension Panel (Denmark) (2009), *Money and Pension Panel Study of 18-25 Year-old's Consumer Loans and Savings*, October; SERNAC (National Consumer Service) (Chile) (2009), Communication with OECD Secretariat, unpublished; Valkama, Elisa and Vesa Muttilainen (2008), *Payment Difficulties Associated with SMS Loans*, National Research Institute of Legal Policy, *www.optula.om.fi/uploads/o0xn4w_1.pdf*.

Household finances

By and large, the last several decades have been prosperous and characterised by unprecedented economic expansion. Incomes in many OECD countries rose, and household wealth grew substantially, reflecting appreciating housing assets and rising home ownership, in addition to other assets. At the same time, consumer debt relative to disposable income increased in some countries. As shown in Figure 1.5, the increases were often driven by mortgage and related long-term debt, but other forms of indebtedness also rose in most countries.

Figure 1.5. **Household indebtedness in 1988, 1998 and 2008**[1]



Note: Data for 1988 are not comparable to subsequent years for France, Italy and Japan, due to changes in definitions or accounting systems. Data for 2008 were not available for Italy and Japan; data for 2007 have been used instead.

1. Liabilities outstanding at the end of the period, as a percentage of nominal disposable income.
2. Data for France are for long-term loans; data for Italy are for medium- and long-term loans.

Source: OECD (Organisation for Economic Co-operation and Development) (2001), *OECD Economic Outlook*, Volume 2001/1, No. 69, OECD, Paris, June and OECD (2009), *OECD Economic Outlook*, Volume 2009/1, No. 85, OECD, Paris, June.

As discussed in Chapter 2, consumers can be short-sighted when it comes to financial matters, and overconfident in their ability to manage debt. Increases in debt levels are therefore a concern as the risk of experiencing financial difficulties is higher, as are the consequences. The problems that have arisen during the recent financial crisis illustrate this point. Given the importance of the issue, most governments have adopted measures to help protect consumers; these include measures ranging from disclosure requirements to education and restrictions on certain lending practices.

Finally, while not a consumer protection issue as such, the inability of many consumers to save for long-term retirement needs, which in many cases may need to cover 30 or more years of retirement, poses another challenge for policy makers. Initiatives to raise awareness in this regard, through education, are being pursued.

Time constraints

Another issue consumers routinely confront is finding adequate time to properly analyse the expanding number of propositions and choices that are available. In the United Kingdom, for example, the proportion of married or cohabiting couples with dependent children where both adults were working rose from 50% in the 1980s to 62% in the 1990s (UK Office for National Statistics, 2000). By 2008, some 81% of married or cohabiting adults (72% of women and 91% of men) with dependent children were working (UK Office for National Statistics, 2009). In response, time-pressed consumers are likely to make key decisions by *i)* limiting searches; *ii)* deferring to an intermediary for advice; *iii)* employing a "rule of thumb" technique to decide (*i.e.* a heuristic technique); or *iv)* forgoing making a purchasing decision because of the effort that would be required to properly research and evaluate a proposition. Chapters 2 and 3 describe how these responses can lead to consumers making decisions that can be costly and they may later regret. To address these time constraints some consumers rely on intermediaries (such as travel consultants, financial advisors and mortgage brokers). The services provided by intermediaries can be highly beneficial both in terms of time savings and in terms of helping consumers make more informed and better decisions, provided of course that the intermediaries are "honest" brokers who are not inclined to oversell or recommend overly expensive products to generate higher fees and commissions.

Time considerations are also an important factor when consumers experience a problem with a good or service. If considerable time would be required, they may be reluctant to complain or seek redress. Moreover, the expense, time commitment, and the complexity of legal proceedings can make complaint processes impractical for claims involving relatively modest transactions.

Summary

As indicated above, dynamic changes in the marketplace driven by technology advances and more open markets and regulatory structures have been highly beneficial to consumers, providing them with a broader range of innovative products from a wider selection of firms. The more dynamic markets have, however, created new challenges for consumers, and changed the nature of the issues that consumer authorities need to address. In the consumer protection area, increased trade and the development of the Internet have provided new opportunities for consumers, but also have increased the need for international co-operation to help detect and address consumer problems, particularly those with a cross-border dimension, more effectively.

In most OECD countries, greater emphasis is being placed on policies and programmes that can help consumers make better decisions, by promoting market transparency and by providing information and guidance on ways to *i)* make better decisions; *ii)* avoid problems; and *iii)* obtain satisfaction when goods or services do not meet expectations. Efforts to "empower" consumers in these ways are also based on the increasing recognition by governments that confident, informed consumers who make well-reasoned decisions represent powerful drivers of innovation, productivity and competition.

In light of the rapid changes in markets and the profound impact they may have on consumers, it is particularly important for policy makers to be able to both identify and measure sources and instances of consumer detriment (see Chapter 3). While policymakers have a wide array of tools available to correct market failures when they occur (see Chapter 4), it is critical that any policy decision taken be based on sound and objective evidence and careful assessment of the corrective options available (see Chapter 5). Understanding how markets operate and how consumers make decisions is critical in this regard. Chapter 2 provides insights in this area, exploring how the findings from work in the field of information economics helps to identify when problems are likely to exist and cause the greatest detriment and how behavioural economics can be useful in better understanding consumer behaviour.

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Chapter 2

The Economics of Consumer Policy

This chapter examines the economics underlying consumer policy. It identifies the core elements that distinguish an economic approach from others (such as rights-based legal frameworks) where economic reasoning is less prominent or nonexistent. It discusses the underpinnings of consumer policy in modern neoclassical economics, as well as insights from new research into consumer decision making from the field of behavioural economics.

Introduction

Economics is useful for helping to identify areas where government intervention in markets serving consumers is likely to be warranted, and it can provide guidance as to the types of intervention that will be most effective. While standard economic theory says that the free market will usually produce the best outcomes for consumers, it also identifies a number of ways in which markets can fail. A lack of competition can lead to market failure, which is why governments intervene to attempt to ensure competitive markets. Another important source of market failure occurs when consumers do not have full information about the products and prices available in the market. The market failures that arise out of the lack of information are a primary focus of consumer protection policy. What may be the most familiar type of market failures are what economists call "externalities". An externality exists when the behaviour of a firm (or consumer) has impacts on a party that was not involved in an economic decision and whose interests were not taken into account. The classic example is pollution, but problems like overly intrusive marketing and inadequate data security are other examples of externalities that may justify consumer policy interventions.

Consumer protection complements competition policy, but they also overlap as a consumer protection measure can affect competition and *vice versa*. While both have the common goal of promoting consumer welfare, their techniques and focus differ. Competition policy seeks to encourage and ensure a high degree of rivalry among sellers, thereby providing consumers with greater choice and lower prices.

A key element in the competitive process is the role of the consumer in imposing discipline on competing firms by shifting their expenditures to firms that best satisfy their needs and wants. Policies that enable consumers to make informed choices in the market can therefore also help maintain competition. Thus, effective competition policies help to protect consumers, and effective consumer policies can help to maintain competition.

Competition can provide market discipline that can discourage firms from engaging in deception and other practices that harm consumers. But, while competition is a necessary condition for the maximisation of consumer welfare, it is not always a sufficient one. In some circumstances, competitive markets may fail to provide sufficient discipline and prevent firms from engaging in behaviour, like deception, that leads to consumer detriment (which is described further in Chapter 3).

The first section of this chapter sets out the basic economics underlying consumer policy, focusing on the role played by information both in creating market failures and in correcting them. This approach is based on the neoclassical model of economic behaviour where consumers are viewed as knowing their preferences and adopting consistent ways of achieving them. The second section examines how the findings from the emerging field of behavioural economics can be used to improve understanding of how consumers actually operate in markets. Using the results and insights from psychological research into how consumers make decisions, behavioural economics relaxes some of the basic assumptions used in the traditional model. Some implications of these insights for consumer policy are also discussed.

The analytic framework developed in this chapter provides context for the description of the core elements involved in the consumer policy toolkit that are presented in the remaining chapters of the report:

- Chapter 3 describes how to identify and measure economic detriment created by market failures.
- Chapter 4 describes the kinds of instruments available to remedy market failures and how they can be utilised.
- Chapter 5 presents a framework that can be used to help governments decide when action is justified and, if so, the form it should take.

Conventional approach

Market failure is the principal factor justifying consumer policy market interventions. Economics provides for a systematic analysis of the relevant issues by: *i)* defining the ideal market arrangement in which consumer welfare is maximised; *ii)* evaluating real-world departures from this ideal in order to determine when, and by how much, consumers have suffered detriment; and *iii)* evaluating the likely impacts of various remedies on markets in general and on consumers in particular.

The ideal of the neoclassical model is the "perfectly competitive market". In a perfectly competitive market, prices are determined by vigorous competition and both buyers and sellers are perfectly informed about all products available in the market, including the prices and attributes of those products. Firms and consumers are assumed to act in their own self-interest, and to know which goods or services will give them the greatest satisfaction; consumers may make mistakes, but it is assumed that such mistakes would be random and not have a material impact on overall outcomes. Perfect competition leads to outcomes where all consumers who value a good or service at more than what it costs society to produce the good or to provide the service, purchase it at a price that reflects its social cost of production.

The perfectly competitive market is at best a useful benchmark for evaluating real markets and possible policy interventions. It does not deal with the reality of modern markets, where information is far from complete. As detailed in Chapter 1, today's market economies provide complex challenges to consumers, with many possible choices and an often bewildering array of information about them. Acquiring and absorbing information requires that consumers expend money, time and effort; making decisions requires even more of these resources.

These realities drove economists to develop a model of firm and consumer behaviour that was more realistic. Based on important theoretical contributions made in the 1960s and 1970s, economists extended the standard neoclassical theory to view information as a scarce resource that can be analysed in ways similar to other commodities in the marketplace. This insight has spawned a large and diverse literature detailing the role played by imperfect information in explaining how buyers and sellers interact to generate observed market outcomes. "Imperfect" in this sense, it should be noted, does not mean that the information is necessarily wrong; rather, it means that consumers do not know everything there is to know about the attributes and prices of all products in the market.

Under the information economics paradigm, consumers seek out useful information, but because this is costly and time consuming, they generally do not acquire all possible information before purchasing a good or service. Consumers make the best possible decisions given the information they do have, but this may not be the decision they would make if they had all possible information. The behaviour of firms is similarly influenced by the costs of both acquiring and disseminating information. Firms weigh the costs of communicating with consumers when making decisions about, among other things, what products to produce and prices to charge, where to locate, whether and how to advertise and how to label their products.

The promotion of competitive markets plays a central role in this context, since it can be the best way to ensure an efficient level of information for consumers. Firms compete by supplying consumers with information via advertising and other marketing techniques, as well as by giving them the variety of services and products that best suits their preferences.

Nevertheless, the inevitable information shortfalls that exist in markets can lead to inefficiencies and resulting consumer detriment that competition alone cannot overcome. Overcoming these shortfalls would thus boost consumer welfare. As an early contributor to the literature observed, "The economics of consumer protection is the economics of information" (Shapiro, 1983). While this may overreach somewhat given that consumer protection problems can arise for other reasons, it does highlight the importance of a good understanding of the economics of information to good consumer policy making and implementation. Key elements of the economics of information include an understanding of how information is generated and used, the kinds of market failures that can arise due to imperfections in information flows, and the types of government actions that can improve matters.

In addressing market failures, attention needs to be paid to how firms will react to regulations and enforcement actions. These actions can affect what products firms decide to produce, what prices they charge, and how they communicate with consumers. The ways firms react to regulations can blunt the impact of the regulations and make it more difficult for policymakers to achieve their goals. Or, firms seeking to avoid violating regulations may overreact, becoming overly cautious or even exiting certain markets altogether, leading to negative impacts on markets and consumers.

Information provision, information search, and information use by consumers

Consumers use a wide variety of information in their decision making, including information obtained from observation and use of the product, from friends and family, from firms via advertising and other marketing activities, and from third parties such as the government, intermediaries and independent organisations.

The amount and value of information obtained through direct observation and past purchasing decisions vary by the type of product or service as well as the particular claim associated with it. The standard way of categorising goods or attributes is as follows:

- *Search goods:* Goods whose attributes and qualities can be observed or verified before purchase, for example, the colour of a suit.
- *Experience goods:* Goods whose attributes or qualities can only be observed after use. To continue with the suit example, the durability of the suit may fit into this category.

- *Credence goods:* Goods whose attributes or qualities cannot be determined by the purchaser even after purchase and use. For example, a single consumer cannot determine, based on personal experience, whether a vitamin supplement that claims to reduce cancer risk actually does so.

For experience goods and credence goods, there is often an "information asymmetry" between sellers and buyers, where sellers know more about the features and quality of their products than do buyers. Both consumers and some sellers – typically those with high-quality goods – have an interest in reducing the amount of this asymmetry by better informing consumers. In the extreme, the information asymmetry can lead to a market failure where sellers of high-quality goods cannot credibly convey information to consumers, leading to a market where only low-quality goods are sold. The phenomenon was studied by Akerlof in an analysis of the market for used cars (Akerlof, 1970). The inability of dealers to successfully distinguish high quality used vehicles from clunkers (often referred to as "lemons"), is seen as effectively eliminating the market for the higher quality cars.

It is important to note that, because both consumers and sellers of high quality goods have incentives to solve the "lemons" problem, private actors in the market will often find solutions. Important examples included product branding and reputation, and third-party information sources.

Advertising and marketing

Advertising, labelling and marketing are important sources of information for consumers. In addition to the very important function of describing the price, location, and physical characteristics of goods, advertising of truthful health and safety claims has been shown to provide useful information. Firms also use advertising and other promotional expenditures as a means of developing reputational capital designed to communicate the quality and value of the products they offer for sale (Beales *et al.,* 1981 and Rubin, 2004). The logic of reputational capital is that firms would not spend a great deal of money on promotion if most consumers who tried the product were unhappy with it and would not purchase it again, or would discourage others from purchasing it. Consumers can then rely on that reputation when making judgments about the quality of a firm's products. This is likely to be most effective in the case of products where consumers can judge the quality of the goods post-purchase, and where firms rely on repeat purchases. Firms also use contractual terms, such as warranties and money-back guarantees, to persuade consumers to use their product.

There are obvious limitations on advertising as a source of information. Firms advertise what it is in their interest to say, so advertising is not an unbiased source of information. There is good evidence, however, that consumers are generally sceptical of advertising (Calfee and Ringold, 1994). Beyond simply stressing the positive or eschewing the negative, firms may engage in advertising that is deceptive. Deceptive advertising, which is discussed below, can lead consumers to make purchases or take other actions that cause them detriment.

Third party information sources

Consumers also rely on information provided by third-party sources. These are described further in Chapters 3 and 4. The sources include organisations that report on the results of extensive independent consumer product testing programmes, business organisations, such as better business bureaus (see, for example, *www.bbb.org*), national regulators and other government authorities that provide information directly to consumers or provide validation for statements made by private parties, through, for example, the use of trust marks (see Box 2.1). Moreover the Internet has fostered a wide variety of third-party information sources for consumers, and an important source of information comes from online product reviews generated by consumers themselves via such sites such as Amazon (see *www.amazon.com*), eBay (see *www.ebay.com*), and Epinions (see *www.epinions.com*) (Ghosel and Panagiotis 2006). Finally "word of mouth" can also be a very important source of information.

Box 2.1. **Third-party information**

Korea

The Korea Consumer Agency established a "Trust gate for Consumers" (T-gate) in 2008 which provides consumers with an online means to search for products and obtain information about them (*www.tgate.or.kr*) (Korea Consumer Agency, 2009). The site includes sections on quality comparisons, consumer reviews, price information, purchasing guidance, and data on consumer complaints.

Switzerland

The Swiss Government provides financial support to consumer organisations in order for them to provide objective information on products and services and to carry out comparative testing (Federal Consumer Affairs Bureau, 2009). In addition, the Federal Consumer Affairs Bureau maintains a site with information on product recalls where enterprises can also make entries (*www.rappelsdeproduits.admin.ch*).

United Kingdom

The United Kingdom's Office of Fair Trading operates a programme called the Consumer Codes Approval Scheme (CCAS) (UKOFT, undated). The CCAS facilitates industry self-regulation by recognising voluntarily adopted industry consumer codes and permitting firms operating under those codes to be licensed to use and display a distinctive OFT Approved code logo. Qualifying codes of conduct must satisfy several core criteria, including procedures to provide consumers adequate information; the use of clear and fair contracts; user-friendly and speedy complaint procedures; and low-cost, independent redress if a complaint is not dealt with satisfactorily. The codes are sponsored and privately administered by trade associations or other organisations capable of doing so, subject to OFT approval. Participating firms can use their adherence to a voluntary consumer code in marketing efforts to demonstrate their trustworthiness. Sectors that have agreements in place include car-body repair, car repair and servicing, automobile sales, real-estate sales, direct selling, home furnishings, and debt management.

Sources: Federal Consumer Affairs Bureau (Switzerland) (2009), Communication with OECD Secretariat, unpublished; Korea Consumer Agency (2009), Communication with OECD Secretariat, unpublished; UKOFT (United Kingdom Office of Fair Trading) (undated), *Consumer Codes Approval Scheme*, *www.oft.gov.uk/news/campaigns/consumercode*, accessed on 6 August 2009.

When consumers obtain information from third parties, they must evaluate how much to rely on that information. Factors consumers might consider include the breadth of the market covered by the source, how much expertise a source has in evaluating the product in question, and whether the information source is independent. If consumers are led to believe a source is independent when in fact it is not, this has the potential to cause detriment. This is especially true if the source provides inaccurate or misleading information. In assessing independence, the source of funding for the party providing information is important for consumers. Some are supported by industry, government or consumers themselves (through subscriptions and the like).

Market intermediaries

Consumers purchase a number of goods and services through intermediaries, such as mortgage brokers, financial brokers, online referral services and online auctions sites. Starting with Grossman (1981) and Milgrom (1981), economists have examined how intermediaries improve information flows in markets. More recently, there has been increasing focus on the role of intermediaries in supplying information to consumers via the Internet. Choi and Whinston (1997) show how online intermediaries create efficiencies by lowering the costs associated with network traffic, in ways similar to the effects of wholesaling and retailing in physical markets. Jin and List (2006) discuss research showing how reputation and the monitoring of quality are found to be complements, and, in particular, how third-party verification can help address the lemons problem referred to above. The paper goes on to note that the effectiveness of intermediaries in providing useful information is directly related to the extent of rivalry among them.

The extent to which intermediaries promote market efficiency and result in good outcomes for consumers depends crucially on three interrelated components: *i)* the share of the market that they cover; *ii)* the extent to which intermediaries compete with each other; and *iii)* the ability of consumers to use the information they obtain to make decisions. The combination of competition and the behaviour of consumers who act on information give intermediaries incentives to provide useful information to consumers. Problems can arise, however, if the incentives of an intermediary that a consumer trusts are not aligned with those of the consumer, or if consumers rely excessively on the advice of a single intermediary rather than shopping around. This issue is examined in a 1998 Canadian report, which describes how, in the financial sector, intermediaries commonly portray themselves as providing financial planning and investment advisory services, but in reality are often only selling a product (Stromberg, 1998).

Deception

The quality of information available to consumers is critical to making good choices. As discussed above, consumers need to be cautious in evaluating information sources. At the same time, sometimes misleading information results in consumers' making poor choices that cause detriment.

Deceptive claims about products and services can cause detriment in a number of ways. They may lead consumers to purchase goods or services that they otherwise would not, or to pay a higher price for a product or service than they otherwise would. In these situations, financial detriment is equal to the difference between what consumers paid for the product and what they would have paid if the deceptive claims had not been made. Deception can also lead to non-financial injury, such as physical injury from products that sellers claim are safe but in fact pose health and safety risks. Deception can also cause detriment indirectly, by causing consumers to forgo other purchases or actions, such as seeking medical treatment that would have benefited them more.

Information problems can give rise to fraudulent activity that can be hard to eradicate even in competitive markets. In fact, deception is most often observed in un-concentrated markets with easy entry and easy exit. This section discusses where deception is most likely to occur and persist in the market, and therefore where government enforcement is most likely to be needed. As described above, goods can generally be categorised as search goods, experience goods, or credence goods:

- *Deception and search goods:* The nature of search goods is such that deception is difficult or impossible. Claiming a car is red when it is actually blue is unlikely to be believed.
- *Deception and experience goods:* Deception is possible for experience goods, as consumers will not learn the truth about a product until after making a purchase. These claims are most likely to occur in markets where neither repeat purchases nor seller reputation are important to seller profitability. If profitability requires repeat purchases, deceiving consumers about experience goods will not be effective. Similarly, if a firm relies on a good reputation to attract business, engaging in deception about experience goods will be risky, as word of mouth, media stories and the like reveal the deception.
- *Deception and credence goods:* Deceptive claims about credence goods are a major concern. Because consumers cannot determine for themselves whether a credence good is effective, they must rely on the claims of the seller and information from third parties. In many circumstances, there may not be private third parties with the resources or incentives to evaluate the claims made. For example, if numerous sellers claim that they have effective weight-loss pills, there is unlikely to be a way for a private party to profit by exhaustively testing those pills, and public-interest groups may not have the resources to conduct the testing. In these types of circumstances, government intervention, in the form of anti-deception laws or requirements that firms demonstrate the effectiveness of their products, may be warranted (see Chapter 4). The latter tends to be the approach taken by most governments in the area of pharmaceutical sales.

Deception and advertisement interpretation

Not all deception involves fraud or explicit lies. An advertisement can be deceptive if the advertisement implies something about a product or service that is not true, or if important information is left out such that otherwise truthful information in the advertisement conveys a deceptive claim. When a matter involves implied claims, an important task for a regulator or enforcement authority is to determine the message actually received by consumers. In these situations consumers often vary in the kinds of messages they take from an advertisement, as well as the importance they attach to the claims that they receive. From a policy perspective, caution needs to be exercised in taking overly prescriptive or overly restrictive actions against deceptive advertising as they could undermine competition and/or encourage firms to be excessively cautious in providing information that could benefit consumers.

Claims and substantiation

For any particular claim, whether express or implied, there is the further task of determining whether the advertiser has a sufficient level of substantiation for the claim being made. There are costs and benefits of requiring firms to meet a high standard of substantiation. The benefits are that the claims made for products are more likely to be true. The costs are the increased costs to firms of developing the evidence, and the loss of information that is true, but too expensive to prove. The trade-off between these costs and benefits depends on the nature of the claim. For a specific objective claim, especially one relating to health or safety, requiring strong substantiation is probably appropriate. For less specific claims, or claims about subjective qualities of products, imposing a high standard of proof on firms is likely unnecessary and may prove counter-productive; it may reduce the amount of useful information in the marketplace, as firms will simply not provide information, instead of incurring the costs of producing evidence.

Governments generally reserve the right to require firms to substantiate their claims. In the European Union, for example, member states are required to confer authority to the courts or administrative authorities to enable them in administrative proceedings to require a trader to justify claims and to consider those claims where substantiation was not supplied, or was not sufficient, to be inaccurate. This was tested in Hungary in 2009 when a company was asked to provide evidence that its products had the claimed effects on a person's immune system, allergies, stress levels, digestive systems and pain levels (GVH, 2009). When the company failed to provide any scientific evidence supporting the claims, it was found to have infringed the law.

Information and competition

Lack of information can reduce the efficiency of an underlying product market in a number of ways. Sellers in un-concentrated markets, for example, can achieve a degree of "informational market power" over price (Beales *et al.*, 1981, p. 510). A case in point is the funeral industry where, Beales notes, the bereaved are not in a position to shop easily; even though the industry is fragmented, prices are relatively high. The same occurs in markets where advertising bans have complicated consumers' ability to compare prices.

Externalities that affect consumers

As discussed briefly above, an externality is a cost (or benefit) that results from some action, but which is not borne by the party deciding whether to undertake the action. The classic example is pollution: in the absence of regulation or other intervention, a factory owner does not consider the costs associated with the pollution produced by the factory when deciding how much to produce or what production technology to use. While externalities like pollution can affect everyone in a society, some externalities affect individuals in their capacity as consumers. As indicated below, some of these have become the focus of consumer protection efforts in some countries.

Telemarketing and spam

Telemarketing – calling consumers at their homes to try to sell them products or services – can benefit firms and some consumers. The calls, however, impose costs, like interruption and annoyance, on many consumers. Firms may not consider those costs when deciding whether to engage in telemarketing, how often to call, or which consumers to call. The costs on consumers, therefore, are an externality, and the market may have too much telemarketing. Similarly, e-mail marketing, or spam, imposes costs on a large number of consumers, while benefiting a much smaller number. Spam has the additional feature of being nearly costless to the sender. Telemarketing and spam are two areas where governments have taken actions to protect consumer interests (see Box 2.2).

Box 2.2. "Do not call" initiatives

Denmark

In Denmark *The Act on Certain Consumer Contracts* generally prohibits firms from making unsolicited communications – both personal and via telephone – to specific consumers (Act on Certain Consumer Contracts, 2004). However there are a number of exceptions: For instance it is legal to make unsolicited contact to sell newspapers or book subscriptions, insurance policies or life-saving service arrangements. In these exceptional cases there are a number of arrangements which consumers can enter in order to avoid unsolicited contact. It is for instance possible to avoid addressed circulars and unsolicited telephone calls by adding your name to the so called "Robinson-list".

Israel

A new set of laws adopted in 2008 by Israel generally prohibits the sending of commercial messages by fax, email, automatic telephone dialling or SMS without the prior consent of recipients. The main exceptions to the opt-in rule are: *i)* a one-time approach to a recipient that is a place of business to request consent to receive commercial messages; and *ii)* in the case of an existing customer relationship, if the advertiser has given a customer an opportunity to refuse receiving such messages and provided that any commercial messages relate to products that are similar to the ones purchased by the customer (Ministry of Industry, Trade and Labor, 2009).

Netherlands

The Netherlands established a legally binding "do not call" register as of 1 October 2009 (Ministry of Economic Affairs, 2009). Consumers can place their names in the "do not call" register by Internet, telephone or mail. They have the option of blocking all calls or blocking commercial calls but allowing calls from certain non-commercial parties, such as official charities. Fines of up to a maximum of EUR 450 000 can be imposed on companies that ignore the register. In addition, telemarketers are compelled to inform consumers that they can list their names in the "do not call" register at the outset of every telephone call. When a consumer wants to be registered, the telemarketer has to process the registration. The registration is free of charge and is permanent, unless the consumer wants otherwise.

United Kingdom

There are two "do not call" initiatives operating in the United Kingdom. The Telephone Preference Service (TPS) is an opt-out system funded and operated by the direct marketing industry under which individuals can request that they not receive unsolicited sales or marketing calls (TPS, undated). It is a legal requirement that all organisations (including charities, voluntary organisations and political parties) not make calls to numbers registered on the TPS unless they have the consent of the individuals concerned to do so. The TPS receives complaints and refers them to the companies involved, but enforcement is carried out by the Information Commissioner's Office (ICO), which is an independent authority set up to promote access to official information and to protect personal information.

The Call Prevention Registry (CPR) is an independent organisation which assists consumers who do not want to receive unsolicited calls (CPR, undated). For an annual fee of GBP 35.75, CPR provides firms with a listing of consumers who indicate their wish not to be called. In the event a problem arises, consumers can file a complaint with CPR, which then acts on their behalf. If the problem still cannot be resolved, CPR refers the firm to the Information Commissioner's Office or an equivalent enforcement authority.

Source: TPS (Telephone Preference Service) (undated), *www.tpsonline.org.uk/tps*, accessed in September, 2009 and CPR (Call Prevention Registry) (undated), *www.callpreventionregistry.co.uk/index.html*, accessed in September 2009.

Box 2.2. **"Do not call" initiatives** *(cont.)*

United States

In response to widespread consumer dissatisfaction with telemarketing, the United States Federal Trade Commission (FTC) in 2003 established a regulation to limit these calls (USFTC, 2003). In particular, the FTC created and maintains a "do not call" list, where consumers who do not wish to receive telemarketing calls can place their phone numbers. Firms that engage in telemarketing are required to buy access to the list, which funds the operations of the programme, and are not allowed to call phone numbers on the list, with certain limited exceptions. The list has been successful: as of January 2010, more than 191 million phone numbers had been placed on it (USFTC, 2010). The FTC has taken enforcement action against more than 30 firms, alleging violations of the regulations.

Sources: Act on Certain Consumer Contracts (2004), Denmark, 9 June, *www.forbrugereuropa.dk/english/consumer-laws/act-on-certain-consumer-contracts/*; CPR (Call Prevention Registry) (undated), *www.callpreventionregistry.co.uk/index.html*, accessed in September 2009; Ministry of Economic Affairs (Netherlands) (2009), Communication with OECD Secretariat, unpublished; Ministry of Industry, Trade and Labor (Israel) (2009), Communication with OECD Secretariat, unpublished; TPS (Telephone Preference Service) (undated), *www.tpsonline.org.uk/tps*, accessed in September, 2009; USFTC (United States Federal Trade Commission) (2003), *National Do Not Call Registry Opens*, 27 June, *www.ftc.gov/opa/2003/06/donotcall.shtm*; USFTC (2010), *FTC Approves Two Reports to Congress on the National Do Not Call Registry*, 4 January, *www.ftc.gov/opa/2010/01/donotcall.shtm*.

Data security

When firms maintain databases containing sensitive information, like consumers' credit-card account numbers, there is some risk that the data will be obtained and used in ways that injure consumers. Unless the firms bear all costs in the event of a breach, they may not fully consider this risk when deciding how much money and effort to put into maintaining security. They may, therefore, under-invest in data security. Some countries have, therefore, mandated that firms protect consumers' data and imposed penalties on firms that fail to do so.

Credit reporting accuracy

Firms that provide credit reports to lenders have incentives to make those reports accurate. Collecting and combining credit-history information is inherently complex, however, so there are trade-offs between accuracy and cost. There may also be circumstances where there is some uncertainty about whether a particular piece of negative credit-history information, such as a default, refers to a particular consumer, and the firm will need to decide whether to include or exclude the information. When firms consider only the effects of their decision on their direct customers, typically lenders, and do not consider the effects on consumers, they may take a cautious approach that limits any downside risks. They may therefore choose to include questionable negative information in consumer reports, as the costs to a lender of making a loan to a highly risky borrower are greater than the cost of failing to make a loan to a reliable borrower. This is an externality because when firms decide what level of resources to put into accuracy, and whether to err on the side of inclusion or exclusion of negative information, they may not consider the effects of those decisions on consumers. Countries have addressed this concern in a variety of ways, including mandating that firms take steps to ensure accuracy, giving consumers the right to view and dispute the contents of their credit reports, and limiting the purposes for which credit reports may be used.

Behavioural economics

The conventional economic model recognises that obtaining and processing information can be costly for consumers. It presumes that consumers know their own preferences, that these are stable, and that consumers will make decisions that are consistent with them, given the limitations they face on their time, their money, and the information they have. The economic term for this is "rational utility maximisation". Behavioural economists take a different perspective, based on other assumptions. Building on results from psychological research into human decision making, behavioural economics describe how people sometimes fail to behave in their own best interests, due to such behavioural traits as self-control problems, the making of inappropriate distinctions between gains and losses, and difficulties in choosing among large sets of options.

There are two primary reasons that behavioural economics is relevant to consumer policy. First, the findings of behavioural economists may help to identify areas where government intervention is warranted when the traditional economic models would say it is not. For example, restrictions on the use of defaults (see below) have been justified by arguments rooted in behavioural economics. Second, some of the most robust findings of behavioural economics have implications for designing effective policy interventions. For example, mandatory disclosures are a common policy tool. Behavioural research has shown that how information is presented, or framed, can have dramatic effects on how consumers respond to that information, so policymakers must use care when designing disclosures if they want to achieve certain results. As with any other policy interventions, those grounded in a behavioural model should be carefully evaluated to ensure that they will provide benefits to consumers and that their costs are fully understood.

The remainder of this section focuses on three major areas where behavioural economics has shed light on consumer decision making and identifies areas where the findings of behavioural economics are most relevant to consumer policy.

Choice and complexity

Some decisions require consumers to deal with either very complex products, such as financial instruments, or a bewildering array of choices. In the standard model of information economics, the time and effort required to address challenges are treated as costs. Behavioural researchers have examined in greater depth how persons make decisions in such situations. They have found that consumers adopt relatively simple "rules of thumb", or "heuristics", to make decisions in these situations, that consumers will sometimes quickly decide to ignore certain possible choices, and that consumers will sometimes simply not make a choice. In order to improve decision making in complex situations, governments and other stakeholders have taken measures to simplify comparisons in complex markets (see Box 2.3). The measures both reduce costs (under the standard model), while diminishing the need to rely on decision-making techniques that may prove to be faulty.

It is important to note that consumers use heuristics all the time to make decisions quickly, and in many circumstances this is an efficient way to reach a good decision. Rules of thumb can also lead consumers astray, however. An important example comes from the savings and investment arena, where it has been found that when consumers have several investment options available in an employer-sponsored retirement savings account, many simply divide their investments equally among those options (Benartzi and Thaler, 2001).

Box 2.3. **Mandated information provision and pricing transparency**

Australian phone plan comparisons

PhoneChoice is a free, independent consumer website that compiles the details of hundreds of mobile and fixed-line phone plans in Australia (PhoneChoice, 2004 and PhoneChoice, 2009). Consumers can compare the rates of plans, according to their preferred criteria, to help them choose the plan that best fits their needs, using an online bill calculator. Most companies submit data on their plans to the company, on a voluntary basis. In addition, the company supports a user forum, reports on industry developments and responds to specific inquiries. The site currently records about 50 000 visits per month.

Chilean Internet, television, and telephone comparisons

The Chilean National Consumer Service (SERNAC) runs a website that allows consumers to compare bundles of Internet, television, and/or telephone services, with various combinations of services at different service speed (*www.mibandaancha.cl*) (SERNAC, 2009).

Danish electricity rates

The Danish Energy Regulatory Authority (DERA) has issued a departmental order obligating electricity companies to make information on prices and terms available to the public (Danish Energy Agency, 2009). The information is provided on a website (*www.elpristavlen.dk*) that is hosted by the Danish Energy Association.

French electricity and gas rates and bills

The consumer protection authority, the Direction générale de la concurrence, de la consommation et de la répression des fraudes (DGCCRF), has issued a binding regulation mandating the level of detail that must be made available to consumers in their gas and electricity bills, including a 1-year recap of past power consumption levels, in order to enable date-to-date comparisons (DGCCRF, 2009). In addition, the energy ombudsman (Médiateur National de l'Énergie) has launched a website comparing the rates and other characteristics of all the electricity and gas contracts offered on the French market. Companies submit data on a voluntary basis.

Slovenian electricity usage and rates

The Slovenian National Energy Regulator (NER) introduced an online tool which enables consumers to calculate and monitor their monthly electricity consumption and check the accuracy of their monthly bills (*www.agen-rs.si/sl/*) (Ministry of Economy, 2009). Information on prices of electricity from different network providers is also provided.

Swiss utilities

The Swiss Government operates a number of sites providing comparative information on prices in different areas of the country. The sites include information on waste disposal, sewage and water rates (*www.preisvergleiche.preisueberwacher.admin.ch/?l=1*), electricity (*www.strompreis.elcom.admin.ch/*) and health insurance premiums (*www.bag.admin.ch/themen/krankenversicherung/00261/index.html?lang=fr*) (Federal Consumer Affairs Bureau, 2009).

UK credit card comparisons

In the UK, the Association for Payment Clearing Services (now the UK Payments Administration) introduced a standard Summary Box to make it easier for consumers to understand and compare credit cards. The Summary Box presents up front at-a-glance key information such as the annual percentage rate (APR), interest rates, the length of interest-free periods, the minimum repayment and all charges that might be incurred (UK Payments Association, 2009).

Sources: DGCCRF (Direction générale de la concurrence, de la consommation et de la répression des fraudes) (France) (2009), Communication with OECD Secretariat, unpublished; Federal Consumer Affairs Bureau (Switzerland) (2009), Communication with OECD Secretariat, unpublished; Ministry of Economy (Slovenia) (2009), Communication with OECD Secretariat, unpublished; UK Payments Association (2009), *Credit Card Industry Launches New Revised Summary Box to Help Consumers*, 27 August, *www.ukpayments.org.uk/media_centre/press_releases/-/page/688*; Danish Energy Agency (2009), Communication with OECD Secretariat, unpublished; PhoneChoice (2004), *Submission for the Consumer and Financial Literacy Taskforce*, August, *http://cfltaskforce.treasury.gov.au/content/_download/submissions/PhoneChoice.pdf* and *www.phonechoice.com.au/index.cfm?Section=Mobile*; PhoneChoice (2009), Communication with company officials, September; SERNAC (National Consumer Service) (Chile) (2009), Communication with OECD Secretariat, unpublished.

When consumers evaluate and compare products they often consider a limited number of variables, focusing largely on price. In the case of complex products, important variables that may affect the total cost of using a product may be ignored. Firms sometimes complicate matters by deliberately downplaying or even hiding variables other than price that could diminish demand for their product; these are commonly referred to as "shrouded attributes" (Gabaix and Laibson, 2006). For example, customers purchasing computer printers may not be aware of or seek out information about the price of ink, even though ink expenses can be a substantial portion of the cost of owning and operating the printer. Or, they may make a reservation for a low-price hotel room, only to find that they are subject to relatively high charges for basic amenities which other establishments offer at low or no cost. In the shrouded-attribute model, firms compete on the portion of the price that consumers focus on, and charge inflated prices for the "shrouded" attributes. It should be noted that in these cases, consumers who pay attention to shrouded attributes when making decisions may benefit if they are able to avoid paying for the overpriced attributes. That some consumers could benefit while others do not can create a "waterbed" effect (an imbalance), whereby some consumers effectively subsidise others; this effect is discussed in more detail in Chapter 3.

Choice and uncertainty

Consumers often face decisions that involve some level of uncertainty. An obvious example is the purchase of insurance, where consumers pay a fixed amount to help limit costs in the event of an uncertain mishap (such as a car accident or a serious health problem). But there are many other examples. When consumers are choosing among utilities providers, for example, they do not know exactly how much, or exactly when, they will use electricity or telephone services. There is also a great deal of uncertainty about the future when consumers make borrowing, savings, and investing decisions. And, as described above, the performance of many common products is uncertain. This can arise because consumers make choices without perfect information, or because some qualities are inherently uncertain. It is virtually impossible to know, for example, how long a pair of shoes will last before wearing out.

Traditional economic models assume that when faced with a choice with uncertain outcomes, consumers evaluate possible outcomes, weigh them according to their probability and make the choice with the highest expected benefit (that is, consumers "maximise expected utility"). These models allow consumers to prefer certainty to uncertainty, while assuming that consumers will evaluate risky decisions in a consistent manner.

Behavioural researchers have identified a number of areas where consumers do not act in line with the assumptions underlying the traditional model. The most formal attempt to integrate these departures into a choice model is usually called "prospect theory" or "reference dependent loss aversion" (Kahneman and Tversky, 1979). This model argues that consumers:

- Evaluate possible outcomes relative to a "reference point," usually thought of as some *status quo*.
- Feel the pain of losses from that reference point more than they feel the pleasure of gains.
- Are willing to take gambles to avoid big losses but are not willing to take similar gambles to achieve big gains.

One example of behaviour that may be explained by prospect theory is the tendency for investors to hold on to stocks that have lost value for prolonged periods (possibly in an attempt to avoid feeling the loss associated with selling at the lower price), while quickly cashing in on appreciating stocks (2000).

A feature of prospect theory is that the reference point is very important to how consumers evaluate possible outcomes. This can limit the usefulness of the theory as a tool for predicting consumer behaviour, as an observer may not know the reference point and therefore may have a hard time predicting how consumers will make decisions. It does, however, provide some help to those who wish to influence consumers' choices. If a seller, or a government policy maker, can successfully induce consumers to consider a choice from a reference point set by the seller or policy maker, they can have a large influence on the choice consumers make.

Prospect theory also notes inconsistencies in the way that consumers evaluate probabilities. Consumers sometimes pay a great deal more to go from facing a very small risk to facing no risk at all than they would pay for a similar reduction in risk that still leaves them facing a small risk.

Another behavioural trait relating to uncertainty that has been observed in some settings is over-confidence. Consumers sometimes appear to behave as if they think that they are more likely to experience an outcome from some action that is better than the average expected outcome. For example, if told that 20% of customers benefit from a particular product, they would tend to believe that they are likely to be part of that 20%.

Inter-temporal decision making and present bias

Consumers face constant trade-offs between consuming today and consuming in the future; moreover, the situation that they face today depends in many ways on the choices they made in the past. The standard economic model of inter-temporal decision making assumes that consumers value current and future consumption differently, and that they do so by discounting the future. It is further assumed that the discounting is consistent between two points in time, regardless of when the consumer is making the evaluation.

In contrast to the traditional model, however, many consumers appear to treat the present as if it were special and more important than other time periods. These consumers might, for example, accept a payment of USD 100 today instead of USD 150 in one year's time. The discount rate for one year would thus be 33%. On the other hand, they might be willing to settle for a payment of USD 100 in one year's time, as opposed to USD 110 in two year's time, which implies a lower discount rate for one year of 9%. This phenomenon is referred to as "hyperbolic discounting" (Laibson, 1997). Such discounting has significant implications for consumers, as it means that they could well make different decisions depending on when they make those decisions; as a result, they could make decisions today that they would regret in the future. This could have important implications for consumer remedies and information campaigns.

People most affected by hyperbolic discounting will arguably take on greater amounts of debt than others. They are also likely to have self-control problems, such as procrastination, and will exhibit inertia when changing the status quo requires effort in the present to gain larger benefits gradually in the future.

Implications for consumer policy

The findings coming out of the behavioural economics field do not fundamentally alter the manner in which consumer policy issues are examined. The standard economic model still provides the basic structure for evaluating markets and considering potential policy interventions. There are several insights from behavioural work, however, that can help governments make and implement more effective policies.

Information interventions

One type of policy intervention is to provide consumers with more information about a product or service, either directly or by mandating that sellers disclose information. In order to be effective, these types of interventions must be thought through carefully. For reasons that can be attributed either to traditional models of costly information search and processing or to behavioural models, more information is not always better for consumers. Additional information may distract consumers from more important factors, and it may overwhelm consumers and cause them to make decisions with less reflection rather than more. For example, in the United States, recently developed food-nutrition labels actually provide *less* information than previous labels, as a way of encouraging consumers to focus on the most important contents of food (USFTC, 2008). In the financial area, regulation requires US credit card companies to present key information to consumers in a table, in prescribed type sizes (USFRB, 2000). Many countries have adopted very short, and often graphic, health warnings for cigarettes.

Default setting and framing

The details of how a choice or disclosure is presented to consumers (*i.e.* how the decision they face is “framed”) can have a significant impact on what consumers choose to do. Framing a decision a certain way may induce consumers to evaluate the choice from a particular reference point, and see the outcomes of their choices as either “gains” or “losses”. Presenting one choice as a default option can induce consumers to choose that option. This may be because the default becomes the reference point, it may be because consumers perceive choosing the default as a way to avoid the costs of making a decision, or it may be because present-biased people procrastinate on changing or may assume that whoever set the default knows more about what is the right decision than they do.

Two clear examples of the importance of default setting in the context of consumer decision making are the adoption of “no-fault” automobile insurance and the sale of reserved seats on trains. In the 1990s, two American states, New Jersey and Pennsylvania, adopted new automobile insurance regulation that gave drivers the option of purchasing lower-cost insurance that limited their rights to sue in the case of an accident (“no-fault” insurance). In New Jersey, the lower-cost, “no-fault”, policy was the default, while in Pennsylvania the higher-cost option was the default. Some 70% of Pennsylvania drivers purchased the higher-cost policies, *versus* only 21% of New Jersey drivers (Johnson, *et al.* 1993). Even more dramatically, a national railway in Europe found that the share of online reservations that included a reserved seat rose by five-fold when the default was changed from “no reserved seat” to a more expensive “reserved seat” (Goldstein *et al.*, 2008). Finally, recent research on retirement savings in four countries shows how defaults influence retirement savings outcomes at all stages of the savings lifecycle, including savings plan participation, savings rates, asset allocation, and post-retirement savings distributions (Beshears *et al.*, 2006).

In response to concerns about the role of defaults, the European Commission has proposed a Directive on consumer rights which includes a clause limiting the use of default options in consumer contracts (European Commission, 2008). Specifically, sellers would be required to obtain express consent from consumers for any payment that is in addition to the payment for the main contractual obligation, and could not rely on default options that require buyers to reject those options to avoid payment.

As discussed above, consumers sometimes "fail to choose" when presented with a large number of possible choices. This will leave them with the default option or status quo. It should be noted that, in most cases, private sellers want to avoid this situation, as consumers who fail to choose are consumers who fail to buy. For government policy makers, however, this means that if a programme's goal is for consumers to make their own choices, the choices must be presented in a way that is manageable, both in terms of the number of choices and the way information is presented.

Summary

The economics of consumer policy focuses on identifying situations where markets, even competitive markets, fail to produce good outcomes for consumers, and where government intervention can improve those outcomes. A primary source of market failures addressed by consumer policy is imperfect information, and therefore the economics of information is central to the economics of consumer policy. One important finding from this area is that deception, and therefore consumer detriment, is most likely to occur with products that cannot be evaluated by consumers prior to being purchased, if ever, and that are purchased infrequently. In contrast, products that consumers can evaluate before purchase, or that consumers can evaluate post-purchase and purchase frequently, are less likely to be the subject of deceptive claims.

Work done in the field of behavioural economics identifies a number of important ways that consumer behaviour may deviate from the assumptions underlying the traditional neoclassical market model. The work enriches understanding of consumer behaviour in key areas, providing an important complement to the neoclassical model. In certain areas, such as designing information disclosures or evaluating situations involving default-setting, behavioural economics may provide important insights that could improve policy formulation. As behavioural economics continues to mature, there may be further implications for consumer policy; it is, therefore, an area that merits continued attention.

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Chapter 3

Identifying and Analysing Consumer Market Problems

The purpose of this chapter is to i) *define what consumer detriment is;* ii) *indicate how markets can be screened to detect problems where detriment may be present; and* iii) *provide suggestions on how market problems can be analysed and how detriment can be measured. Screening, analysis and measurement are essential parts of the policy making framework presented in Chapter 5, as they provide the basis on which decisions to introduce a policy measure should be made. They can also play an important role in helping to determine which of the policy measures described in Chapter 4 might be most effective in addressing a problem.*

Introduction

As discussed in Chapter 2, if markets functioned perfectly, fully informed consumers would make rational choices that were consistent with their preferences in fully competitive markets. In reality, such conditions are rarely achieved. Many firms enjoy a degree of market power; many products are not homogeneous; and information available to consumers, and their ability to act on it (particularly if it is highly technical), is limited. As a result, market outcomes for consumers can fall short of their potential, resulting in losses in consumer welfare. Such losses are referred to as consumer detriment. One of the principal roles of competition and consumer authorities is to screen markets to detect instances where detriment is occurring and where actions to help reduce it may be justified and feasible.

What is consumer detriment?

Consumers will incur a loss in economic welfare if they are misled into making purchases of goods and services which they would not otherwise have made or if they pay more for purchases than they would if they had been better informed. As noted above, these losses are commonly referred to as consumer detriment. The detriment may be apparent immediately if a product is obviously faulty. Alternatively, detriment may take time to emerge (experience goods) and in some instances may never emerge as far as the consumer is aware (credence goods). As a result, identifying and measuring detriment can be problematic. Detriment, it should be emphasised, is an outcome; the causes are not always apparent. Understanding what the causes are is essential for determining which of the policy tools described in Chapter 4 should be considered when deciding on a course of action (Chapter 5).

Consumer detriment therefore takes various forms. It can be: structural or personal; apparent to consumers or hidden; financial or non-financial. The effects on consumers are often variable, affecting certain societal groups more heavily than others. In some instances, it can have a "waterbed" effect (see later discussion), where an action taken by a firm benefits some consumers, while giving rise to detriment for others.

Structural and personal detriment

In a major report for the European Commission, Europe Economics distinguishes between detriment arising from market conditions which limit choice and/or result in inflated prices for a product (structural detriment) and detriment arising from the negative outcomes that individual consumers experience once a purchase has been made, relative to some benchmark such as reasonable expectations (personal detriment) (Europe Economics, 2007a).*

Common sources of structural detriment include anti-competitive business practices (such as cartels or collusion), and government measures that distort competition in ways that affect consumers negatively. Market failures that traditionally fall under the umbrella of consumer protection (for example, deceptive advertising that increases demand for a product) also cause structural detriment. Personal detriment, on the other hand, focuses on individual experiences. The disappointment and the monetary and time losses that a consumer experiences after purchasing and using a weight loss product that fails to deliver on its advertised promise are examples of such detriment. In addition to money and time costs, personal detriment includes negative psychological impacts such as stress. The situations in which personal detriment can arise include *i)* scams and fraud; *ii)* misleading advertising; *iii)* unfair marketing practices; *iv)* unfair contract terms; *v)* sales of unsafe products; and *vi)* inadequate redress in response to complaints.

The distinction between structural and personal detriment can be seen by considering a market in which a product poses risks for 5% of users. Provided consumers are fully informed about the risks, there would arguably be no market failure and therefore no structural detriment. There would, however, be personal detriment to those for whom the downside risk materialised.

"Hidden" detriment

Sometimes detriment is hidden. It would occur, for example, if a consumer agreed to an unnecessary operation or car repair on the recommendation of a specialist believing that it was legitimate. Credence goods (discussed in Chapter 2) are particularly susceptible to such detriment. Consumers who are unaware that there are quality differences among products may not be aware that they are being underserved by an existing merchant; this is another form of hidden detriment.

Challenges in evaluating hidden detriment are also complicated when they involve time-sensitive products. Many individuals fail to save enough for retirement due to their present-oriented bias, thereby discounting the risk this choice entails of having insufficient retirement savings. The detriment resulting from their short-sightedness may only become apparent decades later. Reassessing choices over time can also be problematic. For example, consumers may decide to purchase an attractively priced, lower-quality product; they may come to regret the decision later on and then rationalise their mistake by subsequently claiming that the product was substandard, when in fact the product may have performed as promised. This is one of the reasons that the results of consumer surveys (discussed below) need to be treated carefully.

Finally, hidden detriment can arise when consumers are loath to acknowledge that they have been harmed and employ psychological defence mechanisms to suppress the idea that they have made a poor choice. In research conducted by the Queensland police in Australia, for example, only 25% of consumers who were victims of a Nigerian Internet scam stopped participating in the fraud when alerted to it by police; some 75% continued to send money (Hay, 2007). In other cases, consumers may be poorly informed and therefore be unaware of detriment (see Box 3.1). Or, in the case of insurance products, they may not realise detriment until they find that their coverage was less than they had believed, resulting in an unexpected loss.

* The report provides formal definitions. Structural detriment compares observed conditions with what would have occurred in the absence of a market or regulatory failure. Personal detriment, on the other hand, is the difference between the value that consumers reasonably expected to get from the product and the value that they actually got from it. The key difference between personal and structural detriment is thus not about the level at which detriment is analysed but what counts as detriment. For the personal detriment, the counterfactual is reasonable expectations (*i.e.* anything that does not meet the reasonable expectations counts as detriment). Structural detriment focuses on welfare loss and hence the relevant comparison is not with reasonable expectations but rather what would have happened in the absence of market or regulatory failure.

Box 3.1. UK payment-protection scheme

Payment-protection insurance in the UK is often sold as an add-on to consumer loans made on automobiles, to credit cards and, in some instances, as an add-on for residential property loans. Such insurance can provide "peace of mind" against the risks of accident, illness, or unemployment that could prevent borrowers from keeping current on monthly payments.

A market study carried out in the United Kingdom estimated the detriment relating to the very high premiums collected for payment-protection insurance relative to the actual claims paid out (UKOFT, 2006a). Payment-protection services are rarely advertised so consumers cannot readily compare prices before buying; the purchase of such insurance usually occurs when they are finalising a loan agreement. Few such insurance policies are sold by third parties not linked to the lenders. Nevertheless, in a survey a majority of UK consumers said they were satisfied with their policies. Yet their recall of the product's features was poor. Only 12% of consumers claimed they had compared alternative protection plans before their purchase.* The very low level of claims paid relative to premiums collected suggested substantial structural detriment in the form of inflated prices for the insurance. Consumers who were sold inappropriate insurance policies also suffered personal detriment.

* Survey results need to be treated with caution. Consumers were not aware they had paid too much or that the coverage might not be as extensive as they thought.

Source: UKOFT (2006a), *Payment Protection Insurance: Report on the Market Study and Proposed Decision to Make a Market Investigation* Reference, OFT869, UKOFT, *www.oft.gov.uk/shared_oft/reports/financial_products/oft869.pdf.*

Research into other markets where consumers may not recognise that detriment is present includes the market for energy services. An OECD energy study found that 32% of consumers changed their energy plans for ones that ended up charging them more for the equivalent service (OECD, 2006 and Ofgem, 2008). Other examples include a study of the South African financial services market, where consumers may have unknowingly taken out more expensive loans because of the way an offer was presented (Bertrand *et al.*, 2008), and a UK study of Internet shopping, where consumers' lack of ability to conduct online comparison shopping resulted in a high level of missed savings (UKOFT, 2007).

Financial and non-financial detriment

Table 3.1 presents the different types of financial and non-financial detriment. On the financial side, it includes effects on prices as well as costs that are incurred when products do not meet expectations. On the non-financial side, it includes psychological effects as well as the time and inconvenience associated with resolving a problem.

Psychological detriment can result from problems with products or services and/or from subsequent difficulties trying to obtain redress. There are short-term aspects (such as frustration or anger) as well as longer-term considerations when fundamental changes occur in consumer behaviour (such as changes in how purchases are made). Low-level or short-lived negative effects can be important if they affect a large number of consumers, whereas more serious emotional impacts can be important even if fewer consumers are affected. Long-term psychological detriment arises when a consumer's overall approach to consumption changes in harmful ways due to repeated instances of detriment or possibly a single serious instance of detriment. For instance, a consumer may avoid certain products or become resigned to negative outcomes, taking little care to avoid detriment or to seek redress when problems occur.

Table 3.1. **Types of financial and non-financial detriment**

Financial detriment
Inflated prices
Cost of flawed products (*e.g.* insurance policies that, because of misleading information or misleading omissions, fail to deliver expected coverage)
Cost of repairing or replacing product
Administrative and travel costs incurred resolving the problem (*e.g.* telephone costs, petrol)
Reduction in value of asset (*e.g.* poor house repairs reducing value of house)
Cost of expert advice or assistance (*e.g.* legal costs)
Lost earnings (*e.g.* due to loss of time or injury)
Damage to other property (*e.g.* electrical fault causing house fire)
Non-financial detriment
Restricted choice (which can also have financial implications)
Psychological detriment (*e.g.* stress, anger, embarrassment)
Compromise of personal information or privacy
Time required to address problems
Inconvenience
Injury or adverse effect on health

Source: Adapted from Europe Economics (2007b), *Assessing the Impact of Policy on Consumer Detriment: A Handbook for the European Commission*, Europe Economics, London.

Vulnerable and disadvantaged consumers

All consumers can be vulnerable to detriment. They are, however, likely to be more susceptible at some times than others. Vulnerability may be due to a consumer's psychological or financial state or the nature of a transaction. Service providers might, for example, be in good position to prey upon a grieving person's sense of remorse and guilt to sell a higher-priced or overpriced product that the consumer would normally pass up. Moreover, research indicates that consumers may also be vulnerable by reasons of the place or context in which purchases take place. Vulnerability was found particularly high, for example, in situations involving door-to-door sales (UKOFT, 2004a), and in a case involving payment protection insurance, when consumers were surprised with a last-minute offer of an insurance option in a transaction at the time a contract was being concluded (UKOFT, 2006a).

Some consumers may be susceptible to detriment on a persistent basis. They are sometimes referred to as disadvantaged consumers (Australia Consumer Affairs Victoria, 2004). An immigrant who has not sufficiently mastered the language of an adopted country, for example, may not be in position to make well-informed, rational decisions for many products or services on an ongoing basis. Examples of disadvantaged groups include those with the following characteristics:

- Targets of discrimination (*e.g.* racial, ethnic or gender).
- Low education or literacy levels.
- Language limitations. This concerns an individual's inability to speak, read, or write in the language of normal communication in a given country.
- Immigrants and other outsiders who do not have local knowledge (*e.g.* about consumer rights) and therefore may not be able to function effectively in the marketplace.
- Impaired vision, hearing, or mobility.
- Learning difficulties or cognitive impairment, such as dementia.
- Restricted mobility. Access to markets may be limited to persons without adequate transport.

- Restricted means of communication. This concerns lack of access to telephone or, for example, Internet services.
- Geographical remoteness.
- Unemployment.
- Low income. Low income is frequently correlated with other types of vulnerability, such as being unemployed, retired, not working in order to care for a child or sick relative, or being otherwise unable to work. Low income could increase the impact of adverse events, as could limited savings or wealth.

Caution must be used in defining and over-generalising vulnerable and disadvantaged groups. The elderly, for example, have traditionally been cited as a group that is susceptible to predatory practices and a group that is not proficient in using Internet and related technologies. While this may be true to some extent, it is also true that there is a sizeable senior population which is as capable, or more capable in many regards, than younger persons, in no small part because of their years of experience as consumers. They might be quite capable of defending themselves from predatory practices and absorbing and using emerging information and communication technologies.

Governments often give special attention to situations which affect vulnerable and disadvantaged consumers, sometimes introducing targeted measures to address problems. In Australia, for example, the Ministerial Council on Energy developed a national framework for energy community service obligations which can be used to facilitate the delivery of energy to vulnerable groups of consumers (Ministerial Council on Energy, undated).

Remedies that provide benefits to vulnerable consumers need to be carefully designed so as not to have unintended and unwanted effects on more other consumers. They could, for instance, result in undesirable restrictions and/or limitations on the choice of products in a market. The results from a consumer empowerment survey which was conducted by the Commission in February and March 2010 will shed light on knowledge, skills and assertiveness of European consumers. The survey addresses the overall population, but also focuses on those groups of consumers who are potentially more disadvantaged, such as those with low education, financial problems, unemployment or language limitations.

"Waterbed" effect

While there may be evidence of detriment in a market, it might not affect all consumers. Moreover the detriment to some consumers may obscure the presence of a benefit to others; this is sometimes referred to as a waterbed effect. The waterbed effect occurs in markets where better terms or conditions for some consumers result in a worsening of outcomes for others. Only the latter are likely to be reflected in consumer complaints. The effect was noted in a UK market investigation into payment-protection insurance, where the high prices for the insurance were offset in part by lower prices for the associated consumer loan (UKCC, 2009). Borrowers who did not purchase the protection (presumably wealthier individuals) benefited, while those who purchased the insurance (presumably lower-income individuals) were adversely affected. Such variability in effects should be taken into account when analysing problems, especially when those experiencing the detriment are predominantly disadvantaged consumers.

What are the signs of detriment?

In some instances detriment can be relatively easy to detect. Defective or unsafe products which result in physical injury or tainted food which results in illness are cases in point. In many instances, however, detriment may not be readily apparent; in these cases authorities need to look for signs of possible detriment, and then examine the situations more closely to see whether detriment is actually present. Box 3.2 provides a list of some of the more common signs of possible detriment and some of the market conditions where the likelihood of detriment may be relatively high.

Box 3.2. **Detecting detriment: Signs and situations**

- *Complaints*. Data on consumer complaints have been described as the "gold standard" of indicators. The willingness of consumer to complain, however, varies between countries and sectors depending on traditions in consumer protection and perceptions of the likelihood of success, so complaint levels need to be interpreted in conjunction with other indicators.
- *Consumer dissatisfaction*. Consumer dissatisfaction with product quality, choice, and after-sales service may point to problems that otherwise difficult to measure objectively.
- *Significant price dispersion* for seemingly similar products or services (locally, regionally, nationally or internationally).
- *Goods or services for which search or switching rates are low and/or switching costs are high*. Consumers who do not switch products because of the charges they would incur in cancelling an existing contract, for example, may experience detriment. If switching costs are significant, especially in relation to the price of the service, some consumers will be deterred from changing their supplying firm when the market can offer a better deal.
- *Sales of defective or unsafe products*. The safety of consumer products and services is currently measured through evidence of accidents and injuries, as well as through products notified as dangerous.
- Sellers providing *inadequate redress* in response to complaints.
- The *existence of commission payments*, particularly from upstream firms to retailers or advisers. Such commissions could, for example, influence the recommendations being made by advisers, in ways that were not in the best interests of consumers.
- *Complex goods or services*. Consumers may find it difficult to compare products that are complex, which could increase the chance that they make sub-optimal decisions.
- *Goods and services which are either purchased infrequently or which have experience or credence characteristics* (*i.e.* consumers cannot assess the quality of the product even after they have consumed it).

Other signs can include scams and fraud, misleading advertising, unfair marketing practices and unfair contract terms.

Source: Adapted from Europe Economics (2007a), *An Analysis of the Issue of Consumer Detriment and the Most Appropriate Methodologies to Estimate It: Final Report for DG SANCO*, Europe Economics, London, *www.ec.europa.eu/consumers/strategy/docs/study_consumer_detriment.pdf*.

How can markets be screened to detect problems where consumer detriment may exist?

The preceding section describes how market failures and problems that consumers experience with goods and services that do not meet their expectations can result in reduced consumer welfare. One of the principal roles of authorities responsible for consumer policy is to screen markets on a continuous basis to identify areas where market failures and personal detriment have reached levels that may require government action. As discussed below, a number of techniques can be used to uncover problems, ranging from assessments of complaints data to consumer surveys and independent research. Identifying areas where problems are apparent rarely, however, provides a sufficient basis for taking action. More in-depth analysis (described in Section III) is often required in order to develop insights into the magnitude and scope of a problem and the nature and level of any detriment.

Sources of information

A robust information base is essential to the effective monitoring of markets. It can rely on information that is being developed by parties other than the consumer authority, as well as information developed by the authority itself. The principal sources of such information include:

- Feedback from consumers, consumer organisations, firms or other stakeholders (in the form of complaints, petitions, and related notifications).
- Research carried out by consumer and other government authorities, consumer organisations, consulting groups, or other stakeholders.
- Reports, research, and related information available from business firms.
- The media.

In addition to domestic sources, information being developed outside a country could in many instances be relevant and helpful in monitoring markets.

Feedback

Consumers, businesses and other stakeholders can notify and inform governments about problems in markets through feedback, which can take various forms.

Open solicitations. Open invitations for interested parties to suggest areas which warrant consideration by consumer authorities can be made. These can occur through established consultative processes with stakeholders, or more informally. UK authorities, for example, have made a form available on the Internet through which such parties can suggest areas for examination (UKOFT, undated). The form requests information on *i)* the market segment to be considered; *ii)* the nature of the problem facing consumers; *iii)* reasons that the problem and the market are important; *iv)* the issue of whether laws or regulations are part of the problem; and *v)* supporting information.

Complaints. In most countries formal complaint processes have been established, through which individuals, groups of individuals, or other interested parties can call problems to the attention of consumer authorities. Table 3.2 provides examples of some of the initiatives that have taken place in the OECD area. Most enable individuals to file complaints either by phone, letter or complaint forms that are provided online. Australia (see ACCC, 2009), Portugal (see *www.consumidor.pt*) and the United Kingdom (see UKOFT, 2008, UKOFT, 2009a and *www.consumerdirect.gov.uk*) have also developed related initiatives.

Table 3.2. **Examples of consumer complaint initiatives**

	Description
Belgium	In Belgium any party can file a complaint relating to Belgian economic and consumer protection legislation with the Federal Public Service Economy. This can be done online, by phone, fax or letter. Complainants receive advice and benefit from an enforcement action. Alternative dispute resolution mechanisms are also available for several business sectors. The Directorate General of Enforcement and Mediation reports that 15 053 consumer complaints were received in 2008, leading to 2 215 formal warnings to businesses (FPS Economy, 2009).
Chile	Chile has a single complaint platform (SERNAC Facilita) that is administered by the National Consumer Service. This platform co-ordinates with seven other government authorities that have responsibility for consumer issues, as well as with most of the country's city halls. SERNAC Facilita registers both questions and complaints; some 460 000 records were generated in 2008. Information from this database is used to make policy and enforcement adjustments, as well as to direct education and outreach activities (SERNAC, 2009).
Denmark	The Danish Government maintains a Consumer Hotline which provides consumers with information and advice (see *www.forbrug.dk/fs/kontakt/rdgivning/hotline*). The Hotline helps around 35 000 consumers every year to resolve problems. Studies show that many retail employees are not familiar with the Danish Sale of Goods Act, which is the basic legislation governing commercial transactions. The National Consumer Agency which maintains the Consumer Hotline is therefore expanding the hotline to include retail employees as well (National Consumer Agency, 2010). Problems that develop into formal complaints are addressed by a Complaint Board, which handles 2 000 to 3 000 cases annually.
Finland	In Finland, the Consumer Advisory Service provides consumers and businesses with information on their rights and obligations, and also provides mediation services for disputes between consumers and businesses. A consumer advisor may be contacted by phone through a single national phone number. The State took over the function of this service from municipalities at the beginning of 2009, and received over 6 000 calls within the first month (Finnish Consumer Agency Ombudsman, 2009). The revamped Consumer Advisory Service is designed to provide for a more uniform, centralised data-system that will better cater to statistical needs and will allow for improved monitoring of outcomes for Finnish consumers that experience problems in the marketplace.
France	Consumers can file complaints with national or local consumer organisations; some 17 of the national organisations are linked with the General Directorate for Competition Policy, Consumer Affairs and Fraud Control, which has developed a consumer complaints barometer (see below for details) (DGCCRF, 2009). In addition, some firms have set up dispute handling mechanisms and public authorities and/or firms have set up independent sectoral ombudsmen.
Korea	The Korea Consumer Agency (KCA) deals with consumer counselling, redress, and dispute settlement via "Sobinet", an integrated information processing system for consumer complaints (Korea Consumer Agency, 2009). In 2008, the KCA dealt with about 280 000 cases of consumer complaints, over 19 000 cases of consumer redress, and about 1 400 cases of dispute settlement. These cases summarised in an annual report and are available to the public via the KCA webpage (*www.kca.go.kr*).
Sweden	The National Board for Consumer Complaints (ARN) is a public authority that functions similar to a court. The primary task of the ARN is to impartially settle disputes that are filed by a consumer against a business. While the Board's recommendation is not legally binding, the majority of companies nonetheless comply with the outcome. This process is free of charge to consumers (National Board for Consumer Complaints, 2009).
Switzerland	The Federal Consumer Affairs Bureau (FCAB) maintains a consumer hotline which provides consumers with information and advice. Consumers can also contact the FCAB through an electronic information form. The FCAB responds to questions where it is competent or forwards the questions towards the competent authorities and ensures follow-up (FCAB, 2009).
United States	The Federal Trade Commission (FTC) systematically collects and analyses consumer complaint data in its Consumer Response Center (CRC). CRC counsellors respond to consumer complaints and inquiries received by telephone, mail and e-mail. FTC staff uses CRC data to spot trends and to target law enforcement and education efforts as well as measure the impact of activities related to the FTC's consumer protection mission. The FTC also sponsors and operates Consumer Sentinel – a secure Internet website – which law enforcement agencies use to access the database (see USFTC, 2009a and *www.ftc.gov/sentinel/index.shtm*).

Source: DGCCRF (Direction générale de la concurrence, de la consommation et de la répression des fraudes) (France) (2009), Communication with OECD Secretariat, unpublished; FPS Economy, SMEs, Self-employed and Energy (FPS Economy) (Belgium) (2009), *Rapport annuel 2008: Politique en matière de surveillance du marché*, *http://economie.fgov.be/fr/binaries/annual_report_E7_2008_fr_tcm326-76972.pdf*; FCAB (Federal Consumer Affairs Bureau) (Switzerland) (2009), Communication with OECD Secretariat, unpublished; Finnish Consumer Agency Ombudsman (2009), *National Consumer Advisory Services Flooded with Consumers from the Start*, Press Release, 22 January, *www.kuluttajavirasto.fi/Page/d1bc11a7-7371-4140-8681-eb744f0400c8.aspx?groupId=1c5dad8d-0b76-43d3-8440-6480df10ed3d&announcementId=9c94a017-907a-46d7-85ad-; fd7a4b794e4d* ;FPS Economy, SMEs, Self-employed and Energy (FPS Economy) (Belgium) (2009), *Rapport annuel 2008 : Politique en matière de surveillance du marché*, *http://economie.fgov.be/fr/binaries/annual_report_E7_2008_fr_tcm326-76972.pdf*; Korea Consumer Agency (2009), Communication with OECD Secretariat, unpublished; National Consumer Agency (Denmark) (2010), Communication with the OECD Secretariat, unpublished; SERNAC (National Consumer Service) (Chile) (2009), Communication with OECD Secretariat, unpublished; National Board for Consumer Complaints (Sweden) (2009), ARN – The National Board for Consumer Complaints, *www.arn.se/Other-languages/English/*; USFTC (2009a), *Consumer Sentinel Network Data Book for January – December 2008*, *www.ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2008.pdf*; USFTC (United States Federal Trade Commission) (2009a), *Consumer Sentinel Network Data Book for January – December 2008*, *www.ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2008.pdf*.

The complaints data are generally shared among authorities with responsibilities for consumer protection, and the information is made available, at least in summary form, to the public. The information is sometimes expanded through follow-up interviews with a sample of complainants. This enables the authorities to gather additional information about the consumers, their complaint, the usefulness of the advice they received, and any related issues.

While providing a rich source of intelligence for authorities to detect market problems, the limitations of complaints data must be kept in mind:

- The complaints may not be valid.
- There will be no complaints for problems of which consumers are unaware.
- Those who complain will represent only a subset of consumers who considered it worth their time and effort to lodge a complaint. The number of complaints may depend, for instance, on the financial impact of the problems being considered (*i.e.* consumers may be less likely to complain about low value transactions).
- The complaints will be limited to consumers who know where and how to make a complaint.

The fact that the number of people filing complaints is limited (point three above) may have important implications for policy makers as firms might provide redress only to individuals who are proactive about fixing a problem, leaving systemic problems present in a given market unresolved. Finally, some "complaints" data are gathered from authorities that provide advice to consumers before making a purchase or are getting advice that helps them solve a problem. Ideally, requests for pre-purchase advice will be treated separately from complaints relating to problems after purchase. Since advisory services are primarily set up to help consumers, not collect data, there are limits on the information that can be captured about these consumers.

Research

Consumer authorities can draw on research carried out by consumer groups, businesses, academia, and consulting firms to screen markets, and/or they can themselves undertake research. Such research can be general or it can be tailored to address specific needs or issues. Work can be carried out on the basis of existing information, or it could be supported by *i)* surveys that are conducted with consumers and/or businesses; *ii)* focus groups; or *iii)* workshops.

With respect to broad research, authorities sometimes undertake horizon-scanning exercises which aim at identifying issues that are likely to emerge in coming years. In 2006, for example, the US Federal Trade Commission organised hearings on *Protecting Consumers in the Next Tech-ade* that brought together experts from the business community, government, and technology sectors, consumer advocates, academics and law-enforcement officials. The conference explored the ways in which convergence and the globalisation of commerce were affecting consumer protection, examined changes that had occurred in marketing and technology, and garnered experts' views on the coming challenges and opportunities for consumers, businesses, and governmental bodies (USFTC, 2009).

Surveys

There are many types of consumer surveys that can be used to develop information on market performance. Firms widely use satisfaction/dissatisfaction surveys, for example, to evaluate consumer attitudes about their goods and services. Similar surveys can be conducted by governments. Such surveys can:

- *Give a view of consumers' experiences in a market*. While this seems very basic, it is often not taken into account because current market monitoring to a large degree focuses on "harder" facts such as the number of court cases, formal complaints, or complaints as a proportion of the number of units sold. Gaining an understanding of the consumer experience is invaluable when trying to fit policy initiatives to the actual needs of the population.
- *Give a good understanding of how frequent and widespread a problem is*. This is vital for assessing the need for policy initiatives.
- *To the extent that socio-economic data are captured, allow policy makers to identify whether there are particular groups that have specific problems*. Such information is important as it can have implications for the types of policy initiatives that are relevant.

Surveys do, however, have limitations. For example, surveys are based on the perceptions of the respondents and, as with complaints, cannot detect problems of which survey respondents are unaware. Moreover, a low satisfaction rating for one market does not in itself prove objectively that a market is any worse than another, better-rated market. However, low satisfaction or dissatisfaction ratings over a long period for particular markets would warrant a closer look to determine the underlying reasons for widespread dissatisfaction.

Examples of satisfaction surveys include ones carried out in Denmark, the Netherlands, Norway, Spain, the United Kingdom, the European Commission, Egypt and Australia. In Denmark, the survey is conducted annually. Respondents are asked to provide their views on consumer conditions in various areas, on a scale of zero to 10. The survey generates data in each of 57 markets, from about 300 responses per market (National Consumer Agency, 2009a). The surveys carried out by Norway (Berg, 2008) and the UK (Ipsos/MORI, 2008) are similarly structured. The European Commission carried out in-depth satisfaction surveys that collected information on about 35 indicators (see *http://ec.europa.eu/consumers/strategy/cons_satisfaction_en.htm*). Two satisfaction surveys have been carried out, one on services (European Commission, 2007) and another on the retail distribution of goods (European Commission, 2009a). They provide indicators which can be used in a model to assess the level of consumer satisfaction in different markets, as well as the relative importance of indicators in determining overall consumer satisfaction. This enables policies to be targeted to specific issues where consumers are dissatisfied and where these issues are particularly important to them. In addition, in 2010, a new study will be available screening 50 consumer markets in 27 member states (plus Norway) for potential market malfunctioning; the intention is to carry out this assessment on an annual basis.

In 2009, Egypt initiated a consumer satisfaction survey on household appliances, a market sector accounting for more than 40% of total consumer complaints. The survey included 12 indicators (including price, after-sale service and access to a complaint-handling mechanism) and also collected socio-demographic information. The results of the survey will be used to make recommendations with respect to enforcement and consumer awareness initiatives (Consumer Protection Agency, 2009). Finally, in 2009, Australia published a national study on consumer and trader experiences in relation to statutory warranties and refunds for three sectors: white goods, electronic goods and mobile phones. A quantitative consumer survey carried out in support of the study revealed that: consumer problems with these goods were extensive: 8.5 million consumers encountered a faulty product in a two-year time frame. These problems resulted in consumer detriment averaging AUD 236 in direct costs plus the personal time involved in addressing the claim. The study also revealed that awareness of consumer rights is very low. The findings will be used to develop a national education and information programme on warranties and refunds (National Education and Information Advisory Taskforce, 2009).

Japan has also been active on this front. It prepared a *White Paper on the National Lifestyle* in 2008 that examines the role of consumers in the economy and what can be done to meet the challenges that they are facing. The analysis draws together information from a number of sources, including a national survey carried out by the country's Cabinet Office on lifestyle preferences (Cabinet Office of Japan, 2008).

Another type of survey is one that focuses on a particular issue. The USFTC, for example, conducted in-depth surveys on consumer fraud in 2003 and 2005 to help determine: *i)* the top problems confronting consumers; *ii)* the most likely victims; *iii)* the manners in which the fraud took place; and *iv)* how the fraudulent products were purchased (USFTC, 2007). A similar survey of consumer fraud (scams) was undertaken in the UK (UKOFT, 2006b). In 2008, the European Commission carried out a survey to investigate consumer's experience with switching service providers across 11 sectors. The study analysed other issues such as the ability of consumers to compare offers from competing suppliers and reported price levels. The survey found that the switching rate over a two-year period ranged from a high of 25% for car insurance to a low of 7% for gas supply services. The survey also found, on average across the 11 sectors, that 30% of consumers had at least some difficulties comparing offers from different service providers (European Commission, 2009b). Finally, the Korea Fair Trade Commission and the Korea Consumer Agency have been conducting a survey of prices for major necessities in domestic and selected foreign markets since 2008, with a view towards promoting market transparency and competition (Korea Consumer Agency, 2009).

When surveys are used, they need to be carefully constructed with clear objectives for the level of detail in information to be collected. Moreover, as indicated above, they have important limitations:

- *Accuracy and detail*. It is difficult to accurately measure the frequency or severity of relatively rare events. For example, if only 1% of consumers are the victims of a particular fraudulent practice, a very large overall sample would be required to find enough victims for a useful survey. Surveys would be particularly ineffective in the case of credence goods (described earlier), where it is difficult for consumers to evaluate products sometimes even after they have been used.
- *Interpretation*. Even if detectable trends can be tracked over time, establishing cause and effect relationships can be difficult. Observed changes might be influenced by changes in the mix or volume of products purchased and/or by changing expectations of service levels and quality. Increasing consumer awareness can generate increased volumes of complaints.

Focus groups

Consumer focus groups can provide important insights into the nature and scope of perceived detriment. Such groups can explore individual experiences with, for example, unsatisfactory products, scams, and dubious sales practices, providing opportunities for in depth discussions (see Box 3.3). The results of such meetings can be instructive not only for consumer authorities, but also for businesses as they could highlight areas which they may want to address to improve their competitiveness.

Box 3.3. **UK focus group on scams**

The project on scams mentioned above (UKOFT, 2006b) used focus groups to develop needed information. The research had four parts, including an exploratory qualitative phase and then quantification of the findings. The four parts were as follows: *i)* focus-group discussions, *ii)* in-depth interviews, *iii)* omnibus surveys and iv) computer-aided telephone interviews. The purpose of the focus groups was to talk to members of the public who had been targeted by scammers about their awareness and experience with scams. Researchers wanted to better understand what victims thought a "scam" was and what words they would use to describe it. The findings were then used to revise and improve the questions placed on the subsequent omnibus surveys.

Focus groups were also used in a research project on consumer detriment (UKOFT, 2006c). The in-depth discussions with 11 groups with different demographic characteristics helped to identify those consumers who would be most likely to experience different types of detriment, and those who would be least likely.

Sources: UKOFT (United Kingdom Office of Fair Trading) (2006b), *Research on Impact of Mass Marketed Scams: A Summary of Research into the Impact of Scams on UK Consumers*, OFT883, December, *www.oft.gov.uk/shared_oft/reports/consumer_protection/oft883.pdf* and UKOFT (2006c), *Focus Group Research on Consumer Detriment*, OFT826, UKOFT, prepared by FDS International, *www.oft.gov.uk/shared_oft/reports/consumer_protection/oft826.pdf*.

One key limitation of a focus group is that by definition it does not produce data that are representative of the entire population, and therefore is not always effective at measuring the magnitude of a given problem. Despite this potential limitation, a focus group may provide a very cost-effective manner in which to gather information on hard to reach populations (*e.g.* users of pay-day loans, or other vulnerable consumers).

Business reports and related information

Information provided by firms can also be used to support market-monitoring activities. Disclosures of information on defective or unsafe products or litigation, for example, can provide indications of problems that require government attention. Such information may be provided voluntarily by firms (or business organisations), or it could be legally required. The Better Business Bureaus (BBB) in the United States, for example, collects information on complaints and field inquiries from consumers. In 2008 the organisation received 862 128 complaints and more than 60 million inquiries, providing a potentially rich additional source of information on problem markets (Better Business Bureau, 2008).

Consumer organisations and media

Investigative journalism can be an important source of information on market performance. Consumer organisations in many OECD countries evaluate markets and products, publishing their results in periodicals (Box 3.4). Efforts have also been made by governments to develop mechanisms for reviewing news sources systematically for information on potential problems. The European Commission, for example, has developed a European Media Monitor (see *http://emm.jrc.it/overview.html*), which is a multilingual online tool used to facilitate targeted monitoring. The system gathers reports

Box 3.4. **Product reviews by consumer organisations**

- *CHOICE* (Australia): *www.choice.com.au*.
- *Test-Achats* (Belgium): *www.test-achats.be*.
- *Protégez-vous* (Canada): *www.protegez-vous.ca*.
- *test* (Germany): *www.test.de*.
- *60 Millions de Consommateurs (France): www.60millions-mag.com*.
- *Que Choisir* (France): *www.quechoisir.org*.
- *Consumentenbond* (The Netherlands): *www.consumentenbond.nl*.
- *Forbruker-rapporten,* "The Consumer Report" (Norway): *www.forbrukerrapporten.no*.
- *FRC Magazine* (Switzerland): *www.frc.ch*.
- *Which?* (United Kingdom): *www.which.co.uk*.
- *Consumer Reports* (United States): *www.consumerreports.org*.

from news portals world-wide in 43 languages, classifies the articles, analyses the news texts by extracting information from them, aggregates the information and issues alerts.

Governments often support, or sponsor, the work on consumer topics. In Korea, for example, the Korea Consumer Agency (KCA) launched *Consumer Age*, a monthly consumer magazine, to provide consumers with objective and reliable information on products (Korea Consumer Agency, 2009). The KCA also produces consumer information in video format for television and related media outlets

In addition, the broadcast media (television and radio) often report on developments affecting consumers, both in the form of news stories and more in-depth programmes. Finally, the Internet is another information source, as it provides a means for consumers to communicate concerns about markets and products, through blogging, using sites set up by consumers to complain about goods or services or particular companies, and other networking.

Consistency of information among sources

In theory it should be possible to use a wide range of published economic data in order to identify problem sectors and markets. This would enable, for example, data on consumer switching and data on consumer complaints to be used together when analysing a sector. To be most useful, analyses require consistent definitions across data sets, ideally at a level of aggregation that approximates the economic markets. Such consistency is difficult to achieve as data sets are developed for a variety of purposes, and often use different definitions (see UKOFT, 2004b).

In addition to consistency among sources, research would also be facilitated if there were harmonisation across countries. In this regard, the European Commission is working towards developing a harmonised methodology for classifying and reporting consumer complaints addressed to third parties (*e.g.* national authorities, consumer organisations, regulators). Once this methodology is developed it will be taken up, on a voluntary basis, by bodies collecting consumer complaints. The methodology will also be considered by the OECD's Committee on Consumer Policy, to determine whether wider adoption would be possible.

Screening techniques

The sources of information described above indicate where consumer authorities can find information that will help to identify problem markets, or ways that such information could be generated. Any one of the sources could prove sufficient in identifying a problem. As indicated below, there are ways that information can be further developed and used by authorities to screen markets in a more systematic manner, using indicators. The indicators can be one-dimensional, or they can be linked with one another to provide a more comprehensive approach.

Single indicator

When a single indicator is used, it generally focuses on consumer dissatisfaction, as reflected in complaints or surveys. In France, for example, a Consumer Complaints Barometer was developed in 2007, based on the complaints received by the consumer protection authority. The purpose of the barometer is to improve the ability of the government to address current and emerging issues. Complaints are organised in a way that permits authorities to analyse *i)* the products and sectors which are the subject of complaints (12 sectors and 54 families of goods and services are specified); *ii)* the types of market operators involved (several hundred possibilities are provided); *iii)* the nature of the complaint (5 main domains, more than 40 themes, and close to 160 specific problems are indicated); and *iv)* the selling methods (Ministère de l'Économie, de l'Industrie et de l'Emploi, 2009).

Multiple indicators and composite indicators

Countries do not generally rely on one indicator in screening markets to identify areas where there is detriment: consideration is given to several. In the case of the European Union, multiple indicators have been drawn together in a Consumer Markets Scoreboard that is being used to monitor markets (European Commission, 2008; European Commission, 2009c). The methodology for monitoring markets from a consumer perspective has two phases: screening and analysis. The scoreboard provides the evidence for the screening phase that allows identification of sectors across a market which have a risk of not functioning well in terms of economic and social outcomes and where intervention may be needed. This screening of consumer markets is based on five top-level indicators: complaints, prices, switching, satisfaction, and safety. No single indicator is deemed sufficient to draw conclusions about which markets may be malfunctioning. Moreover, identifying a sector for further analysis is not to be viewed as confirmation of a malfunctioning market.

The scoreboard initiative is one that is expected to strengthen over time, as data inadequacies are addressed. The aim is to enable the European Commission to identify markets where further analysis of the underlying level of detriment and its causes might be undertaken (see Box 3.5).

With respect to composite indicators, indices reflecting consumer satisfaction have been developed in Denmark, Norway and the United Kingdom to facilitate identification of problems. Denmark's Consumer Conditions Index is based on the information collected in the survey mentioned earlier and (complaint information that it hasreceived see Box 3.6). Respondents are asked to evaluate conditions on a scale of zero to ten. The number of points given to a specific market provides an indicator of how that market is doing relative to other markets (National Consumer Agency, 2009a).

Box 3.5. **EU scoreboard objectives**

- Identify which markets are malfunctioning in terms of consumer outcomes and need further in-depth market analysis.
- Show which horizontal consumer issues (such as cross-border e-commerce) need further analysis.
- Track progress towards the goal of an integrated internal market with confident consumers.
- Allow benchmarking of member states' performance across the national consumer environment.

Source: European Commission (2008), *The Consumer Markets Scoreboard: Monitoring Consumer Outcomes in the Single Market*, *http://ec.europa.eu/consumers/strategy/sec_2008_87_en.pdf*.

Box 3.6. **Danish consumer conditions index**

The Consumer Conditions Index (CCI) has been central in the monitoring of Danish markets and is the foundation for consumer information and dialogue with businesses. The CCI has been published once a year since 2004; it provides a snapshot of consumer conditions in 57 markets. As the index is based on a survey that is regularly repeated, it provides a means for tracking changes over time, both in specific sectors or within a specific market. The CCI draws together information on three principal components: *i)* consumer confidence; *ii)* transparency; and *iii)* complaints.

The screening of markets in the CCI forms the basis of policy decisions. The monitoring of markets is also an excellent basis for discussing ways that markets could be improved for consumers with the firms concerned.

The cost of maintaining the CCI is about DDK 500 000 (*i.e.* about EUR 66 700) per year. About half is for the collection of data, which is carried out by an outside party. The other half is for data processing, which is handled by employees at the National Consumer Agency.

Source: National Consumer Agency (Denmark) (2009b), Communication with the OECD Secretariat, unpublished.

Analysis of market problems

Once problem areas have been identified, consumer authorities should analyse the relevant markets in order to develop a deeper understanding of the types of the problems that consumers face and the nature and extent of the detriment. As discussed in Chapter 5, one of the main objectives should be to develop more precise information on the nature and extent of consumer detriment and how detriment arises. Ideally, this would be determined by comparing the actual situation in a market with the situation that would likely exist if the cause(s) of the detriment were eliminated.

As authorities have resource constraints, they will need to be selective in deciding which problems to consider. The nature of the product concerned should be considered before a decision is made to examine a problem further. When products are frequently and repeatedly purchased, and where consumers can quickly identify any problems, there may be little need for further review. Poor choices by a consumer in an initial period could be remedied subsequently and any losses would be short-lived. Such products include "fast-moving consumer goods" which are everyday products that are relatively low-priced (such as packaged food, toiletries, batteries and the like).

In carrying out an analysis, information can be developed from a variety of sources. In addition to the sources of information mentioned earlier, consideration should be given to consulting with outside experts, developing economic models, conducting economic experiments (*i.e.* simulated situations using test groups) and focused investigative work. Experts' knowledge, for example, could ensure a clearer picture of the sector as well its linkages with other sectors. Economic experiments could help to reveal the strength of behavioural biases. This has been the case with respect to hyperbolic discounting, where experiments have been run to see how people react when offered choices between lesser sums of money in the short term and larger sums in the future (see Chapter 2). The results confirm that persons are more likely to opt for smaller sums if the payout is immediate; if both payouts are in the future, they are more willing to hold out for the larger one (Green, Myerson and Ostaszewski, 1999).

Another tool that could be employed is *mystery shopping*, which involves the collection of information by field workers posing as shoppers; this can be used to help develop more robust data and information on prices, marketing practices and firm behaviour (Box 3.7). Care has to be taken, however, in the way that such shopping is carried out, so as to avoid unlawful entrapment.

Box 3.7. **Mystery shopping: Car repair, financial services and e-commerce**

Car repair

To evaluate car repair services, Canada's Automobile Protection Association carried out a government-funded investigation in 2003 (Automobile Protection Association, 2003). A four-year old automobile was serviced before the investigation, receiving a new battery, starter, spark plugs, wires, distributor cap, rotor, and tires. The brakes were in excellent condition, and all fluids and filters were replaced. A batter cable was then loosened, which caused problems starting the vehicle. The car was then brought to a series of automobile shops for repair, to gain insights into the likelihood of unnecessary repairs.

Financial services

In 2004-05, the Financial Consumer Agency of Canada carried out a mystery-shopping exercise to gather information and identify any problems related to access to basic banking services (Financial Consumer Agency of Canada, 2005). *The Access to Basic Banking Services Regulations*, introduced in 2003, allow Canadians to cash a federal government cheque for less than CAD 1 500, free of charge, and to open a retail bank account, with no minimum deposit. Approximately 100 shoppers, representing Canada's diverse population, were involved in the mystery-shopping activity. All of their visits involved dealing with a representative of a bank, either to cash a cheque or to open an account. Mystery shoppers were trained to collect data through observation, as well as in written form. They relied on a standardised post-visit questionnaire to compile this information systematically (Financial Consumer Agency of Canada, 2005).

In 2008, the Hungarian Competition Authority engaged a research firm to evaluate the quality of information provided by banks on consumer services, focussing on credit cards, mortgages and combined deposits (GVH, 2009). The firm used a "trial-transactions" methodology to develop information, which involved firm employee's personally going to banks to acquire as much information as they could on the services.

Box 3.7. **Mystery shopping: Car repair, financial services and e-commerce** *(cont.)*

E-commerce

The European Union carried out a project in 2002 to examine cross-border e-commerce (European Consumers Centres Network, 2003). The project involved staff from thirteen European Consumer Centres (ECC) offices, two consumer organisations and nine external examiners and was organised in three phases. The first phase consisted of a shopping exercise in which the ECC staff performed cross-border shopping from foreign e-commerce companies. A total of 114 orders were made. The second phase was a quality examination of the information given on the traders' website. In total, 262 websites were checked. The third phase was a comparative analysis of the information to the Distance Selling Directive with special regard to the cooling-off period.

Each participant in the shopping exercise ordered items only from web traders in EU countries other than their own. It was also decided that the majority of products should be returned in order to assess the quality of the returns process. The researchers ordered T-shirts, ink cartridges, paper (or other office supplies), CDs, DVDs, toys, dictionaries and watches. All researchers ordered products as private persons.

In October 2009, the European Commission published the results of a mystery shopping evaluation of cross-border e-commerce in the European Union, conducted by an external consultant in 27 EU member states (European Commission 2009d). Mystery shoppers throughout the EU measured the extent to which consumers had access to real alternatives to domestic e-commerce by attempting to purchase goods online from web traders based in another EU member state (cross-border e-commerce). The study also measured the extent to which consumers could make cross-border savings compared to domestic online purchases and how traders provide information to consumers in accordance with basic consumer protection rules and best practices (see *http://ec.europa.eu/consumers/strategy/facts_en.htm#E-commerce* for further information).

Sources: Automobile Protection Association (2003), *APA Auto Repair Investigation*, April, *www.apa.ca/template.asp?SectionID=3&ArticleID=12*; European Commission (2009d), *Mystery Shopping Evaluation of Cross-Border E-Commerce in the EU: Final Report, http://ec.europa.eu/consumers/strategy/docs/EC_e-commerce_Final_Report_201009_en.pdf*; European Consumer Centres Network (2003) *Realities of the European Online Marketplace: A Cross-border E-commerce Project by the European Consumer Centres Network*, *http://ec.europa.eu/consumers/redress/ecc_network/european_online_marketplace2003.pdf*; Financial Consumer Agency of Canada (2005), *Backgrounder: 2004-05 FCACMystery-Shopping Results*, *www.fcac.gc.ca/eng/publications/surveystudy/mystshop/pdfs/mysteryshopping2004-2005-eng.pdf*; GVH (Gazdasági Versenyhivatalt) (Hungary) (2009), Communication with OECD Secretariat, unpublished.

While there are various methodologies that can be employed to carry out market analysis, as discussed in Chapter 5, such analysis should in general seek to: *i)* define the nature of the observed problem in a precise manner; *ii)* clearly identify the market(s) affected; *iii)* establish the scale of the problem, both overall and for individual consumers; *iv)* determine whether there are vulnerable or disadvantaged groups that are heavily affected; and *v)* examine whether there is reasonable scope for designing a remedy. Some countries have developed approaches that contain insights on how assignments can be addressed. The UK Office of Fair Trading has published guidance (most recently in UKOFT, 2009) covering why market studies are undertaken, how markets are chosen for study, how studies are managed, what the possible outcomes are, and how the impact of market studies may be evaluated.

In carrying out market analysis, it should be noted that the complexity and difficulty of simulating and calculating detriment are considerable. Efforts nonetheless need to be made in order to assure that policy makers have an evidentiary basis for making decisions. As discussed in Chapter 5, cost-benefit analysis is an essential ingredient in decision making.

Annex 3.A1 describes approaches that can be taken to measure different types of detriment, and summarises some of the key issues that need to be addressed. Further information on techniques that can be employed are described and evaluated in a report done for the European Commission: *An Analysis of the Issue of Consumer Detriment and the Most Appropriate Methodologies to Estimate It* (Europe Economics, 2007a). The report strongly endorses the use of consumer surveys to facilitate measurement.

Summary

The work of consumer authorities focuses on detecting instances where markets are falling short in meeting consumer expectations and needs, evaluating the magnitude and scope of the problem, and then determining whether measures should be taken to improve outcomes. On the detection side, consumer complaints are one of the leading indicators but, as this chapter indicates, surveys and independent research are also important, as is, increasingly, the Internet (which consumers can use to highlight and communicate problems). As discussed, a number of countries have developed ways to combine different types of indicators to improve the effectiveness of screening.

Deciding which problems to tackle require authorities to establish priorities, which is an important aspect given their limited resources. The economic importance of the problem and the nature of its effects on consumers are key elements in this regard, but other considerations, such as the impact on vulnerable and disadvantaged groups, may also be factors.

Chapter 5 provides a framework for determining the conditions under which a policy intervention may be required to address a problem and, if so, the sorts of instruments that should be considered are detailed in Chapter 4. As indicated in this chapter, authorities should seek to analyse the problems under review sufficiently before considering policy options, as good policy making requires a solid evidentiary base. Such analysis could be relatively concise, but as indicated, it may require substantial research of up to one year.

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ANNEX 3.A1

*Assessing Consumer Detriment**

Personal detriment

Personal consumer detriment focuses on individuals who have experienced negative outcomes and hence looks at a subset of consumers rather than all consumers in the aggregate. As discussed earlier in the chapter, it has financial and non-financial aspects; both quantitative and qualitative assessments are therefore possible. Quantitative analysis, it should be noted, does not necessarily involve expressing impacts in monetary terms. A key consideration is ensuring that the analysis is proportionate to the potential consumer benefits from improving the policy decision (see Table 3.A1.1).

Table 3.A1.1. **Ways of analysing personal detriment**

Types of analysis	Examples	When should this type of analysis be carried out?
Qualitative	Degree of consumer inconvenience or stress arising from a problem.	Can be carried out for all situations; it is particularly useful for areas which are difficult to quantify (such as psychological detriment).
Quantitative (but non monetary)	Number of consumers affected, if possible broken down by demographic factors. Number of complaints	Where data are available or can be collected without incurring disproportionate cost.
Monetary	Estimated financial losses suffered by consumers.	Primarily for financial aspects of personal detriment, where data are available or can be collected without incurring disproportionate cost.

In some cases when consumers suffer problems, they will obtain redress from their supplying firms through product replacements, refunds, or other compensation. This may partly or wholly offset the detriment that they have suffered. The redress has to be considered during the assessment of personal detriment. This enables identification both of the problems which consumers suffered in the first place, and the extent to which they were able to obtain redress under the existing legal framework.

Qualitative assessments

Qualitative assessments focus on how the consumer behaviour has been affected by a problem in a market (see Box 3.A1.1) and whether there were distributional effects (particularly affected groups of the population, or redistribution of wealth from, for example, consumers to producers).

* The European Commission developed this Annex; it draws on its recent research on consumer detriment (see especially Europe Economics, 2007a).

Box 3.A1.1. **Impacts of market problems on consumer behaviour**

- *Changes in the confidence that consumers have in the market*. Confidence in a market can be shaken when something goes wrong. This may in turn affect the total number of market transactions which consumers engage in.
- *Changes in the choices made by consumers between different firms and products*.
- *Psychological impact*. Psychological harm such as increased levels of stress or anger, but long-term loss of consumer confidence can also be an important source of non-financial detriment to consumers; quantification is not always feasible.

Once the various direct and indirect effects of the problem have been identified, the final stage of the qualitative analysis is to arrive at an overall judgement, if possible, on the likely scale of personal detriment.

Gathering evidence of personal detriment

As indicated earlier in the chapter, evidence of consumer detriment can be developed from a number of sources.

Consumer complaints

The number of consumer complaints recorded by public bodies or consumer organisations can be used as a sign of a market problem; in some instances it can also serve as a proxy for personal consumer detriment. The focus should be on the relative importance of the complaints for the market as a whole, not the absolute number. If possible the number of transactions involving complaints should thus be compared with the total number of transactions. Generally, complaint data can be used to compare relative consumer outcomes over time or across sectors, but not as measure of the absolute amount of detriment suffered.

Consumer surveys

Consumer surveys involve asking a representative sample of the population about the problems which they have experienced in a market; the information collected can be used to help assess the level of detriment. Such surveys can be conducted in a number of ways: face to face or via telephone, the Internet, or the post. The choice of the format depends on the specific circumstances (see Table 3.A1.2).

Table 3.A1.2. **Comparison of different survey methods**

	Face-to-face	Telephone	Internet and post
Cost of survey	High	Medium	Low
Potential for bias in sample	Low	Low	High
Time period required to conduct survey	Short/ predictable	Short/predictable	Uncertain
Suitability for long or complex questionnaire	High	Low	Medium to high
Suitability for sensitive questions	Low	Medium	High

When designing the questionnaire, careful attention needs to be paid to the wording of the questions and the order of choices and questions. There are, for example, different ways to formulate questions:

- Dichotomous questions, to which respondents respond “yes” or “no”, or “true” or “false”.
- Questions which ask for a numerical value.
- Multiple-choice questions.
- Questions which ask for a rank ordering.
- Questions which ask for a rating on a pre-defined scale.
- Open-ended questions, to which respondents provide written input.

Surveys should also include a number of demographic questions which allows analysis of how responses vary between different groups in society. They should be kept as brief as possible and consistent with obtaining the information required. It is recommended that quantitative surveys be pilot-tested on a small number of respondents to check whether the questionnaire will yield consistent, reliable results.

Other indicators

There are number of other measures which can be used as indicators of the relative extent of personal detriment through time or across countries or sectors; for example:

- The number of court cases arising from consumer problems.
- The degree to which a consumer problem is subject to campaigns by consumer organisations, academic studies, political campaigns, or press coverage.

Aggregation of findings at macro level and adjusting the data

If a survey has been carried out with a representative sample of consumers, the results can be extrapolated to estimate the level of consumer detriment that exists in the aggregate. Results may, however, have to be adjusted to take the different expectations of consumers into account. For example, the number of problems reported by consumers taking part in a survey is likely to depend on their individual expectations, which may, in some instances, be unreasonably high or low. To help control for “outliers”, control questions that would help to profile respondents could be used to help identify the outliers. Questions about general attitudes to consumer rights and to complaining could be used in this context.

Behavioural biases

It should be noted that, as suggested in Chapter 2, behavioural biases can result in consumer detriment, even when there are no problems on the supply side of the market and consumers have adequate information to make decisions. Detecting these instances is by no means straightforward.

Assessing structural detriment

Structural detriment concerns problems which affect the welfare of consumers in the aggregate. It can be measured in terms of market outcomes such as prices or profits above the competitive level. As discussed earlier, the most important sources of structural detriment are market failure and regulatory failure. From a demand-side perspective, the most frequently encountered market imperfections and the questions that should be asked when encountering these failures are listed in Box 3.A1.2. To the extent possible, assessment of detriment in the areas should be quantified in monetary terms.

Box 3.A1.2. **Measuring the impact of structural detriment**

Market power

- To what extent would increased competition reduce the price paid by consumers?

Imperfect information and imperfect use of available information

- To what extent do high search costs discourage consumers from acquiring information needed to make well-informed choices? To what extent do these search costs permit firms to exercise a degree of market power (*i.e.* maintain high prices)?
- To what extent is product diversity and the way products are offered (*e.g.* bundled offers) making it more difficult for consumers to compare price and quality?
- To what extent is asymmetric information harming consumers?

Sluggish innovation

- To what extent are industry conditions resulting in sluggish innovation?

Product or service choice

- To what extent are industry conditions resulting in restricted choices?
- To what extent is choice overload confusing consumers, making it difficult to compare products? Is product bundling causing detriment?

Regulatory failure

- To what extent do tariffs, bans, and quantity or price restrictions affect consumers?
- To what extent are regulatory compliance costs for businesses passed on to consumers?
- To what extent are consumers affected by inadequate contract rights or insufficient legal rights of redress when firms fail to deliver on their commitments?

Gathering evidence

Evidence can be gathered using the sources described earlier in this chapter. In certain areas, price comparisons can be revealing, as disparities can provide insights into the magnitude of detriment. In addition to price comparisons in domestic markets, international price comparisons should also be considered, as should economic modelling and experiments. With respect to price comparisons, the European Commission has been working with Eurostat and the national statistical institutes of the EU member states since 2008, to gather prices of comparable and representative consumer products across Europe. The results of this work, which includes prices of 66 products for a majority of European countries, are reflected in the 2009 Consumer Markets Scoreboard.

Calculating losses in consumer surplus

Structural detriment captures the loss of consumer welfare and is typically measured using the concept of consumer surplus, which is the difference between what a consumer is willing to pay for a product and what the consumer is actually paying. In the case of inflated price, it can be approximated by multiplying the volume of consumption by $P2- P1$, where $P2$ is the price being charged to consumers and $P1$ is the price that would exist in the absence of the market problem. Similar calculations can be made for situations affecting the quality of a product or the volume consumed. Such calculations are rarely straightforward, as they require an ability to estimate what the price and/or sales of a product would be absent the market distortion.

Interpreting results

In evaluating consumer detriment, attention should also be paid to the related effects on the industry supplying the product. If the objective of policy makers is to maximise the total welfare of society, then the negative impact on consumers should be netted off against the benefits which accrue to producers when evaluating possible policy options. Concerns about distributional issues (*i.e.* who gains and who loses) may, however, also be a factor in any final decisions.

Final conclusions should be made on the basis of the direct and indirect evidence gathered. It should be borne in mind that the role of the consumer is only one role the citizens might play and there are other impacts that matter to society such as the impact on workers and investors.

Bringing together analyses of personal and structural detriment

The interaction of personal and structural detriment also needs to be examined in any assessment. Structural detriment may sometimes follow directly from personal detriment. Examples would be personal detriment which *i)* decrease consumer confidence in a particular market, leading to a decrease in the volume of transactions in that market and hence a decline; and *ii)* decrease consumer confidence in a particular sales channel (*e.g.* cross-border sales, distance selling). This could potentially decrease the range of products that consumers are able to choose from and/or weaken competition in markets for products which can be sold through that channel.

In cases such as these, analysis of personal detriment can be used as evidence on how structural detriment might be affected. This is particularly useful where it is difficult to quantify impacts on structural detriment itself. However, there may be some instances in which personal detriment does not affect the overall functioning of the market, and hence does not affect structural detriment. For instance, personal detriment may affect a small group of consumers, while others experience a benefit (see the discussion above on the waterbed effect). In these instances, the trade-off between aggregate consumer welfare (measured by the change in structural detriment) and fairness considerations would need to be addressed in considering whether a policy intervention might be justified (see Table 3.A1.3).

Table 3.A1.3. **Relationship of personal detriment to structural detriment**

What happens to personal detriment?	Is reduction in structural detriment greater than the net cost of all other impacts?	
	Yes	No
Decreases	Policy is unambiguously beneficial.	Trade-off between reduced efficiency and (possibly) improved fairness.
Increases	Trade-off between increased efficiency and (possibly) reduced fairness.	Policy is unambiguously harmful.

Two other factors that need to be taken into consideration in assessing whether detriment should be addressed: the extent to which personal or structural detriment affects vulnerable or disadvantaged groups disproportionately, and the extent to which the detriment involves very severe negative outcomes (*e.g.* injury from unsafe product, or poverty in old age due to the bankruptcy of a financial institution).

Chapter 4

Consumer Policy Instruments

This chapter presents the range of key policy tools that are available to consumer authorities to address problems in the marketplace, outlines how these tools can be used effectively and identifies some of their potential impacts. It also examines the role of enforcement strategy in addressing problems.

Introduction

As discussed in Chapter 3, good policy making requires consumer authorities to identify and study consumer problems carefully before deciding whether or not a policy intervention may be required. Once a decision is made to intervene, the key question becomes what should or could be done. On the supply side, government intervention to promote competition has been, and continues to be, a highly effective tool for enhancing consumer welfare. Such measures are generally considered and implemented by authorities responsible for competition policy. There are, however, numerous other tools available on both the supply and the demand side for addressing the challenges that consumers face. Some of the tools are aimed at helping consumers directly, such as consumer education and assistance provided to consumers on how to seek redress when they have been affected by unfair commercial practices. Other measures are directed at firms supplying products, such as requirements that certain information be provided to consumers or restrictions on some types of sales and advertising practices. As discussed in Chapter 5, the challenge for policy makers is to identify and assess the most promising tools for addressing the problems they are confronting. Twelve types of policy instruments are covered in this chapter:

- Consumer education and awareness.
- Information provision and other disclosure measures.
- Contract terms regulation.
- Cooling-off periods.
- Moral suasion.
- Codes of conduct and trustmarks.
- Standards.
- Licensing and accreditation of firms or providers.
- Financial instruments.
- Prohibitions.
- Dispute resolution and redress mechanisms.
- Enforcement strategies.

In addition to assessing the effectiveness of tools to address a problem, policy makers will often need to consider the broader effects that a measure will have on markets or society. There may, for example, be environmental, ethical, health or competition implications that warrant attention. Examples of how this can occur in the use of consumer policy instruments are provided below.

Consumer education and awareness

Initiatives to promote education and awareness can help improve transparency and assist consumers to develop the skills, knowledge and confidence needed to improve market outcomes, thereby increasing consumer welfare. In developing consumer awareness, information can be used not only to inform, but also to influence consumer behaviour; cases in point include government campaigns to encourage healthy eating or discourage smoking.

In addition to addressing an existing problem, education and awareness can be used to help ensure that a problem does not become widespread. For example, the Australian government has embarked on an extensive healthy-eating education campaign designed to address both existing weight-related health conditions and to ensure that all consumers understand the benefits of healthy eating (see *www.gofor2and5.com.au* and *www.healthyactive.gov.au*). To be effective, education and awareness strategies must go beyond addressing information asymmetries in individual transactions; they should help promote critical and active engagement by consumers generally. Indeed, awareness and education strategies work as a foundation for other consumer policy tools.

The key differences between an awareness campaign and an education initiative are their time frames and depth. Awareness campaigns are generally short-term, media-oriented actions that focus on a particular consumer issue. For example, a campaign may make consumers aware of their ability to choose an energy or telephone firm or of the dangers of a newly identified unsafe good or scam (see Box 4.1).

Box 4.1. **Mobile-phone tariff comparison in Portugal**

In 2005, Portuguese communications regulator ANACOM (the Autoridade Nacional de Comunicações) developed a simulator, the Tariff Monitor, with the co-operation of the country's three mobile operators. It is a free service that gives private consumers the information they need to assess and compare the various tariff alternatives for mobile-telephone service available in Portugal. In order to boost use of the simulator, a major campaign was launched between April and July 2006. Access and use of the service grew by more than 500% during the first month after the beginning of the campaign (ANACOM, 2006).

Source: ANACOM (2006), Tariff *Monitor – One Year in Operation and Future Developments*, *www.anacom.pt/render.jsp?contentId=388275*.

Education initiatives, on the other hand, take a long-term approach, as the focus is on developing lasting skills and/or on bringing about changes in consumer behaviour. Many education initiatives also make use of awareness campaigns as part of their strategy. For example, school children might be taught about financial topics generally, thereby raising their financial literacy; this can then be augmented by raising the student's awareness of the risks associated with high levels of consumer debt. Such campaigns may promote more considered investment and borrowing decisions in the future.

The objectives of consumer awareness and education initiatives are widely cited in consumer policy literature (see, for example, Bannister and Charles, 1983, Hellman-Trutert, 1999 and UNDESA, 2003). In general, the goals could be seen as falling into one of three categories:

- Improving decision-making abilities.
- Raising awareness of consumer rights and avenues for redress when the rights have been violated.

- Promoting more responsible behaviour (for example, in purchasing products which are more environmentally benign).

The goals can be pursued in either a generic or specific context (see Box 4.2).

Box 4.2. **Generic and specific consumer skills**

Generic consumer skills: In a 2004 study, the UK Office of Fair Trading identified a number of generic, transferable skills that consumers require. These include the ability to *i)* research, assimilate and critically analyse information according to individual needs, *ii)* manage resources effectively, *iii)* assess risk and exercise balanced judgement in making responsible decisions, *iv)* communicate effectively in a wide range of consumer situations, *v)* solve problems where they arise and *vi)* know when to seek professional advice (UKOFT, 2004).

Specific consumer skills: Education and awareness initiatives can also focus on developing specific consumer skills, whether those skills relate to a particular product, industry, or stage in life. For example, the US Federal Trade Commission's "Deter, Detect, Defend: Avoid ID Theft" campaign seeks to assist consumers in learning how to avoid identity theft, and what to do if their identity is actually stolen (USFTC, undated). A variety of resources have been employed to support this aim, including brochures, consumer education kits, PowerPoint presentations, and a short audio-visual presentation.

Sources: UKOFT (United Kingdom Office of Fair Trading) (2004), *Consumer Education: A Strategy and Framework*, OFT753, UKOFT, London, *www.oft.gov.uk/shared_oft/consumer_education/oft753.pdf* and USFTC (undated), *Fighting Back Against Identity Theft, USFTC*, Washington, *www.ftc.gov/bcp/edu/microsites/idtheft/index.html*, accessed on 12 January 2009.

Development and implementation

Careful consideration needs to be given to the purpose of an awareness or educational initiative. Is its function simply to inform consumers? Or is it to educate them in a manner that would influence their long-term behaviour? If it is the former, then the key is to communicate a succinct message to as many people as possible in a timely fashion. If it is the latter, then the approach is necessarily more complex, as consumers would need to be made aware of an issue and the potential benefits of becoming better educated before making their ultimate decisions.

Awareness and education initiatives can be developed and implemented by government alone or in collaboration with key stakeholders, including consumers and consumer bodies, industry, educational institutions and the media (see Box 4.3). Governments can also encourage business firms and consumer groups to conduct campaigns themselves. Joint initiatives can be particularly effective, as the partners can often more effectively communicate with target audiences, drawing on specific experiences, resources, and knowledge. Industry involvement can further strengthen messages and aid in dissemination. Working with educators, such as schools, colleges, universities and teacher associations, can also assist in effectively delivering formal education programmes. The OECD's Committee on Consumer Policy has devoted considerable attention to ways to improve consumer education in recent years. A major report was completed in 2009 which examines the approaches that countries are taking, with a view towards identifying effective practices (OECD, 2009). The report found that:

- In many countries consumer education is not a specific policy area. When mentioned in legislation, references tend to be general and presented as an element of overall consumer

Box 4.3. **European Union consumer education initiatives**

The European Commission's consumer information and education policy complements national initiatives, focusing on national implementation of EU rules and cross-border issues. General information campaigns have been launched in 12 of the newer member states (European Commission, 2009). The campaigns focus on NGOs, schools, universities and adult education institutions. Special training courses are organised for staff of consumer organisations. Efforts are also being made to educate youth. The Europa Diary, for example, is an educational tool aimed at 15 to 18 year olds (*http://ec.europa.eu/consumers/empowerment/cons_education_en.htm*). It contains the basics of what the EU offers young citizens, covering topics such as travel, nutrition, drugs, shopping, money matters, environment, climate change, sustainable consumption, external trade and safety issues. The diary has been distributed to approximately 22 000 schools. Online educational tools have also been developed. Under the Dolceta initiative, materials developed by university experts are made available on the web; teachers, trainers and adults are the target audiences (*www.dolceta.eu*).

Source: European Commission (2009), Communication with OECD Secretariat, unpublished.

protection policy. Goals, where stated, tend to focus on developing increased consumer awareness of issues in specific areas and increased awareness of consumer rights.

- In most countries the central government plays the leading role in overseeing consumer education policies, with regional and local authorities responsible for carrying out policies and programmes in their respective areas.
- By far the most common institutional approach to consumer education is targeted education, which is education that has been designed to focus on a specific issue and/or a specific group.

Consumer literacy levels have important implications for consumer policy. As discussed in Chapter 5, literacy needs to be taken into account when selecting and designing policy instruments to address a problem. This is clear when one reviews the situation in the field of financial literacy. A 2005 review of financial literacy surveys in twelve OECD countries found that financial understanding in most consumers is low (OECD, 2005a). As events in mortgage markets in 2007-2009 have shown, a failure to understand the nature of financial instruments can have significant effects on individuals, with possible economy-wide implications.

Effectiveness of awareness and education initiatives

Awareness and education initiatives can be powerful policy tools. In addition to improving skills and enhancing transparency, they can help address some of the challenges posed by the behavioural biases described in Chapter 2. Helping to overcome biases can involve training consumers to apply more rigorous approaches to the way in which they make decisions.

The following findings about the effectiveness of awareness and education initiatives are useful in considering how these strategies can be made most effective (see Flowers, 2001):

- Mass-media campaigns which rely on print (*i.e.* newspapers and magazines) and audio-visual media (*i.e.* television, radio, and the Internet) are particularly well-adapted to achieving short-term behavioural change among consumers. Lasting behavioural change may require sustained efforts over time.

- Integrated campaigns, involving more than just one medium and one message, are more effective than single-focus strategies, particularly when they incorporate participatory strategies or face-to-face communications.
- Active and participatory learning techniques, where people work and learn from and with each other, can facilitate a deeper level of education and behavioural change. This can help consumers respond to problems by assisting them to devise their own ideas and strategies and to make long-term changes.
- Meetings and workshops can result in successful learning when they are inclusive, provide opportunities for learning by doing and are accessible to consumers.
- Behavioural change is most likely when people are presented with goals *i)* that are consistent with their beliefs or value systems; *ii)* that are likely to make a positive change in their lives; and *iii)* that work with (not against) their behavioural biases.

Internet and communications technologies provide a valuable vehicle for delivering educational and awareness-raising results. Interactive websites are being used increasingly to support education and awareness initiatives by providing consumers with further practical and educational information, learning tools, resources, and peer networks.

Awareness and education initiatives may assist with consumers' access to information, but may not always be sufficient. Consumers may be informed about the benefits of a particular course of action (for example, a saving plan for retirement which includes matched contributions from government or an employer) but may be affected by behavioural biases that are difficult to overcome.

Evaluating the effectiveness of education campaigns is a difficult proposition. Costs can be calculated, but the fact that the benefits of education campaigns are often long-term in nature can make it difficult to quantify the benefits. Moreover, while it is relatively simple to assess the extent to which consumers have received advice, it is far more difficult to determine whether the information was effective in improving consumers' decisions.

Information provision and disclosure

Effective, well-targeted information can assist consumer decision making by making it easier for them to compare products, increasing transparency and accountability, reducing search costs, helping to prevent disputes and protecting consumers from deceptive practices. Information which is not well designed, on the other hand, can be useless or even counterproductive. A 2007 UK report found that information that was required to be supplied to consumers was rejected because it was too voluminous and was often presented in an unappealing or complex format[rdquoe] (Better Regulation Executive and National Consumer Council, 2007). Examples included a toaster which was sold with 52 separate safety warnings and consumer-credit agreements which could take up to 55 minutes to read and were often presented in technical language that many consumers did not understand.

As discussed in Chapter 2, firms generally have more information than consumers, resulting in information asymmetries. Policy makers often use government-mandated information provision and disclosure to promote transparency, on the assumption that well-informed consumers should be in better position to make decisions that are consistent with their own preferences (see OECD, 2007a and Ippolito, 2004). This is true, to the extent that consumers can evaluate the available information and act on it. In this context, it is important that consumers receive information that is directly relevant to their immediate decisions, rather than information which is provided simply for the sake of full disclosure.

Governments can address information deficiencies by providing information themselves or by encouraging firms to do so voluntarily, or through a formal requirement. Various forms of information currently used in markets include:

- *Comparative information:* information that compares the cost, quality, or other features of goods and services.
- *Descriptive information and disclosure statements:* information used to inform consumers of potential risks, conflicts of interest, information on components of a price, complaints and redress mechanisms, and contractual terms and obligations. Examples include product labels, such as energy-efficiency labels on household appliances, food-nutrition information, warning labels on toys, producer and country of origin information on consumer products, and health warnings on tobacco.

Types of information

Comparison tools

Comparison tools can overcome problems with choice and information overload by providing consumers with a relatively simple, clear picture of the attributes of the product or service in question. They are often used to simplify technical information and assist consumers when making one-off or infrequent purchases. Comparison tools, which can take the form of calculators, include those provided by market participants and commercial providers, consumer bodies and the government (Box 4.4).

Box 4.4. **Examples of comparison tools**

Market participants and commercial operators

The Danish Energy Regulatory Authority (DERA) has issued a departmental order obligating electricity companies to make information on prices and terms available to the public (see *www.elpristavlen.dk*). The UK retailer Tesco operates a Price Check website which compares its prices with those of competitors (see *www.tesco.com/todayattesco/pricecheck.shtml*).

Consumer bodies

The Australian consumer advocate organisation CHOICE conducts surveys that compare products (see *www.choice.com.au*); the Slovenian consumer organisation ZPS (Zveza Potrošnikov Slovenije), supported by the Slovenian Ministry of Economy, operates a website that provides comparative information on food products (see *www.precenimocene.si*).

Government initiatives

The Italian Ministry of Economic Development operates a website that provide comparative information on a broad range of products (see *www.osservaprezzi.it/livelli/livellideiprezzi.asp*); in the United States, the Public Utilities Commission of Ohio's Apples to Apples website provides comparative information on energy prices (see *www.puco.ohio.gov/PUCO/ApplesToApples/index.cfm*).

In some instances the development of a tool by one party can lead to further development of related tools. For example, the government-supported Energy Watch in the United Kingdom set up a price and product comparator for energy services (see *www.consumerfocus.org.uk*). This encouraged both consumer switching and the development of privately run energy price and product comparison services.

Ratings schemes

Ratings schemes assess *i)* products according to a single characteristic; *ii)* products or standardised services according to a range of characteristics or tailored services; or *iii)* business firms according to a range of characteristics. Ratings schemes help consumers make confident choices when presented with accurate information. The US and Canadian Better Business Bureaux (*www.bbb.org*), for example, have an online database to compare the reliability and integrity of a broad range of firms.

Third-party intermediaries

As discussed in Chapter 2, third-party experts and intermediaries can play important roles in information provision, to the extent that they act in the interests of consumers (*i.e.* are free from conflicts of interest). Their contributions can be particularly important in markets for complex, infrequently purchased products, like automobiles, computer equipment, and financial products. Such intermediaries often aim at simplifying information; in some instances, they provide recommendations or advice. Governments can help boost the stature of intermediaries by evaluating their content and by providing support for more extensive price testing. In the United Kingdom, for example, the Ofcom (telecoms regulator) Price Accreditation Scheme ensures that any accredited site provides consumers with prices that are accurate, comprehensive, up to date and accessible (see *www.ofcom.org.uk/consumer/2009/08/ofcom-re-accredits-price-comparison-sites/*).

Interactive tools

Interactive tools and games may also be used to help consumers carry out specific tasks. The Australian Government's Understanding Money website, for example, includes interactive tools for consumers to assess their financial capability and knowledge (*www.understandingmoney.gov.au/*) and the Australian Stock Exchange's Stock Market Game allows people to trade in a virtual market, without risk, and gain a better understanding of investing in the stock market (*www.asx.com.au/resources/education/games/index.htm*). Similar initiatives have been taken by the UK Financial Services Authority (see *www.moneymadeclear.fsa.gov.uk*).

Online consumer-generated reviews

As with comparison tools and intermediaries, online consumer-generated reviews (*e.g.* Amazon, eBay, Epinions and Tripadvisor) can help consumers make decisions, to the extent that input is not manipulated by contributors or site operators. These reviews allow consumers to make comparisons with the benefit of direct contributions and critiques from other consumers who are at least nominally independent of the products or services they assess.

Development and implementation

Voluntary information provision and disclosure

Voluntary information disclosure is often driven by the market, as sellers seek to promote sales of their products by underscoring the attributes of the products. Business incentives for providing information can be high when disclosure is low-cost, information is verifiable, and there is a high proportion of consumers who can understand and evaluate the information. Such disclosures can at times be biased as they are likely to downplay or avoid mention of a product's shortcomings. As mentioned in Chapter 2, consumers are generally aware of potential biases and, as a result, take this into account when using such information.

Voluntary disclosure can also, however, result from "moral suasion" when governmental officials strongly encourage firms to address an information need. In the United Kingdom, for example, industry, working with government, developed a summary box designed to improve the quality of information available to consumers prior to their concluding credit card contracts (*seewww.publications.parliament.uk/pa/cm200405/cmselect/cmtreasy/508/50804.htm*).

Mandatory information provision and disclosure

Mandatory disclosure prescribes the type of information that must be provided to consumers and, at times, the form in which it must be provided (see Box 4.5). For example, laws concerning credit often specify minimum information requirements for consumers, in the form of warnings about the risks or possible consequences of a transaction, or

Box 4.5. **Examples of mandatory information in the European Union**

Display of unit prices

The Unit Prices Directive (Directive 98/6/EC) obliges traders to clearly display the selling price of a product, including the value-added and all other taxes. The sellers also have to clearly indicate the price per unit of measurement (*e.g.* the price per kilogram or per litre) on the products they offer to consumers. Small retailers in some member states are exempt from the unit price provision; products for which such indication would not be useful because of the product's nature are also exempt.

Food labelling

EU rules on food labelling (Directive 2000/13/EC) ensure that consumers receive correct and complete information that enables them to make informed choices about the food they buy. The most important mandatory information that must appear on food labels concerns health and safety. For example, information is required on the expiry date for food products; information on the presence of ingredients to which many consumers may be allergic or intolerant (*e.g.* nuts or gluten) is also required, as is information on storage conditions and conditions of use.

Consumer Rights Directive

The proposed Directive of the European Parliament and the Council on consumer rights [COM(2008)614 final] would oblige traders to provide to the consumer prior to conclusion of sales or service contract, the information on their identity, the characteristics of the product being sold, its price, payment and delivery conditions, after-sale services, withdrawal rights and duration of any contract.

Consumer credit information

The Consumer Credit Directive (2008/48/EC) requires pre-contractual information to be provided to consumers in standard and comparable form, as follows:

- The main features of the credit product (*e.g.* the type of credit, the total amount of credit, the conditions governing the drawdown, the duration, instalments and, total amount consumer will have to pay).
- The cost of the credit (*e.g.* the borrowing rate, the total cost of the credit to the consumer expressed in terms of an annual percentage rate of charge (APR), any other costs and charges in the event of late payments).
- Other important provisions (*e.g.* the right of withdrawal, early repayment and the right to review a draft credit agreement).

In the case of distance marketing of financial services, additional information is required.

Source: European Commission (2009), Communication with OECD Secretariat, unpublished.

acknowledgements by consumers of their understanding of rights or obligations. Mandatory information requirements are often highly prescriptive, for example specifying the size of font and the precise wording of advertisements. The UK's Consumer Credit (Advertisements) Regulations 2004 is a case in point (UKGOV, 2004).

Effectiveness of information provision and disclosure

The value of information depends, of course, on its ability to capture and hold a consumer's attention (Better Regulation Executive and National Consumer Council, 2007). It is important for governments considering the development of disclosures to field test them on consumers prior to implementation. Adherence to good general disclosure design practices does not guarantee that disclosures will work as intended.

Volume and content

To be useful, information needs to be understandable. As indicated above, long and overly complex information risks being of little value to consumers. Moreover, excessive or poorly presented information can lead consumers to feel overwhelmed or can distract them from other important aspects of the product which may have a greater bearing on their ability to make a decision effectively (OECD, 2007a). A report prepared by the US Federal Trade Commission in 2004, for example, found that proposed disclosure requirements for mortgage brokers were likely to confuse consumers, to the extent that many would choose loans that were more expensive than alternatives (Lacko and Pappalardo, 2004 and Lacko and Pappalardo, 2007). Excessive or complex information can also result in consumers' hesitating to purchase products which would otherwise greatly benefit them, thus creating deadweight loss in the economy.

On the other hand, well-designed information can be highly beneficial. In New Zealand, a TrueCost Checklist was devised to provide consumers with a guide for collecting basic information on financing the purchase of an automobile (NZMCA, undated), and in the United States, a local jurisdiction developed a restaurant grading system to promote transparency and provide incentives for restaurants to improve hygiene (see Box 4.6). In the European Union, firms are required to provide energy ratings for a wide range of products (including domestic electrical goods and houses) offered for sale or rent (see *http://europa.eu/legislation_summaries/energy/energy_efficiency/index_en.htm*).

Attention must also be paid to the effects that mandated information might have on firms. If not well-designed it could affect competition by giving rise to significant compliance costs, thereby distorting business decision making and/or limiting product offerings (OECD, 2007a). Moreover, government disclosure requirements may become outdated in sectors where innovative new products are being developed, potentially making it more difficult for firms to promote new products and processes which have features that are difficult to highlight (because of mandatory disclosure requirements).

If disclosures are "triggered" by an event, some firms may take action to lower the chance that the triggering event occurs. This may reduce the amount of useful information provided to consumers. Moreover, sellers may tailor their products to look better under the disclosure regime in ways that do not benefit consumers. For example, in the United States, some states have passed laws requiring hospitals to disclose mortality rates from cardiac surgeries. There is evidence that this disclosure requirement may have led some of the hospitals to avoid taking on high-risk patients so that their mortality statistics would appear more favourable (Schneider and Epstein, 1996, as cited by Weil, *et al.*, 2006).

Box 4.6. **Los Angeles restaurant grading**

Since 1997, Los Angeles County has graded restaurants based on hygiene standards in order to improve food safety. Research indicates that the system has been "highly effective" and it has been associated with a decrease in the rate of food-borne illness and an increase in restaurant hygiene quality in Los Angeles County (Jin and Leslie, 2003).

Several features of the grading policy contribute to its effectiveness. First, the grades are simple and easily interpretable, meaning the complexity of disclosure is unlikely to prevent consumers from processing the mandatorily disclosed information. Second, the high degree of competition in the restaurant industry means that consumers can easily punish a restaurant with a low grade by choosing a different restaurant. Third, the timing of the warning makes it easy for consumers to embed the grade into their decision-making process because they will have access to the hygiene grade before ordering and committing to a restaurant. The grades are also posted online in a searchable database on the website of the Los Angeles County Public Health Department.

Another important feature of the system is that restaurant managers have tools to gauge customer response, making it possible for them to embed the effect of hygiene grades into their decisions. Negative customer feedback about a low hygiene grade and declining sales, which research has shown attends a C-level grade, are both strong signals to restaurants about the importance of improving their grade to maintain competitiveness.

Source: : Jin, Ginger and Phillip Leslie (2003), "The Effect of Information on Product Quality: Evidence from Restaurants Hygiene Grade Cards", *The Quarterly Journal of Economics*, May.

Framing

The way in which information is presented (*i.e.* framed) is critical to the way in which it is read and evaluated by consumers. This is true regardless of the document's subject, the complexity of the information or a consumer's socio-economic status (Better Regulation Executive and National Consumer Council, 2007). Some common ways information is presented include:

- **Marketing techniques:** Presenting information in a manner which focuses on positive aspects can affect consumer decision making. For example, food nutrition information may be framed in a manner which seems positive ("*90% fat free!*") or negative ("*contains 10% fat*") and this difference in presentation can affect consumer behaviour.
- **Risk/loss:** Presenting information about risk or loss has a more consistent and significant impact on consumers than messages of benefits or gains. "*Eating cholesterol-reduced margarine reduces your risk of heart disease*", for example, has a more pronounced effect than "*eating cholesterol-reduced margarine improves liver function*" (Hibbard, 2000). Consumers respond to messages of risk or loss that appear relevant to them, and the effect is heightened when a risk message includes clear directions about how to reduce a potential risk.
- **Defaults:** As discussed in Chapter 2, consumers have a tendency to accept an option when it is offered as the default position. For example, when investing in a pension or superannuation plan, consumers will often simply accept the default option offered by their employer if they think the decision might otherwise be very complicated. Likewise, in countries where individuals are given a choice on donating their organs upon death (or not), the default choice has proven to have significant implications. Countries which have opted for a "yes" default have donation rates that are 16% higher than in countries where the default is "no" (Johnson and Goldstein, 2003).

- **Tone:** It may not always be possible to present information in a neutral manner. Even if it is possible, there is a risk that consumers will find such a tone uninteresting. For example, information regarding potential hazards in the form of a warning about a specific product may be presented in an alarming tone such that consumers become wary of all goods in that product category. Conversely, if the tone of the warning is neutral, consumers may not take notice of the warning at all and continue to purchase problematic goods.

Timing

Information is often provided to a consumer just when a purchase is being finalised. This can be problematic as the pressure and time constraints of reading disclosures at the point of sale may be significant. For example, a UK survey found that people are unlikely to read paperwork in detail when it is provided to them at the point of making a purchase, particularly if they were talking to a salesperson beforehand (Better Regulation Executive and National Consumer Council, 2007). This suggests that information requiring reflection or analysis may not be very useful to consumers when provided once the consumer has made a choice and as the sales transaction is being finalised. It would be more useful if provided earlier on.

Contract-term regulation

Requiring that all consumer contracts contain basic, non-excludable terms that provide consumers with an assured level of quality, safety, and rights in relation to products and services can help boost consumer confidence. Regulation can provide this assurance by mandating that consumer contracts explicitly contain certain terms (mandated contract terms). Alternatively, regulation can assure that certain principles or terms are operational for various types of contracts, whether or not the principles or terms are explicitly stated in contracts (implied contract terms). Mandated and implied contract terms can also be beneficial to consumers, to the extent that they clarify the types of guarantees and remedies available to consumers when they experience product failure. The use of standard implied or mandated contract terms can also benefit firms, to the extent that they increase regulatory certainty and reduce compliance costs. These and related issues were examined in a major analysis on consumer contracts completed by the Committee on Consumer Policy in 2007 (OECD, 2007b).

Mandating or implying conditions and warranties by force of law into all consumer contracts is one way of ensuring a high level of consumer protection. A condition is a term that is fundamental to a contract and non-fulfilment of that term can terminate the contract. A warranty, on the other hand, is type of insurance that provides consumers with recourse if a product does not perform as promised. It may not necessarily result in the nullification of the contract in the event a consumer experiences detriment, but it may result in compensation in such a case.

In the European Union, rules on the fairness of consumer contracts are subject to the Directive on Unfair Terms in Consumer Contracts (1993/13/EC) and are covered in the Proposal for a Directive on consumer rights (COM(2008) 614 final). The aim of the relevant provisions is to prevent significant imbalances in the rights and obligations of consumers on the one hand and sellers and suppliers on the other hand. In addition to principles, the Directive identifies terms that may be regarded as unfair. Such terms are not binding for consumers.

Most jurisdictions have now codified implied conditions and warranties as part of their consumer protection legislation. Conditions and warranties implied or mandated by regulation, which provide the basic architecture for all consumer contracts and which should be considered by policy makers as forming an integral part of the regulatory landscape and regulator's toolkit, are designed to provide consumers with basic and guaranteed levels of protection in relation to the goods and services they acquire. Governments should seek to ensure that consumers are aware of these protections.

Cooling-off periods

A cooling-off period provides consumers with the ability to cancel a contract with a firm without penalty during a given period. It was developed in large measure to provide consumers who may have acted impulsively, may not have adequately studied a contract or may have been pressured, with a mechanism to reconsider or undo their decision. In some instances governments have intervened and mandated cooling-off periods, which are typically seven to fourteen days in length. These periods are often provided for significant consumer transactions, such as home purchases or loans, or transactions known to involve high-pressure sales tactics, such as second-hand car purchases or purchases made in the home from door-to-door merchants.

Cooling-off periods can also address problems that are associated with situational monopolies. A situational monopoly occurs where the seller is in a unique position to influence a consumer's decision in one particular situation. Cooling-off periods address this problem by allowing decisions made in such circumstances to be evaluated outside of the specific "situation", eventually permitting a contract to be cancelled.

Cooling-off periods also refer to the policy that many retailers have which allows customers to return products for refunds or credits if they are not satisfied. In this case, where the cooling-off period is voluntary, sellers of high-quality products might use the cooling-off period as a signal of the quality of their goods.

Cooling-off periods can be highly beneficial for consumers in the case of experience goods that can be evaluated relatively quickly, thereby helping to address issues related to asymmetric information. They may, however, have unintended, adverse consequences. For example, the level of comfort provided by a cooling-off period could result in consumers not taking sufficient time to properly assess their decisions prior to purchase; they may feel obliged to continue despite the opportunity to reconsider. On the other hand, because consumers know they can cancel later, they may be more likely to make the decision to purchase.

Moral suasion

Moral suasion occurs when governments seek to influence or pressure firms to meet a specific objective involving consumers, without directly regulating their activities. This can be done via:

- **Promoting corporate responsibility:** Emphasising the importance of demonstrating corporate responsibility in both the economic and social contexts.
- **Recognition:** Recognising consumer-friendly activities through, for example, awards.
- **Criticism:** "Naming and shaming" firms which persistently act contrary to consumer interests.

- **Warnings:** Warning that a failure to correct a problem could result in formal measures (such as regulations), being taken. For example, after an insufficient number of instant-loan companies followed the Finnish Consumer Authority's warning to limit their activities to daytime hours, the government introduced a statutory regulation to address the issue (Finnish Consumer Agency, 2010).

The effectiveness of moral suasion rests upon a number of supply-side factors, including the cohesiveness of the industry, the number of industry players, their relative market power and any entrenched positions they may have. The effectiveness of moral suasion also relies upon the robustness of the policy or action in question and various factors relating to public views, including:

- A government's perceived commitment to that policy.
- The form in which the government's position is conveyed to the public.
- The level of trust in the government held by the public.

Codes of conduct and trustmarks

Codes of conduct and trustmarks are tools that can be used by governments and/or industry to help establish and consolidate good business practices.

Codes of conduct

A code of conduct is a set of principles and rules that govern the way industries and institutions should behave toward their stakeholders (Carson, 2008). Such codes are so varied it is difficult to provide a definition that adequately describes them all. Depending on the purpose and nature of a code, responsibility for developing, administering and enforcing compliance with it can rest with the government (through regulators or consumer authorities, for example), with the signatories to the code themselves, or there could be shared responsibility. Adherence to a code could be voluntary, or it could be mandated, either as a condition of membership in an organisation, or by law.

Factors which should be considered in deciding whether such a code would be appropriate and effective are summarised in Box 4.7 (see also ACCC, 2005, Australian Government, 1998a, Australian Government, 1998b, and the UK OFT's criteria for approving consumer codes at *www.oft.gov.uk/advice_and_resources/small_businesses/codes/*).

The balance of this section focuses on codes that are developed and administered largely by industry. These codes can provide advantages over direct government regulation, although as noted above, many rely on some form of endorsement or oversight by government to be effective and credible. The potential advantages include (ACCC, 2005):

- They can be more flexible than legislation and can be amended more quickly to keep abreast of changes in industries' needs.
- The demands on government resources are likely to be lower, while business compliance costs can often be less as well.
- Industry participants often have a greater sense of ownership of the code, which is likely to lead to a stronger commitment to comply with it.
- Industry-led complaint-handling procedures under industry-developed codes can be cost-effective, time-efficient and user-friendly in resolving complaints.

The self-regulation that goes hand-in-hand with industry-developed codes has the potential to achieve improvements in business practices using negotiation and

Box 4.7. **Factors to consider in developing a code of conduct**

- Factors that may be relevant in developing a code of conduct include:
  - ❖ The consumer issue being addressed; for example, would a code of conduct aid consumers in:
  - ❖ Evaluating the quality of the product?
  - ❖ Identifying a competent supplier?
- Getting defective products fixed or securing redress?
- The nature of the industry concerned. How the following could influence the effectiveness of a code should be considered:
  - ❖ The size and structure of the industry.
  - ❖ Other industry characteristics such as the geographic spread and cohesiveness of the industry.
  - ❖ The history of the industry in relation to the objective of the code.
  - ❖ The existence, coverage and strength of an industry association.
- The types of existing or proposed standards which are aimed at addressing the issue (and the existence of supporting mechanisms for these standards).
- The current degree of confidence, trust, or credibility the industry has with the community and consumers.
- Commitment of the industry to self-regulation.
- Willingness and ability of the code administrator to act against non-compliance.

consultation. Consumers can benefit from a greater focus by firms on customer service and on being responsible for their own behaviour (Truss, 1998). Self-regulation can also play a role in making markets work well for consumers, particularly in terms of the quality of products and services they receive. Self regulation helps achieve better market outcomes by influencing business incentives under conditions which make it difficult for consumers to assess product attributes and for firms to signal quality. Box 4.8 provides additional examples of industry-based codes in several countries.

The OECD's Committee on Consumer Policy is carrying out research on the roles that industry can play in promoting and protecting consumer interests. Case studies of self-regulatory and co-regulatory schemes within the OECD are being examined, with a view to developing insights into the conditions under which these schemes can contribute positively to the overall regulatory framework.

Industry-based codes have limitations in terms of their scope and effectiveness, and more formal government interventions, including legislation, may be needed to address issues effectively. In these situations, government endorsement of codes can be used to enhance compliance with the code.

Research suggests that industry-enforced codes of conduct tend to be more effective when the self-regulatory body has widespread industry support, comprises representatives of the key stakeholders (including consumers, consumer associations, the government and other community groups) and operates an effective system of complaints handling (ACCC, 2005).

Box 4.8. **Examples of voluntary codes of conduct**

In the United Kingdom, the Office of Fair Trading has approved Codes of Practice for a number of industries where consumer problems were being experienced. Participation is voluntary. Details of the requirements necessary for approval and a list of approved codes can be found at *www.oft.gov.uk/advice_and_resources/small_businesses/codes/* (UKOFT, undated).

The US Direct Selling Association administers a voluntary code of ethics (see *www.dsa.org/ethics/*). It aims to ensure that members do not make statements or promises that might mislead either consumers or prospective salespeople. The code is enforced internally and consumers have access to a range of remedial actions including complete restitution, repair, request for an increase in advertising about the code, and request for written commitment to the code.

Sources: Direct Selling Association (United States) (undated), *Code of Ethics*, *www.dsa.org/ethics/*, accessed on 11 March 2010 and UKOFT (United Kingdom Office of Fair Trading) (undated), *Consumer Codes of Practice*, *www.oft.gov.uk/advice_and_resources/small_businesses/codes/*, accessed on 11 March 2010.

In well-functioning markets, codes of conduct that are devised, implemented, and enforced by industry participants can be effective when designed in conjunction with consumer stakeholders and, if necessary, the government (Verschoor, 1998). Further, the effectiveness of codes increases when the codes are part of a learning process that requires inculcation for industry participants, reinforcement, and measurement (Doig and Wilson, 2002).

On the other hand, the use of a code where other tools, such as regulation, would have been more appropriate can undermine consumer confidence. Thus policy makers should scrutinise codes like all other tools. This can be particularly important when an industry code does not have sufficient coverage of firms or where code enforcement is not treated seriously. As with all governmental tools, an evidence-based assessment of the efficacy of the use of a particular policy instrument is important (ACCC, 2005; UKOFT, 2008a).

Moreover, it should be noted that the effectiveness of codes depends on the extent to which firms comply, and the extent to which there are systems in place for identifying and disciplining firms which do not conform. Provisions for redress when consumers have been harmed as a result of non-compliance also need to be adequate. This is also the case for standards and licensing systems, which are discussed below.

As indicated earlier, policy makers should also scrutinise codes of conduct to ensure that they do not have unintended, anticompetitive side effects. For example, any requirements for minimum entry qualifications set a barrier to entry, and registration requirements have a similar potential to be used in anticompetitive ways (Deighton-Smith *et al.*, 2001). Professional regulation can also contain advertising restrictions. While prohibitions against price advertising, for instance, can be portrayed as a means of ensuring that consumers are not seduced by misleading claims, they can – like a collusive agreement among competitors to refrain from such advertising – lower competition and maintain prices at a higher level than would prevail in a completely free market.

Trustmarks

Firms can also show consumers that they comply with high standards of conduct through other mechanisms, such as trustmarks which are seals (or related symbols) whose use is approved by independent organisations for firms which comply with a grantor's standards. To be effective, trustmark standards should be clearly articulated and enforced by the seal grantor. In many contexts, such as with BBBOnline or TRUSTe in Canada and the United States, such seals include a mechanism for resolution of consumer complaints.

Trustmarks can assist consumer protection authorities by creating best-practices standards for firms, ensuring compliance with such standards and providing complaint resolution mechanisms for individual consumers. In some cases, authorities can use their powers to enforce promises made by firms to their consumers in the context of a trustmark seal programme. As long as the relative roles of trustmarks and government authorities are clearly defined, the particular functions of trustmarks can be adapted to many contexts. For example, the APEC countries are developing a cross-border privacy-rules system which will use trustmarks to facilitate information flows while protecting privacy with countries that do not have well developed privacy laws or privacy enforcement authorities.

Standards

Standards can be defined as "… published documents setting out specifications and procedures designed to ensure products, services and systems are safe, reliable and consistently perform the way they were intended to. They establish a common language which defines quality and safety criteria" (Standards Australia, undated). They can provide an assured level of quality and safety in manufacturing, making choices easier for consumers. Standards drive competition among firms by pushing them to develop more efficient means of meeting those standards, which in turn can lead to greater innovation. However, in areas more prone to fraud and deception, such as the supply of certain imitation goods and services, where quality and safety are likely to be compromised, standards may fail to inspire consumer confidence if they can be relatively easily circumvented.

Standards may also be used to ensure interoperability of products from different suppliers. They can ensure, for example, that the thread on a screw will be similar, without respect to the manufacturer, or that software packages can be run on various operating systems. Standards can thus increase the range of products available to consumers and increase competition between suppliers. Transaction costs can be reduced simply through a statement of conformity to a known standard.

Development and implementation

Standards can be set by business firms, governments, not-for-profit organisations, trade organisations, or a combination thereof. Independent standards bodies such as the International Standardization Organization (ISO) design standards in a number of areas including environmental sustainability, information technology, shipping and marine technology, food products, and laboratory equipment.

In considering whether establishing a standard would be beneficial, the following factors could be taken into consideration:

- The stakeholder(s) who should be responsible for developing the standard.
- Whether the standard would deliver the desired policy outcome and whether the industry sector concerned would utilise it effectively.
- Whether the standard should be principles-based, performance-based, or prescriptive (see Box 4.9).

Box 4.9. **Principles-based, performance-based and prescriptive standards**

Principles-based standards establish a general objective that is applied and interpreted in specific instances. For example, a general objective could be established to maintain a level of chemical fumes that would assure worker safety, without quantifying what those levels would be for different chemicals.

Performance-based standards specify a desired outcome in precise terms, but allow individual parties to determine how to achieve the outcome. Using the example above, the performance-based standard would specifically indicate and quantify the acceptable levels of fumes, but leave it to individual parties to choose a method for meeting the standard.

Prescriptive standards specify the technical means for attaining a specified outcome. In this instance both the objective and the means would be specified.

Provided that objectives are specified clearly enough, non-prescriptive approaches may provide a more efficient means of obtaining the objective for the company. In the above example, there would be scope for producing a larger overall reduction in the exposure of workers to fumes (Office of Best Practice Regulation, 2007).

- The costs and benefits of introducing the standard, and whether it should be voluntary or mandatory (see Box 4.10).
- The degree of stakeholder and technical input required for the development of the standard and, if the issue being addressed is time-sensitive, the amount of time it would likely take to develop the standard.
- Whether the standard would limit or otherwise affect competition among firms.

Role of international forums

International forums can play an additional role in improving standards by providing an opportunity for governments, standard-setting bodies, and other organisations to share information on best practices and comparative approaches to the development and implementation of standards. These forums can also facilitate co-operation between jurisdictions on matters of mutual interest.

In the consumer policy area, for example, the ISO has a Committee on Consumer Policy (COPOLOCO) which provides a forum for the exchange of information and experiences on standards and conformity assessment issues of interest to consumers. The Committee influences the ISO's work by proposing new areas for standardisation where there is a perceived need for enhanced consumer protection. Standards projects have been undertaken on customer satisfaction, environmental management systems, social responsibility, tourism and related services and the trading of second hand goods.

In the product safety area, the growth of international trade and the related increasing importance of safety standards and technical regulations prompted governments to establish an International Consumer Product Safety Caucus (ICPSC) in 2006. The caucus aims to strengthen international government and regulator collaboration and co-operation with a view towards enhancing the exchange of information on consumer product safety issues, with a focus on government policy, legislation and market surveillance. Also, there are other international fora that are active in the product safety area. The OECD, for example, has been examining ways that the sharing of information on consumer product safety issues and developments could be improved.

Box 4.10. **Voluntary and mandatory standards**

Generally the impetus to develop a voluntary standard comes from an industry body. These standards often seek to establish best practices in relation to a product's general design characteristics. In this regard, voluntary product standards provide an important way of reassuring consumers about the reliability and safety of products, by defining what constitutes quality and establishing safety criteria. These standards may be developed and published by an independent standards body such as the International Standards Organization or nation-based equivalents.

Many countries provide guidance for the development of market standards. For example, the Australian government provides guidance on the development of obligatory standards, which are termed regulatory standards in Australia, for consumer products (ACCC, undated). Consumers can also play a role in the development of standards. In Europe, for example, consumer participation in standard setting is ensured by a general co-ordination body operating at European level, called ANEC (the European Association for the Co-ordination of Consumer Representation in Standardisation) (see *www.anec.org/anec.asp*) (European Commission, 2010). ANEC's experts participate in technical committees at European and international level; their aim is to help ensure that standards are market-relevant and to provide advice on the manner in which information contained in labels, warning and instructions is provided to consumers.

Regulatory standards are usually introduced by government in response to concerns about a particular product. There are two types of regulatory standards. *Safety standards* require goods to comply with particular performance, composition, contents, methods of manufacture or processing, design, construction, finish, labelling, or packaging rules. *Information standards* prescribe the information or warnings that must be provided to consumers for certain goods. Regulatory standards can be based upon an existing voluntary standard or can be developed as new problems emerge in markets.

Standards may also be created by international organisations. The Codex Alimentarius Commission was created in 1963, for example, by the Food and Agriculture Organization and the World Health Organization to develop international food standards to protect consumer health and to facilitate fair trading practices in foods (FAO and WHO, undated). It also promotes co-ordination of food standards work undertaken by international governmental and nongovernmental organisations (see *www.codexalimentarius.net/web/index_en.jsp*).

Sources: ACCC (Australian Competition and Consumer Commission) (undated), *What are Mandatory Product Safety and Information Standards?*, ACCC, Canberra *www.accc.gov.au/content/index.phtml/itemId/325871*, accessed on 9 February 2010; European Commission (2010), Communication with OECD Secretariat, unpublished; FAO and WHO (Food and Agriculture Organization and World Health Organization) (undated), *Codex Alimentarius,www.codexalimentarius.net/web/index_en.jsp*, accessed on 11 March 2010.

Effectiveness of standards

Standards have a range of potential benefits, both direct and indirect, for consumers. They can help to:

- Ensure the safety of products and conformity with relevant legislation.
- Increase the compatibility of products; for example, standards can help ensure that components from different computer hardware and software firms are interchangeable.
- Establish an acceptable level of product quality.
- Make decisions easier for consumers and reduce barriers to switching from one product to another. For example, information standards allow consumers to gain a greater insight into the attributes of products that they purchase.

- Encourage businesses to compete vigorously and thereby improve efficiency and innovation (Blind, 2004).
- Increase economic growth; for example, in the Federal Republic of Germany during the period of 1960-1990, standards were found to have increased economic growth by 0.9% per annum (Jungmittag, Blind and Grupp, 1999).

While standards have significant value, overly prescriptive requirements can create unnecessary barriers to entry for industry entrants and can be costly to firms. Standards that are too high will likely decrease consumer choice. In addition to this, depending on the part of the world, adopting a standard can be a lengthy process, taking more than three years. This sometimes means that the standard making process cannot provide a timely policy response. Finally, there is a risk that minimum standards will establish a norm that is rarely exceeded, particularly if firms have difficulty signalling quality above the minimum. Where distinctions can be made, consideration could be given to establishing a graded standard; a star rating, for example, could be used to signal the extent to which products met or exceeded a standard.

Licensing and accreditation

Licensing can be used in industries where there is a need to guarantee a minimum level of product quality or provide evidence of a minimum level of firm competency. Accordingly, licences can serve to build and maintain consumer confidence. To be meaningful, a licence must be issued by a reputable authority. Typically licences are granted by governments, but in some cases trade or professional bodies do so. Licensing programmes can be structured in a similar manner to trustmark programmes.

Development and implementation

Licences may be appropriate for industry sectors where firms supply goods that are potentially dangerous or where it is inherently difficult for a consumer to know if a firm has the expertise, skills, or knowledge to deliver a satisfactory good or service (Cope, 2005). Table 4.1 provides examples of types of licenses. It should be noted that some of the features listed are not necessarily beneficial to consumers.

Licensing schemes generally have to be registered with a government authority or an industry body which may impose a number of obligations on licence holders. In Finland,

Table 4.1. **Examples of professional and occupational regulation and licensing**

Type of obligation	Explanation
Entry qualifications	Academic and/or experience qualifications are needed to become a professional (*e.g.* accountants).
Registration requirements	The firm/individual must hold a licence to practice (*e.g.* electricians, taxi drivers).
Reservation of title	Only persons with the appropriate qualifications and/or on the register may use the professional title (*e.g.* health-care professionals).
Reservation of practice	Certain areas of practice are not allowed to be performed by persons other than certified practitioners (*e.g.* building and construction workers).
Disciplinary processes	Professionals may be asked to explain their actions if their conduct is questioned, and may be disciplined or prevented from practising (*e.g.* heath-care professionals).
Conduct of business	Rules that prescribe ways in which the professional may or may not conduct their business affairs; common restrictions include ownership, profit sharing and advertising. (*e.g.* financial-service providers)
Business licensing	Firms must be licensed before they are able to sell their services (*e.g.* food vendors).

Source: Deighton-Smith, R., B. Harris and K. Pearson (2001), *Reforming the Regulation of the Professions*, National Competition Council Staff Discussion Paper, AusInfo, Canberra, *www.ncc.gov.au/pdf/PIReStPr-001.pdf*.

where instant loan companies can be set up by anyone with no requirements needing to be met, the consumer authority has responded by pursuing mandatory registration and setting requirements for professional skills and reliability (Finnish Consumer Agency, 2010).

Licensing generally either establishes *i)* criteria that have to be attained; and/or *ii)* conditions that must be maintained. A failure to comply with requirements can result in losing or failing to obtain a license. In relation to the first point, firms must demonstrate that they have attained certain levels of competence, based on training, displays of ability and/or examples of professional development. Schemes that do not require that a party have a license before entering a market (*i.e.* case *ii*) usually provide for sanctions (such as fines or restrictions) if there is a failure to maintain standards.

Effectiveness of licensing

A well-targeted licensing regime that can achieve the aim of maintaining high standards of practice and quality in an industry can be beneficial to consumers. Licensing is, however, subject to the same limitations as codes and standards. For example, licensing bodies may, for self-serving reasons, require that only licensed persons be permitted to undertake specific tasks which could in fact be undertaken by others. Moreover, licensing can impose unnecessary standards and additional compliance costs on firms, and institute costly and time-consuming administrative and enforcement regimes without clearly benefiting consumers (Rimmer, 2006). Finally, accreditation and licensing procedures may fail to exclude incompetent or unethical practitioners from an industry. For example, professionals may be reluctant to discipline fellow professionals as a result of misplaced professional loyalty.

Financial instruments

Financial instruments can be used to influence the behaviour of either consumers or firms. They include fines, which are discussed further in the section on enforcement, taxes and subsidies. The instruments affect the net cost of products, while letting markets otherwise function freely (Office of Best Practice Regulation, 2007). To ensure effective enforcement of consumer rights, individual consumers must be able to enforce these rights and access redress. In order to enhance consumer protection and the exercising of consumer rights, some governments may subsidise redress mechanisms.

Financial instruments require careful deployment, as they are powerful tools that can distort competition and undermine consumer interests if not prudently implemented. For example, a subsidy to a certain product manufacturer may have the negative outcome of encouraging the consumption of a domestic product instead of a cheaper or more innovative or more environmentally friendly import, while protecting an inefficient domestic industry. In contrast, taxing pollution would drive up prices of the products of heavy polluters, thus providing incentives for firms to develop more environmentally benign products and processes.

Prohibitions

Prohibition of a product or practice is one of the strongest policy instruments that governments can employ as it restricts what or how products can be traded (see Box 4.11). An example in the European Union (EU) is the Directive on General Product Safety (2001/95/EC) and other EU legislation which aims at ensuring the safety of consumers. Many

Box 4.11. **Examples of prohibited practices in Australia**

Prohibited practices: misleading and deceptive conduct, unconscionable conduct, including taking advantage of vulnerable and disadvantaged consumers and selling certain consumers goods and services that are deemed to be unsafe.

Prohibited goods: unsafe toys, certain addictive or harmful drugs or poisons, lead-based paints and chlorofluorocarbons in spray cans.

Prohibited services: provision of commercial surrogacy and prostitution services in certain States.

Source: Australia Treasury (2009), Communication with OECD Secretariat, unpublished.

countries, for example, prohibit the sale of products that are potentially harmful to children: some, for example, prohibit certain types of advertising targeting children; some prohibit sales of cigarettes to children. Many countries do not tolerate lying to consumers (actively or by silence) and do not permit harassment or duress to be used against consumers; most do not permit trade in prohibited drugs, body parts, endangered species or products derived from endangered species, or people (slavery or indenture).

Many OECD countries explicitly prohibit practices that are unfair. The EC Directive on Unfair Terms in Consumer Contracts (1993/13/EC), for example, contains a list of examples of terms that may be regarded as unfair, and terms that are found to be unfair are not binding on consumers. In many countries, the concept of unfairness encompasses misleading practices, including in the EC's Unfair Commercial Practices Directive (2005/29/EC); Part V, Division 1 of Australia's Trade Practices Act (entitled "Unfair practices"); and in a number of Canadian provincial laws governing business practices (in, for example, Alberta, British Columbia, Manitoba and Ontario).

There are some prohibitions or unfair practices that require policy makers to exercise discretion. For example, in the United States, Section 5 of the Federal Trade Commission (FTC) Act declares unfair or deceptive commercial acts or practices unlawful (USFTC, 1983). In determining whether an act or practice is unlawful, the authority considers the following:

- There must be a representation, omission or other practice that is likely to mislead the consumer. Most deception involves written or oral misrepresentations, or omissions of material information.
- To be deceptive the representation, omission or practice must be likely to mislead reasonable consumers under the relevant circumstances. If the representation or practice affects or is directed primarily to a particular group, the reasonableness from the perspective of that group is examined.
- The representation, omission, or practice must be a "material" one. To be material, the act or practice must be likely to affect the consumer's conduct or decision with regard to a product or service. If the consumer would have made a different choice but for the deception, consumer injury is likely to be found. A finding of materiality means that there is a presumption that injury is likely to exist.

Thus, pursuant to the FTC Act, acts or practices are deceptive if there is a representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment.

Development and implementation

Prohibition is most effective when supported by an appropriate enforcement and monitoring regime that discourages the formation of illicit markets. To be effective, consumers and firms should be made aware of the prohibition and the reasons for it in order to build support. Prohibitions of unfair business practices need to be responsive to changes in markets to be most effective.

Effectiveness of prohibitions

Prohibitions, in particular those designed to protect social values, can help to achieve important societal objectives; some countries, for example, ban certain advertising of cigarettes with a view towards limiting consumption. Prohibitions of deceptive conduct or unfair contract terms aim to improve the workings of the market by helping to prevent consumers from being victimised by unscrupulous traders.

Given the strong effects of prohibiting a product or practice, however, it is important to ensure that the costs and benefits are carefully assessed before a measure is implemented. In particular, the effects on the efficiency of markets and consumer choice should be considered, as should the potential costs on business firms. Also, in some cases, prohibitions apply universally, whereas the harm applies only to specific segments of consumers who may be particularly vulnerable. In such circumstances, other approaches to dealing with the issue may be more appropriate.

Dispute-resolution and redress mechanisms

When consumers are not satisfied with a product or service, they may seek redress through a financial settlement of some sort or through repair or replacement of a defective or underperforming product. Firms are generally aware of consumer concerns in this regard, and many, along with retailers, offer warranties or guarantees to build consumer confidence in their goods and services, while providing ways for consumers to notify them about specific problems.

In many instances, complaints can be resolved satisfactorily between the parties concerned. In others, disputes may need to be resolved through involvement of third parties, which may be through informal or formal adjudicative or consensual processes (Figure 4.1).

Dispute-resolution mechanisms can occur at the industry level or can be government run. In either case, they can provide for both individual and/or collective adjudication. The ability for consumers to file complaints and obtain complaint resolution is an important part of consumer protection. Formal structures, whether managed by government or industry, can be provided through the mechanisms described in the top three tiers of the dispute-resolution pyramid shown above (see OECD, 2005b; OECD, 2005c; OECD, 2007c).

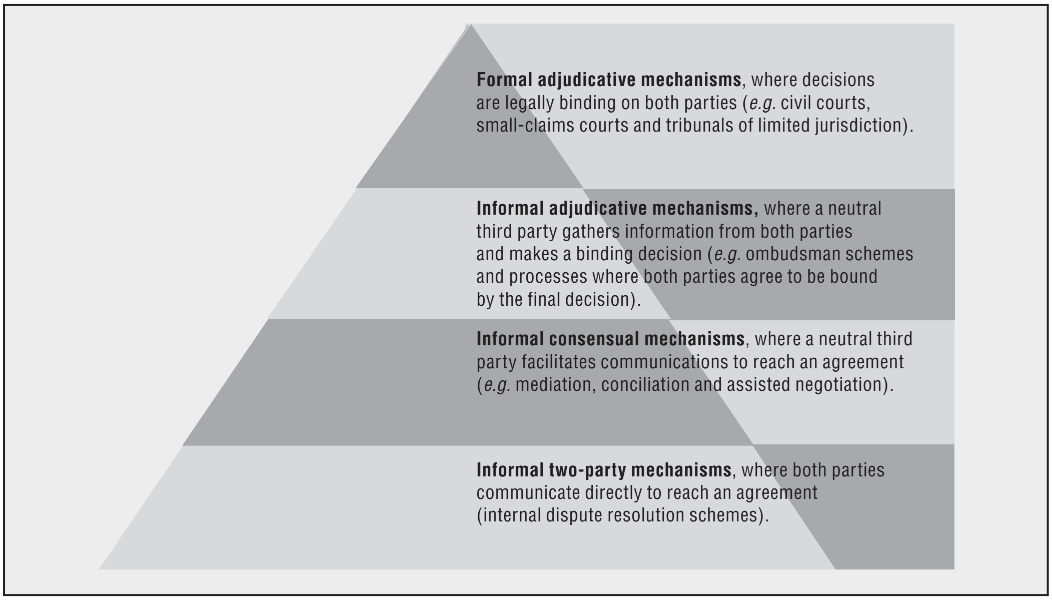
Developing and implementing dispute-resolution and redress frameworks

Role of government in dispute resolution

Government support and assistance for dispute-resolution mechanisms takes various forms:

- *Provision of complaint-making mechanisms.* Governments may offer avenues for consumers to submit complaints in the first instance. In the United States, the Federal Trade Commission, Federal Communications Commission, and Better Business Bureau (a non-profit business organisation), each operate easy-to-use, online complaint-submission mechanisms.

Figure 4.1. **Types of dispute-resolution mechanisms**



Source: Adapted from Ramsay, Iain (2005), *Consumer Redress and Consumer Protection Policy*, presentation at OECD Workshop on Consumer Dispute Resolution, Washington, DC, 19-20 April.

- *Provision of Information. Governments can* explore creating portals and other mechanisms to provide consumers with dispute-resolution information.
- *Sponsorship or approval of industry mechanisms that meet specific criteria*. Government approval can be achieved through procedures in which a government body assesses and then endorses a mechanism (Australian Government, 1997). This approach may be best suited for well-functioning markets with credible industry bodies. Industry mechanisms can also be subject to legal tests. Australia's Mobile Premium Services Industry Code, for example, contains a dispute resolution framework that must be registered with the relevant regulator (see *www.commsalliance.com.au/Activities/mobile-premium-services*).
- *Government provision of a mechanism*. Dispute resolution schemes may be run by governments either as *i)* a funded formal, quasi-legal process, such as Tribunals [see, for example, the NSW (New South Wales) Office of Fair Trading at *www.fairtrading.nsw.gov.au/corporate/cttt.html*]; or *ii)* an informal process (see, for example, the UK's Financial Ombudsman Service at *www.financial-ombudsman.org.uk/*)].
- *Enforcement and redress:* Government enforcement can assist consumers in obtaining financial compensation, alleviating consumer injury and preventing further detriment. Enforcement authorities can also play an important role by, for example, bringing enforcement proceedings in the public interest and/or by representing consumers in formal legal disputes. They have better access to the investigative, legal, and financial resources to take such cases. This can help to overcome the costs that individual consumers or groups of consumers would otherwise incur.

OECD countries agreed to guidelines for dispute resolution through a *Recommendation on Consumer Dispute Resolution and Redress*. This recommendation establishes common principles for member countries on mechanisms for consumers to resolve disputes and obtain redress for economic harm resulting from transactions with firms involving goods or services, including transactions across borders. It includes recommendations for individual, collective, and governmental dispute-resolution and redress mechanisms in addition to recommendations to enhance the effectiveness of remedies in cross-border consumer disputes (OECD, 2007b).

Role of industry-based dispute resolution

The business community has an important role to play in resolving consumer disputes, whether through internal or external processes. Handing complaints effectively at the outset can have a significant and positive influence on commercial relationships and customer satisfaction. Complaints also provide firms with feedback about a product or service experience, allowing them to further develop and refine their product offering, operational processes and market focus.

Industry-based external dispute resolution (EDR) processes, such as non-statutory ombudsman schemes, have been embraced by companies and professional organisations in the private sector as a necessary, viable, and legitimate technique for resolving conflicts between themselves and consumers (Morris, 1987). The processes can be self-regulated by an industry or may be supported by government regulation. Such schemes are usually funded by industry, yet often run independently, with decisions binding the industry participants and sanctions applying for non-compliance. Many benefits accrue from such schemes. These include improvements in industry standards and the provision of low-cost consumer access to redress.

Online dispute resolution (ODR) is also becoming increasingly important. The term ODR is associated with mechanisms such as automated negotiation, neutral evaluation assessment, mediation, arbitration (binding and/or nonbinding), expert determination, or "virtual juries" that use Internet-based processes, information management tools, and communication tools. ODR has been used both for disputes arising out of online e-commerce transactions, and offline disputes. It has been particularly successful for domain name dispute resolution, e-commerce transactions, and small insurance claims where the main issue to resolve is the amount of settlement (see ICANN, 2009). For example, SquareTrade is an ODR service where two parties can resolve their disputes directly through negotiation in an online space or by using a SquareTrade mediator. SquareTrade has been used for its dispute resolution services by large online companies such as eBay, the online auction site, and has handled over 2 000 000 disputes in 120 countries (see *www.squaretrade.com*).

Effective dispute resolution frameworks

There is extensive literature on the principles for the delivery and development of effective dispute-resolution processes (see OECD, 2007b, International Standards Organization, 2004, Trans-Atlantic Consumer Dialogue, 2000 and Consumers International, 2000). Box 4.12 summarises some of the main principles for effective dispute resolution addressed in this literature.

Enforcement strategies

The success of consumer policy in promoting consumer interests depends critically on the interpretation, implementation and enforcement of those policies by enforcement authorities (see Diver, 1980). Not every situation can be anticipated at the policy making stage, and therefore statutes and regulations often are written in fairly general terms. Enforcement, on the other hand, is fact-specific, often requiring significant interpretation

Box 4.12. **Principles for effective dispute resolution**

- *Accessibility*. Consumers are made aware of the mechanism, which is easy to use and imposes either no or low costs.
- *Independence*. The decision making process and administration of the mechanism are independent (*i.e.* do not directly involve the disputing parties).
- *Fairness*. The mechanism produces decisions which are fair and seen to be fair by observing the principles of procedural fairness; decisions are made on the basis of available information and on specific criteria.
- *Accountability*. The scheme publicly accounts for its operations by publishing its determinations and information about complaints and by highlighting any systemic industry problems.
- *Efficiency*. The scheme tracks complaints and ensures that complaints are dealt with appropriately. The process is subject to independent, regular review.

of law or policy. Decisions on which violations to pursue in effect establish policy. At the same time, enforcement actions may themselves raise issues that establish the need for further policy development.

Choosing which violations to pursue

The steps to prudent enforcement decisions are similar to those of sound policy making. First, an enforcement authority needs to identify, to the extent possible, the types of violations that are occurring. Chapter 3 provides information on how policy makers can identify sources of consumer detriment. That discussion is equally relevant to enforcement authorities identifying violations.

Because enforcement authorities have limited resources, decisions need to be taken on which violations to pursue, and their priority. There are a number of factors that an enforcement authority may consider when making those decisions. These include the level of detriment to consumers, broader policy considerations, the availability of other mechanisms, the message to industry and/or to consumers affected by the enforcement action, resources and the ability of an authority to mount a successful case.

Level of detriment caused by the violation

The overriding goal of an enforcement authority should be to reduce consumer detriment to the greatest extent possible, given its legal mandate and resources. Accordingly, enforcement authorities should generally pursue the violations that cause the greatest amount of consumer detriment. Indeed, a recent survey of enforcement authorities around the world found that the amount of consumer harm was a factor in determining which cases to pursue for 18 of 22 survey respondents (ICPEN, 2008; see also UKOFT, 2008b).

Basing decisions on the amount of consumer detriment requires an evaluation of the detriment. This does not mean that it is necessary to conduct a full-blown investigation into every violation to determine which cause the most detriment. Rather, as is discussed in Chapter 3, the effort put in to determining the amount of detriment should be proportionate to the decision that will be made with that information.

There are two reasons why pursuing violations that cause the greatest consumer detriment can be an effective strategy. The first is the direct impact would be greatest for consumers. There may, however, also be an important indirect benefit: enforcement actions may deter other firms from committing the same types of violations, thereby reducing the likelihood of significant future detriment.

Broad policy considerations

Many enforcement authorities focus their efforts on specific industries or practices that have been identified as priority areas through the political process (*e.g.* by the legislature or by government ministries) or through other sources such as the media or consumer organisations and other advocacy groups (ICPEN, 2008). Sometimes enforcement actions tackle a specific consumer-focused aspect of a broader policy issue while other times they focus on a narrower concern (Box 4.13). Authorities may also choose to focus efforts on problems that affect specific groups of consumers, such as particularly vulnerable or disadvantaged consumers, consistent with broader social goals.

Box 4.13. **Enforcement and the economic downturn**

One example of enforcement-related activities that reflect broader policy considerations is the role that consumer protection enforcement authorities have been playing during the economic downturn. With the downturn, there has been a rise in many countries in scams that are aimed at preying on vulnerable and financially distressed consumers. These include mortgage foreclosure rescue scams, employment scams and debt relief and credit repair scams. Governments have placed priority in moving swiftly against these scams in a number of countries, as part of efforts to deal with the economic crisis in a comprehensive manner.

In the United Kingdom, for example, the government issued a White Paper in July 2009 pledging that, as part of a broader commitment to helping consumers struggling with debt, the government will take "swift enforcement action against debt write-off scams and against firms who exploit the vulnerable in debt" (HM Government, 2009). In the United States, the Federal Trade Commission has played an important role in bringing cases related to the economic downturn targeting scammers, for example, who sought to exploit the American Recovery and Reinvestment Act of 2009 (the economic stimulus package that was widely reported as injecting USD 787 billion into the US economy) by selling purported access to, or expertise for obtaining, free government grants (USFTC, 2009a).

Source: HM Government (2009), *A Better Deal for Consumers: Delivering Real Help Now and Change for the Future*, July, *www.berr.gov.uk/files/file52072.pdf* and USFTC (2009a), *How the FTC Works to Halt Fraudulent Schemes Exploiting the Economic Downturn and the Stimulus Package*, Prepared statement of the Federal Trade Commission on scams related to the economic stimulus before the Senate Committee on Homeland Security and Governmental Affairs, 10 September, *www.ftc.gov/os/testimony/P094402econstimulusscams.pdf*.

Availability of other mechanisms

Depending on the type of violation and the type of firm committing the violation, it may be possible to achieve compliance through methods which are less costly than pursuing formal enforcement actions. Some violations, for example, result from mistakes or oversights; they may cease if they are simply pointed out to the firm. On the other hand, in situations where unintentional violations have caused substantial consumer detriment, it may nevertheless be appropriate to impose sanctions on firms, to discourage similar mistakes in the future.

Prior to taking an action, enforcement authorities should consider whether other authorities may be in a better position to address a violation; they should also consider whether and how they might want to co-operate with foreign consumer enforcement authorities to address a problem (see UKOFT, 2008b and ICPEN, 2008). In addition, in some jurisdictions private parties may be able to bring suit against firms for certain types of violations. When this is the case, government authorities might want to consider focusing their efforts on situations where there is no viable private plaintiff whose interests align with the public interest (see USFTC 2009b and UKOFT, 2008b).

The message a particular enforcement action sends to firms and consumers

An authority's decisions about enforcement priorities have implications for firms and consumers. Enforcement actions signal what types of violations an authority is focusing on, which may provide additional incentives for firms to comply with the policies concerned (see ICPEN, 2008 and USFTC, 2009b). From time to time it may also be effective to bring actions against relatively less-important types of violations with a view towards reminding firms of the need to adhere to them as well.

When there is ambiguity in a regulation, either because a regulation is written in general terms or because a particular business practice was not anticipated by a regulation, enforcement actions can help define the boundaries of regulations for industry (see UKOFT, 2008b and ICPEN, 2008). Identifying certain practices as potential violations, for example, can result in firms ceasing or avoiding those practices. Notification can be made by issuing guidance about when enforcement actions are likely to be considered or other, informal, approaches.

Enforcement actions can also send unintended messages to firms, and authorities should be cognizant of this. Some violations may occur as part of what is otherwise a beneficial economic activity. For example, if an enforcement action is taken against a firm for breaching the conditions associated with research and development incentives, other firms may reduce their levels of research and development to reduce the risk that they will become subject to such actions. This then could reduce innovation within the economy, which, in turn, could negatively affect the development of new consumer products. On the other hand, if an enforcement action creates the impression that an authority will be aggressive in a particular area, this may deter violations, which could benefit economic activity. In general, enforcement authorities should strive to provide clarity to firms in order to avoid sending unintended messages about enforcement actions.

Enforcement actions can also be reinforced by providing information to consumers. Enforcement actions may lead to public statements or media reports, which can complement consumer education by raising consumer awareness about harmful practices or their rights to redress.

Resources

Enforcement authorities have limited resources. When considering how best to help consumers, they must therefore consider the staff's time that would be required to pursue an enforcement action and the other resources that would be needed (see ICPEN, 2008 and UKOFT, 2008b). Tradeoffs ultimately have to be made. Several resource-intensive actions may make it necessary to significantly reduce the scope of other actions.

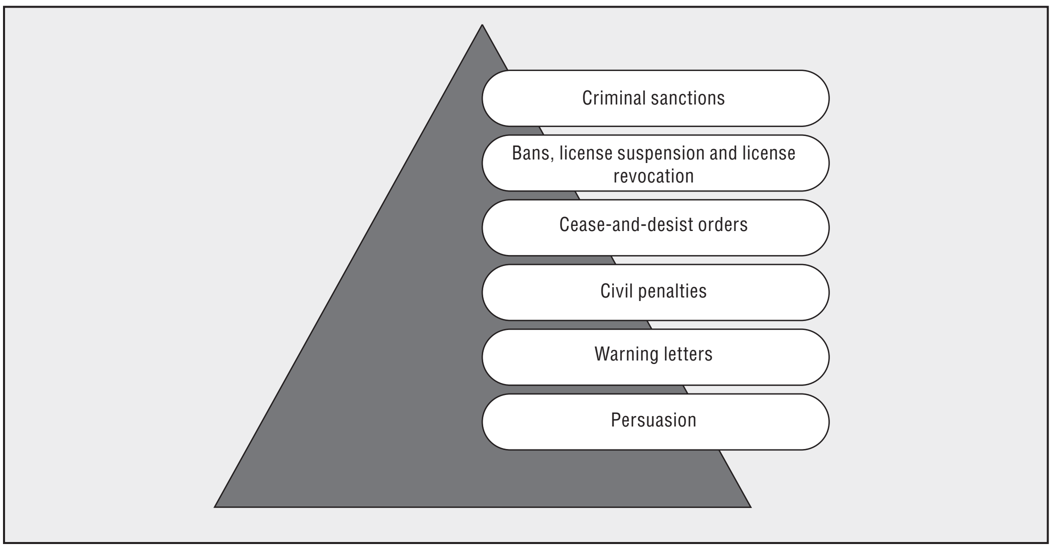
An authority's expertise in a particular area

A challenge that sometimes faces enforcement authorities is a violation that occurs in a highly technical area, or in a new market that the authority is not familiar with. In these situations, the authority may be able to pursue the action by working with other government bodies, or by hiring experts on a temporary basis. In areas that the authority anticipates will become more important over time it may be beneficial to undertake fact-finding investigations or enforcement actions that would otherwise not be attractive, with a view towards developing authority expertise (UKOFT, 2008b).

Sanctions

The types of sanctions available to enforcement authorities and the prioritised use that they will make of them will vary widely across jurisdictions, but a general observation is that enforcement authorities need a wide range of credible sanctions to secure compliance. These range from informal persuasion to severe penalties such as criminal prosecution and license revocation (Figure 4.2). Regulators are most effective at achieving compliance when a mixture of persuasion and punishment techniques that are proportionate to the violations can be used (Braithwaite, 2000, as quoted in NZMCA, 2005). In addition, it is important that a regulator can escalate the sanctions imposed if a firm continues to engage in violations. Experience shows that regulators in any area that have only one deterrence option available to them are less effective than regulators that have a range of sanctions. This is particularly true when the only deterrence option available is extremely severe. For example, a regulatory authority that has the power to withdraw or suspend licenses may be ineffective because such a sanction is too severe for most problems and most traders are aware that the regulator would only be able to use it in relation to the most extraordinary offences.

Figure 4.2. **Enforcement pyramid**



Source: Adapted from Braithwaite, J. (2000), *Convergence in Models of Regulatory Strategy*, Regulation, Crime, Freedom (Collected Essays in Law), Ashgate, Dartmouth, as cited in NZMCA (New Zealand Ministry of Consumer Affairs) (2005), *Review of the Enforcement of Consumer Protection Law: An Initial Think Piece*, NZMCA, Wellington.

Common types of sanctions include *i) warning* letters; *ii)* civil penalties; *iii)* cease and desist orders; *iv)* bans, license suspension and license revocation; and *v)* criminal sanctions.

Warning letters

Many authorities are viewing warning letters as a powerful and relatively cost-effective law enforcement tool. For example, in recent years, the US Federal Trade Commission used warning letters to combat deceptive marketing in a variety of matters (USFTC, 2010). The products covered included supplements and other health products, mortgages and other financial products, energy-related devices, spam and internet scams, children's websites, as well as clothing and textile products that were falsely labelled. Companies receiving the letters have included small and large retailers, with both online and traditional "brick-and-mortar" stores. In April 2009 the United States Federal Trade Commission, in co-ordination with other US federal and state law enforcers, sent warning letters to companies who may have deceptively marketed mortgage loan modification or foreclosure rescue services (see *www.ftc.gov/opa/2009/04/hud.shtm*).

Civil penalties

A civil penalty involves monetary relief that is sought by a party against another party for a wrongdoing. Civil penalties can include fines, the forfeiture of income from violations and/or a requirement to provide redress payments to consumers. There is extensive literature on what "optimal penalties" should be (see, for example, Becker, 1968). A recurring finding is that penalties imposed on firms should be proportionate to the harm (the consumer detriment) caused by the firm's violations. It should be noted that the costs imposed on firms by any non-monetary penalties should also be included in any consideration of "optimal penalties".

In addition to punishing violators and deterring future violations, redress payments can off-set consumer detriment and raise the public credibility of an enforcement authority.

Cease-and-desist orders

A cease-and-desist order prohibits a violator from repeating the same or similar action in the future. Such orders can be structured to punish repeat offenders more harshly, if, for example, penalties for repeating a violation are greater than those for an initial violation. In the European Union, in the consumer area the Injunction Directive enables qualified entities from member states (*e.g.* consumer organisations or public authorities) to stop an illegal practice of a trader in another Member State (see *http://ec.europa.eu/consumers/enforcement/injunctions_en.htm*).

Bans, license suspension and license revocation

Some violations and, in particular, repeated violations, may warrant temporary or permanent bans on firms engaging in a particular line of business. For business or professions requiring licenses, a ban can be achieved by suspending or revoking the license.

Criminal sanctions

Some violations that cause consumer detriment may go beyond civil violations, resulting in criminal behaviour. There is no standard definition of what constitutes a criminal action; the situation varies across jurisdictions. In terms of taking action, some consumer protection authorities have criminal enforcement powers, others do not. In the case of the latter, co-ordination with other governmental bodies may be required if strong action is needed.

Summary

The main policy instruments or tools available to governments for achieving consumer policy outcomes are described above. The chapter has examined how each instrument can be used effectively and what some of their potential impacts might be. It points out that the use of an instrument may have effects that go beyond the specific consumer problem being addressed, and that these effects need to be considered before an action is taken. Otherwise, the benefits of an intervention may be undermined. While much is known about many of the instruments discussed, knowing when and how to use them is less well understood. This challenge is addressed in Chapter 5, which presents a framework for policy making.

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Chapter 5

Consumer Policy Decision Making

The purpose of this chapter is to provide a step-by-step process that policy makers can employ to help determine whether or not they should intervene in a market to address a specific problem and, if a policy intervention is warranted, to help determine what policy instrument, or instruments, should be used.

Introduction

As outlined in Chapter 1, policy makers are facing growing challenges in protecting consumers. Markets for many goods and services have become more sophisticated in recent decades, requiring higher levels of knowledge and skill on the part of consumers. At the same time, understanding of how markets function, and more importantly, the oftentimes complex manner in which consumers behave and make decisions within these markets has increased through, for example, the study of information and behavioural economics (see Chapter 2).

The challenge for policy makers is to develop improved policies and techniques for responding to consumer problems. In this context, Chapter 3 describes the methods that can be used to screen and analyse markets where consumers are being harmed. Chapter 4 examines the tools that can be used to address problems. This chapter draws on the previous chapters, presenting a framework for evidenced-based policy making.

General and operational objectives of consumer policy

There are two general elements underlying consumer policy: protection and empowerment. How these objectives are expressed, however, varies among jurisdictions. The EU's consumer policy strategy seeks to harmonise levels of security and protection for consumers throughout the EU, for example, through the following operational objectives (EC, 2007):

- To empower EU consumers. Putting consumers in the driver's seat benefits citizens but also boosts competition significantly. Empowered consumers need real choices, accurate information, market transparency, and the confidence that comes from effective protection and solid rights.
- To enhance EU consumers' welfare in terms of price, choice, quality, diversity, affordability and safety. Consumer welfare is at the heart of well-functioning markets.
- To protect consumers effectively from the serious risks and threats that they cannot tackle as individuals. A high level of protection against these threats is essential to consumer confidence.

Similar objectives have been established in other jurisdictions (see, for example, MCCA, 2008 and MCCA, 2009).

While traditional emphasis of consumer policy has been on consumer protection, governments are increasingly exploring ways to enhance both individual and total consumer welfare through consumer empowerment. For example, the Australian Productivity Commission (2008) notes that educated and informed consumers are the first line of defence against firms who try to unfairly take advantage of consumers and that demand from empowered consumers encourages firms to compete vigorously and to be innovative.

The general and operational objectives of consumer policy – and by extension, the manner in which consumer policy is developed and implemented, will vary across countries according to different political, economic, social and other factors. For example, ethical considerations, such as a community's perceived sense of fairness, or the protection of vulnerable consumers, may vary widely across jurisdictions and can play an important role in determining when and how to intervene in a market.

Rationale for intervening in markets

When to employ a policy measure requires careful consideration. Consumers experience no obvious difficulties when undertaking the majority of transactions, particularly those that are simple and routine. Moreover, when problems arise they are often able to be resolved through direct dealings with retailers. Furthermore, markets can sometimes work on their own to generate effective solutions to many consumer problems. For example, a firm that that misleads customers about the quality of its product may lose sales from a lack of repeat business and a reputation for dishonesty.

However, as discussed in previous chapters, markets do not always deliver good outcomes for consumers. This is often the case where competition in a market is weak (*e.g.* a monopoly, an abuse of market power or collusion) or fragmented. Information asymmetry, especially incomplete information on the part of consumers, or a limited understanding of available information, can also expose consumers to significant detriment. Behavioural factors (*e.g.* consumer over-confidence, the tendency of consumers to focus on short-term benefits and costs and the tendency of consumers to automatically accept defaults set by firms) or unfair or illegal commercial practices (*e.g.* misleading advertising or fraud) can also lead consumers to make poor, and sometimes costly, decisions. It is in these circumstances that policy makers may wish to consider intervening in a market. It is imperative that any policy intervention taken be based on solid evidence that has been carefully considered so as to avoid unintended or unforeseen costs for both firms and consumers.

Evaluating consumer problems

Most consumer authorities operate within resource constraints and must be selective in deciding which problems to consider or study more fully. In some cases, consumer authorities are required by law to respond to certain types of complaints or requests for administrative advice or decisions. However, there is generally scope for authorities to undertake additional initiatives beyond these legal requirements. The extent to which formal criteria exist to determine priority areas for discretionary work varies among OECD countries. In the United Kingdom, the Office of Fair Trading has published a guide that outlines the criteria that are applied to such decisions (UK OFT, 2008). Furthermore, preliminary reviews are often carried out to clarify the situation in markets or areas where there are concerns. While the process for identifying consumer problems may vary among OECD countries, the way that a consumer problem is addressed must be informed by sound economic principles.

This toolkit does not provide guidance on setting general or operational objectives for consumer policy. Furthermore, it assumes that a method is already in place to detect consumer problems and that a process exists to determine whether a consumer problem needs further investigation. For example, the detection of consumer problems may be based on a proactive (*e.g.* surveys, preliminary market reviews) or reactive (*e.g.* complaints-based) approach, while the decision to take further investigation may be based on the estimated number of consumers affected by the problem, the degree to which consumers are harmed and the general priorities of the consumer agency or authority and other actors in society at large. While the process for identifying which consumer problems require further attention varies among OECD countries, the way that the problem is addressed should be informed by sound economic principles. This toolkit presents an approach for achieving this end in a six-step process (Figure 5.1):

- Step 1: Define the consumer problem and its source.
- Step 2: Measure consumer detriment.
- Step 3: Determine whether consumer detriment warrants a policy action.
- Step 4: Set policy objective and identify the range of policy actions.
- Step 5: Evaluate options and select a policy action.
- Step 6: Develop a policy review process to evaluate the effectiveness of the policy.

Stakeholder engagement

Stakeholders can play an important role in many (if not all) steps of the evaluation process, providing basic information, technical expertise and advice on the issues being evaluated. Their role is seen as particularly important in Step 5, as they may be in good position to identify any unforeseen or unintended consequences of a chosen policy option. While not explicitly referenced in Figure 5.1, consumer policy makers should carefully consider which steps would benefit from broad stakeholder consultation.

Step 1: Define the consumer problem and its source

Consideration of when and how consumer authorities should intervene in a market begins when a consumer problem has been detected and authorities have decided to review it. The first step should then be to *define the nature and source of the problem* (Box 5.1).

Defining the consumer problem and its source will help identify the institutions and stakeholders that could be involved in any potential policy development process. For example, consumer problems derived from anti-competitive conduct (*e.g.* collusion or abuse of market power) would indicate the need to involve competition agencies and authorities. Alternatively, consumer problems derived from firm behaviour, information failures or behavioural issues are often best dealt with by consumer policy agencies and authorities.

Therefore, once the nature and source of the problem is defined and well understood, decision-makers need to determine:

- Whether the consumer agency or authority is the most appropriate entity to address the source of the consumer problem as a whole, or certain aspects of the problem (if so, proceed to Step 2).
- Whether the problem would be better handled by another entity. This would occur if the problem, or likely policy tools for correcting the problem, fell outside the consumer authority's mandate.
- Whether there is reasonable scope for correcting the problem at its source.
- Whether the solution would conflict in an unacceptable manner with other public policy objectives; if so, the investigation may need to be terminated.

Figure 5.1. **Consumer policy making steps**

Step 1: Define the consumer problem and its source

What is the problem from the consumer's perspective?
(*e.g.* product doesn't work or overcharged)

Identify the source of the problem requiring action:

- **Firm behaviour:** misleading claims, fraud, or unconscionable conduct.
- **Information issues:** such as too much, too little or too complex
- **Behavioural issues:** such as myopia, defaults and framing; overconfidence; heuristics; hyperbolic discounting.
- **Regulatory or market failures:** such as lax or ineffective enforcement or collusion.

Is this a consumer policy problem, or would it be better addressed by a non-consumer policy action
(*e.g.* competition policy)**?**

Decide whether to: proceed with measuring detriment (Step 2); refer problem to another agency; or terminate investigation.

Step 2: Measure consumer detriment

Identify how consumers are being harmed by the problem, including considering wider social and economic costs
(*e.g.* financial costs, time loss, stress, or physical injury)**.**

Determine the level of consumer detriment:

- **Qualitative analysis** (using, for example, complaints, focus groups or mystery shopping).
- **Quantitative analysis** (using, for example, surveys, market screening or econometric analysis).

Proceed to Step 3

Step 3: Determine whether consumer detriment warrants a policy action

Determine whether the scale, nature and duration of consumer detriment are significant:

- **Scale:** Small detriment experienced by many consumers, for example, or large detriment experienced by some.
- **Nature:** Are there unfair distributional impacts, including those on vulnerable consumers?
- **Duration:** How is the scale and nature of detriment likely to change over time? What are the likely consequences of taking no policy action?

Are there other substantial costs to the economy? How are other stakeholders (including firms) negatively impacted by the consumer problem?

Determine whether: a policy action should be examined (Step 4); more evidence is required (Step 2); or the investigation should be reconsidered (Step 1) or terminated.

Step 4: Set policy objective and identify the range of policy actions

Set a policy objective (be as specific as possible)**.**

Identify the consumer policy tool(s) that could be used to address the policy objective (*e.g.* demand-side tools, supply-side tools, intermediate tools)**.**

Examine whether improved enforcement of existing policy tool(s) could meet the policy objective.

Identify the full range of practical policy actions
(*e.g.* improved enforcement, a new tool, a combination of new tools) **that could be further studied.**

Proceed to Step 5

Step 5: Evaluate options and select a policy action

Evaluate the costs and benefits of each policy action, including the possibility of unintended consequences:

- **Financial aspects** (consumer and business costs and benefits).
- **Non-financial aspects** (such as community values and ethical considerations).
- **Consider the effects on other policy areas** (such as competition, health and environment).
- **Consultation:** consult with stakeholders (including firms) on all policy actions or the selected policy action, as appropriate.

Select the most advantageous policy action(s).

Proceed to Step 6

Step 6: Develop a policy review process to evaluate the effectiveness of the policy

Establish time frames and the elements of a review process
(*e.g.* interim monitoring or full scale review)**:**

Factor in changes and potentially unforeseen or unintended consequences.

If review process reveals that the selected policy action is not meeting its objective or is not warranted any more, consider:

- **Modifying (or eliminating) the selected policy action.**
- **Reviewing alternative policies (Step 4 and/or 5).**
- **Reviewing the nature and/or source of the consumer problem (Step 1).**

Box 5.1. **Nature and sources of a consumer problem**

I. What is the *nature* of the problem from the consumer's perspective?

- Does the problem pertain to:

  i) Price (*e.g.* artificially high prices, hidden charges or tied-selling)?

  ii) Quality/safety (*e.g.* unsafe goods, products that do not meet reasonable expectations of quality)?

  iii) Availability (*e.g.* unavailable products/services or insufficient choices)?
- Are consumers failing to have their problems with products or services resolved in a satisfactory manner (unreasonably high cost, of or lack of access to, redress mechanisms)?
- Is there evidence that consumers are making decisions that are inconsistent with their personal preferences and self-interests (*e.g.* purchasing unnecessary – or too much – insurance, purchasing incompatible products, etc.)?

II. What is the *source(s)* of the consumer problem?

Firm behaviour

- Are there issues related to fraudulent, deceptive or misleading commercial practices? Are firms making false claims about their products? Or, for example, is a market intermediary representing an unsuitable product or service as being in the best interest of a consumer, when in fact the primary motivation behind the recommendation is a hidden commission?
- Are consumers being harmed due to unfair contract terms, price discrimination or other unconscionable conduct?
- Does the problem reflect insufficient competition or related harmful business practices (*e.g.* cartel-like behaviour)?

Information issues

- Does the problem arise from inadequate information? Is there evidence of information overload? Is information too complex to be understood by a sizeable population of consumers or is the cost of accessing the information too high?
- Does the problem concern obstacles that firms have in conveying the qualities and attributes of goods (including experience goods, credence goods and emerging technologies) and services?

Behavioural issues

- Is there evidence that behavioural biases are responsible for, or contributing to, the problem? If so, which one(s)?
- **Heuristics:** are consumers making quick purchasing decisions or eliminating some superior options as a result of too many product offerings or due to the complexity in comparing options?
- **Hyperbolic discounting** and **overconfidence:** are consumers taking on too much debt either due to placing too much value on current consumption, or based on an overly optimistic anticipation of future earnings?
- **Defaults** and **framing:** are consumers making decisions based on inertia (*i.e.* failing to choose and selecting the default choice), or are their decisions heavily influenced by the manner in which a choice is presented to them (*e.g.* "95% fat free" *versus* "5% fat")?

Regulatory or related market failures

- Does the problem reflect inadequate industry knowledge of existing regulations, inadequate enforcement of regulations, inadequate consumer knowledge of, or access to, formal and informal redress mechanisms and/or real or perceived failures of redress mechanisms? If so, in what ways?
- Does the consumer problem represent a market externality that negatively impacts an individual in their capacity or interest as a consumer? For example, as outlined in Chapter 2, firms may not fully consider the negative impacts experienced by consumers resulting from telemarketing or spam. Many consumer policy authorities have become increasingly active in addressing these – and similar – types of consumer problems.

Step 2: Measure consumer detriment

Chapter 3 describes how market outcomes can sometimes fall short of their potential, resulting in welfare losses for consumers. These losses are referred to as consumer detriment. As previously discussed, it has two forms: *structural detriment* (which focuses on the loss of consumer welfare due to market or regulatory failures) and *personal detriment* (which focuses on the negative outcomes for consumers relative to a benchmark such as reasonable expectations). Once the nature and source of a consumer problem has been correctly identified, a consumer policy agency or authority should establish the nature and extent of any consumer detriment. The assessment would include estimating the number of consumers affected by the problem as well as identifying the specific nature in which they are harmed.

The analysis needs to consider both economic and non-economic effects, such as financial costs, time loss, stress and physical injury. Selecting the techniques that could be used to measure these factors, which are reviewed in Chapter 3, depend on the nature of the problem being examined and the resources available for undertaking the assessment. Determining the level of consumer detriment by using qualitative analysis, for example, may involve carrying out field work with focus groups and/or analysing complaints data. Quantitative analysis may rely on data collected through surveys, market screening and econometric analysis.

Chapter 3 also describes the many challenges in measuring consumer detriment. For example, some qualitative forms of consumer detriment – such as frustration or disappointment – can be very difficult to assess in a precise manner. Complicating this matter further is the difficulty in identifying when negative experiences lead to long-term changes in consumer behaviour which result in further detriment. A negative experience could, for example, cause consumers to unjustifiably avoid certain products or services in the future or it could cause them to become resigned to accepting a negative outcome without taking action to seek redress. Another key challenge involves detecting "hidden" detriment – that is, harm to a consumer that the consumer is not aware of (*e.g.* a consumer agreeing to an unnecessary car repair based on faulty advice). Detriment may also be hidden from consumer authorities when, for example, a consumer is reluctant – perhaps due to shame or embarrassment – to admit that they made a poor decision or have been the victim of fraud. Finally, as implied above, sometimes a consumer agency or authority does not have sufficient resources to precisely identify or carry out the research and analysis required to measure detriment.

Despite these measurement challenges, it is important for a consumer policy agency or authority to estimate, to the extent possible, the full range of detriment experienced by consumers. Without this information, it is difficult to make a reasonably well informed decision on the merits of a market intervention. Once a consumer agency has a good appreciation of the magnitude of consumer detriment, they will be in a much better position to build a case – if warranted – for a market intervention (Step 3), and will also be in a better position to set an effective policy objective (Step 4). It is also important that the evidence collected at this stage be maintained so that it can be used as a benchmark for evaluating the impact of any policy that is introduced (Step 6).

Step 3: Determine whether consumer detriment warrants a policy action

Once the nature and magnitude of detriment have been examined, policy makers should consider whether there are sufficient grounds for intervening to correct a consumer problem. The decision whether to intervene should consider:

- *What is the scale of consumer detriment?* An intervention may be warranted if the detriment is small, but felt by a large number of consumers, or alternatively, if the detriment experienced even by a small group of consumers is very large; the extent to which very severe negative detriment (such as death) may arise should also be considered.
- *Who is experiencing the consumer detriment?* Are there disproportionate impacts on certain groups or classes of consumers, including vulnerable groups such as children, the elderly or other socially disadvantaged groups? Are these impacts acceptable?
- *What is the anticipated duration of the consumer detriment?* Is it likely to decline, remain the same or increase over time? If the detriment is likely to change, how significant are these changes expected to be and over what duration are they likely to occur?
- *What are the likely consequences of taking no policy action?* The political, social and economic consequences of taking no policy action should be considered. Is the problem likely to improve or worsen without intervention?
- *Are there other substantial costs to the economy?* In considering the cost of detriment, policy makers should be aware that other stakeholders may also experience detriment resulting from a consumer problem. For example, a rogue firm may cause detriment to consumers *and to other firms* (*e.g.* a legitimate firm may experience lower sales, or the reputation of an industry as a whole may suffer). Detriment caused to legitimate firms (in addition to consumers) may help to build a case for policy action.

Once having considered these factors, a consumer agency or authority should decide whether:

- A policy action should be considered (if so, proceed to Step 4).
- More evidence is required before proceeding to policy development (if so, return to Step 2).
- A better understanding of the nature and/or source of the consumer problem is necessary (if so, return to Step 1); or
- The investigation should be terminated; that is to say, on the basis of the evidence gathered in Steps 1 and 2, and the analysis conducted in Step 3, a policy action is not warranted.

Step 4: Set policy objective and identify the range of policy actions

Setting the policy objective

Having made a decision to intervene in response to a consumer problem, policy makers should set the desired policy objective (*i.e.* the specific outcome the policy intends to achieve for consumers and the market more generally). For example, a specific policy objective may be to aid consumers in making better marketplace decisions by reducing false or misleading statements on firms' websites by a certain percentage. Policy makers should ensure that the specific objective that is identified at this stage is consistent with the general goals of consumer policy. While it is sometimes difficult to do in practice, the policy objective should be set with as much precision and specificity as is possible. Doing so will help select a range of feasible policy options and will also aid in evaluating the success of the policy action at a later date. At this stage, it would also be beneficial to determine what indicators, targets or metrics could be used in the future to review the effectiveness of the policy. If metrics are employed, efforts should be made to establish a baseline prior to implementing a policy.

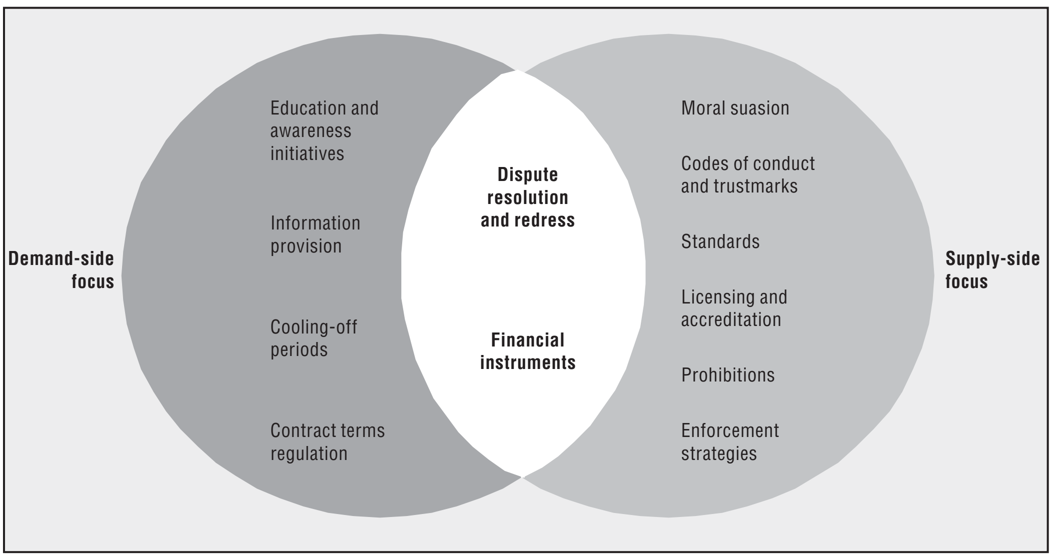
The desired outcome of a consumer policy intervention will vary depending on the problem. It is critically important, however, that great care is taken to set a policy objective that will reduce (or eliminate) the consumer detriment that has been identified. For example, consider a situation in which consumers of energy services are not being provided with enough information by firms and are subsequently making poor decisions. In this instance, a government may decide to increase the amount of mandated information that must be disclosed by firms to consumers, with a view to helping them make better choices. The primary objective in this case would be for consumers to make better decisions. Making more information available could provide an effective means to this end. If, however, consumers continued to make poor decisions, possibly because there was too much information to deal with or it was too complex to understand, the broader objective of the intervention will not have been met, and the intervention will not have been successful. It is important that the desired outcome be clear to ensure that policies appropriately target the problem and are not overly burdensome.

Identifying the range of practical policy actions

The next task is to identify the range of consumer policy tools that could be used to achieve a policy objective. As described in Chapter 4, these include (Figure 5.2):

- *Demand side tools: e.g.* education and awareness initiatives, information provision, cooling-off periods, contract terms regulation.
- *Supply side tools: e.g.* moral suasion, codes of conduct, standards, licensing and accreditation, prohibitions.
- *Intermediate tools: e.g.* dispute resolution and redress and financial instruments (including fines and other financial penalties).

Figure 5.2. **Consumer policy tools to target the demand and supply side of markets**



Examples of problems faced by consumers and some frequently used policy responses are set out in Table 5.1.

Table 5.1. **Frequently identified problems and policy responses**

Problem (from the consumer's perspective)	Potential source(s) of consumer problem	Potential policy response(s)
Product quality does not meet expectations.	Firm behaviour (*e.g.* false or misleading claims; failure to meet standards). Consumer issues (*e.g.* misuse of product; unreasonable expectations).	Enforcement actions against deceptive claims; improved disclosure; redress mechanisms (including financial penalties); restrictions on misleading advertising; enforcement of standards.
Unanticipated charges on mobile phone bills.	Information problems (*e.g.* contract is too long or contains complex information). Unfair contract terms.	Education or awareness material on cell phone contracts (including information on common charges); technical support (through the government or intermediaries); mandatory disclosure of simple information; industry ode of conduct; moral suasion. Contract-terms regulation.
Consumer regrets signing a long-term contract for a gym membership.	Behavioural bias (*e.g.* overconfidence) High-pressure sales techniques	Cooling-off period. Restrictions on marketing practices
Dangerous product.	Firm behaviour (insufficient expertise or use of inappropriate inputs). Consumer issues (*e.g.* misuse of product).	Enforcement of safety standards; licensing and accreditation; prohibitions. Improved disclosure.
Excessive telemarketing calls.	Market externality (firms do not consider the harm experienced by consumers from excessive and unwanted telemarketing calls).	Codes of conduct; prohibitions; financial penalties.

In addition to identifying new measures that could be taken to address a problem, policy makers should also examine whether a problem could be addressed by improving the enforcement of an existing measure that was already in place. This would help to identify the full range of practical policy actions that could address a problem. Creative policy actions that combine elements of new and existing policy tools should be considered as there may not be a single measure that could address a problem on its own.

Efforts to identify policy options should focus on those that are practical. Those that would be unfeasible or politically unacceptable should be filtered out. For example, a policy maker may decide that restricting or banning advertising of certain unhealthy food products to children is desirable consumer policy. However, if this solution is likely to encounter legal or constitutional challenges (*e.g.* on freedom of expression grounds), it may not warrant further consideration.

Consideration should also be given to: *i)* who will be responsible for implementing and administering the various instruments (that is, industry, government, and/or consumer organisations); *ii)* the proposed strength of the instruments (ranging, for example, from voluntary guidelines to strict rules); *iii)* the cost of introducing and maintaining the instruments; *iv)* who will be responsible for communicating the new policy to stakeholders and the public and how this will be done; and *v)* any special consideration to be given to vulnerable or disadvantaged consumers.

Step 5: Evaluate options and select a policy action

Once practical policy options have been identified, they should be evaluated to determine which would be the most appropriate and cost-effective. In most instances, a cost-benefit analysis should be carried out, covering both quantifiable aspects and those areas where quantification may not be practicable (*e.g.* community values and ethical considerations). The scale and depth of a cost-benefit analysis should be determined on the basis of the likely consequences of the policy under consideration. Not every action by government requires in-depth analysis. For example, an immediate product ban following a death or serious injury to consumers would not always require a cost-benefit analysis. On the other hand, in some instances, it may be worthwhile to carry out surveys, field trials and research aimed at deepening an assessment. This would likely be the case for policies that entail high costs on some stakeholders and are of a relatively permanent nature (*e.g.* locked in by legislation). For modest or easily modified interventions, more simple approaches, often dispensing with quantification, could provide policy makers with a useful guide for decision making.

In instances where a cost-benefit analysis is carried out, in addition to the costs imposed on firms and consumers, it is important to cover the costs and benefits associated with developing and implementing a policy. Regulation that mandates product safety and information standards, for example, would need to take into account the expected costs (and benefits) associated with monitoring and enforcement. This would include, for example, surveillance of retail outlets and websites, responding to complaints and acting against offending firms (*e.g.* by withdrawing goods from sale and bringing legal action).

Assessing benefits and costs of policy options

The first step in choosing an appropriate policy intervention involves evaluating the costs and benefits of each option, which is a standard tool in regulatory decision making. The OECD's *Recommendations on improving the quality of government regulation* states that "regulators should estimate the total expected costs and benefits of each regulatory proposal and of feasible alternatives, and should make the estimates available in accessible format to decision makers" and that "the costs of government action should be justified by its benefits before action is taken" (OECD, 1995).

Cost-benefit analysis is often seen as a rigorous and exacting exercise which is relevant and affordable only for major projects. Moreover, there can be a misconception that such analyses focus only on quantifiable, financial data, ignoring other qualitative and less tangible considerations. In fact, properly designed, cost-benefit analysis should provide a general framework for evaluating policy proposals that takes into account all benefits and costs, including those that are non-monetary, qualitative and intangible in nature (see Box 5.2). As such, cost-benefit analysis should provide decision makers with information about all of the positive and negative effects of a regulatory proposal. It should enable them to consider factors such as political and administrative feasibility, community values and expectations, ethical considerations, welfare and equity issues, and the effect of a measure on other policy areas, such competition and the environment.

Consulting stakeholders

Effective policy development also requires consultation with stakeholders, including consumer organisations, affected firms and/or industry associations. Such consultation can give regulators access to information and perspectives that might not otherwise be available. It can also help to ensure that policies are clear and comprehensive. Many governments have developed guidelines with respect to public consultation. In 2004, for example, the UK Cabinet Office developed a revised *Code of Practice on Consultation*. The Code details seven criteria for effective public consultation and applies to all public

Box 5.2. Dealing with costs and benefits that are difficult to value

Some costs and benefits can be difficult to monetise. Examples include environmental, social, cultural and ethical considerations, regional impacts, health and safety issues and national defence. In such instances, tools may be available to make estimates. Boardman *et al.* (2006) have, for example, proposed two techniques:

- **Revealed preference techniques,** which infer value from observed behaviour. A non-marketed good's value may be reflected indirectly in markets for related goods; and
- **Stated preference techniques,** which rely on surveys to obtain information on how people value costs and benefits. People are simply asked their willingness to pay.

NZIER (2005) provides further insights into carrying out cost-benefit analyses where the effects are difficult to quantify and monetise. While the techniques described are useful, their limitations need to be kept in mind (see, for example, Breidert *et al.*, 2005).

In those areas where estimates cannot be made, cost-benefit analyses should nevertheless include all relevant information that can affect a decision in such cases. To assure that all relevant elements are considered, cost-benefit estimates should be reported in three categories:

- **Monetary** (*e.g.* revenues and expenses, cost savings).
- **Quantified,** but not monetised (*e.g.* number of complaints or the estimated number of reduced injuries or lives saved).
- **Qualitative** (or descriptive), but not quantified or monetised (*e.g.* changes in stress levels or trust).

The potential importance of qualitative elements should not be underestimated as they can significantly influence decisions. They should be explicitly highlighted and explained in an analysis so that decision makers are aware of the value judgements they are making in pursuing a particular policy option.

The process of identifying, describing and evaluating all costs and benefits is valuable in itself as it helps to ensure that policy makers weigh all factors, in their entirety when comparing different policy options. Policy makers should, however, be cognizant of the limitations of the estimation techniques being used.

Source: Boardman, E.A., Greenberg, D.H., Vining, A.R. and Weimer, D.L. (2006), *Cost-Benefit Analysis: Concepts and Practice*, 3rd ed., Pearson Prentice Hall, New Jersey; Breidert, Christoph, Michael Hahsler and Thomas Reutterer (2006), *A Review of Methods for Measuring Willingness-to-pay*, Innovative Marketing (Volume 2, Issue 4), see *http://michael.hahsler.net/research/wtp_innovative_marketing2006/wtp_breidert_hahsler_reutterer_preprint.pdf*; NZIER (New Zealand Institute of Economic Research) (2005), *COOL Revisited: Benefit cost analysis of Country of Origin Labelling* (prepared for Food Standards Australia New Zealand), NZIER, Wellington, *www.foodstandards.gov.au/_srcfiles/NZIER_COOL_September_2005.doc*. See also OBPR (Office of Best Practice Regulation) (2007), *Best Practice Regulation Handbook*, Australian Government, Canberra and New Zealand Treasury (2005), *Cost Benefit Analysis Primer*, New Zealand Government, Wellington.

consultations by UK government departments and agencies, including consultations on European Union directives (Box 5.3).

Step 6: Develop a policy review process to evaluate the effectiveness of the policy

The final task, evaluating consumer policies, is often ignored or undertaken irregularly and incompletely by policy makers. In today's rapidly changing marketplace it is important that policy makers develop regular review processes to evaluate consumer policies to determine the extent to which they are achieving policy objectives in a cost-effective manner. As indicated in step 4, this task is easier to accomplish if policy objectives are

Box 5.3. Consultation guidelines

- **When to consult:** Formal consultation should take place at a stage when there is scope to influence the policy outcome.
- **Duration of consultation exercises:** Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
- **Clarity of scope and impact:** Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
- **Accessibility of consultation exercises:** Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
- **The burden of consultation:** Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if buy-in to the process is to be obtained.
- **Responsiveness of consultation exercises:** Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- **Capacity to consult:** Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Source: HM Government (2008), *Code of Practice on Consultation*, Better Regulation Executive, Department for Business, Enterprise and Regulatory Reform, *www.berr.gov.uk/files/file47158.pdf*.

set at the onset, and if targets or metrics are identified prior to the implementation of the policy.

However, such reviews may not be straightforward. Just as it can be difficult to measure detriment with precision, it may be difficult to measure reductions in detriment from a successful policy. It is also possible that since implementing a policy the problem may have changed, diminished, or grown, for reasons unrelated to the policy. More importantly, the underlying causes of the problem may have changed and require different measures or approaches. Without evaluating policy interventions on a consistent basis, policy makers risk continuing to support ineffective or inappropriate instruments. Moreover, they could risk locking in resources that could be more usefully deployed elsewhere to address other, potentially more urgent, problems.

Countries have addressed evaluation issues in a number of ways. In Australia, for example, the core function of the Productivity Commission is to conduct public inquiries on key policy or regulatory issues bearing on Australia's economic performance and community wellbeing. In this context it carries out policy reviews, which in recent years have included an evaluation of the country's consumer product safety system (Australian Productivity Commission, 2006) and the previously mentioned evaluation of the country's consumer policy framework (Australian Productivity Commission, 2008). In the United Kingdom, policy evaluation is one of the key functions of the country's Office of Fair Trading. In 2009, for example, it published a report which reviews the effectiveness of a sample of six consumer enforcement interventions, with a view towards identifying ways to enhance the effectiveness of future interventions (UKOFT, 2009).

In developing a policy review process, consideration needs to be given to the time frames and the elements of the process, including the need to factor in changes in the nature of the consumer problem or the marketplace, and potentially unforeseen or unintended consequences of the selected policy action. Policy evaluation is usually best undertaken after a policy has been in operation for a reasonable period of time (*e.g.* three to five years).

The methods and techniques for conducting post implementation evaluations, which can range from interim monitoring to a full-scale review, are similar to those used for prior assessment of expected costs and benefits and can be carried out in various ways, including:

- Self-monitoring by the regulated community.
- Periodic assessments by governments, competent authorities or third parties.
- Monitoring complaints by the public.

The reviews should be used to determine whether a measure should be maintained, modified or eliminated, whether enforcement should be strengthened, whether an alternative policy action should be considered, or whether reassessment of the nature and/or source of a problem would be beneficial (Step 1).

Summary

The six-step tool kit outlined above provides policy makers with a framework for developing policy interventions that are evidenced-based and well designed. The first step, specifying the nature and source of a consumer problem, helps to identify the relevant agencies that should be involved in the policy making process. The second and third steps, determining the nature and magnitude of consumer detriment and determining whether a policy action is warranted, provide the analytical basis for making a marketplace intervention. The fourth step, which includes setting a policy objective and considering the full range of policy options that could be used to address a problem, helps to ensure that any policies are designed to achieve a well-defined outcome and that the full range of options (including better enforcement of existing policies) are considered. The fifth step, analysis of practical options (usually supported by cost-benefit examinations) helps to ensure the selection of the most advantageous option for society. It recommends that stakeholders be consulted to help ensure that the policy does not have unanticipated consequences and is also well understood by the relevant stakeholders. Finally, the sixth step calls for policies to be reviewed for ongoing relevance, in order to ensure that they continue to meet their objectives, or, as appropriate, that the policies be modified or eliminated.

Establishing a robust framework for policy development and review is essential in today's more challenging policy making environment. The emphasis on careful, evidence-based analysis and a deliberate review of relevant options, in consultation with stakeholders, should help to strengthen the effectiveness of any policy interventions that are taken. Furthermore, the integration into the policy framework of what has been learned through the study of neoclassical, information and behavioural economics should provide policy makers with stronger bases for selecting and blending policy instruments and refining policy options. Using the framework to strengthen the functioning of markets thereby boosting consumer welfare, will also facilitate other desirable public policy objectives, such as promoting greater innovation and competition in the marketplace through more empowered, discriminating and well-protected consumers.

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Consumer Policy Toolkit

The markets for goods and services have undergone significant changes over the past 20 years. Regulatory reform, global markets, new technologies and growth in the role of services in economic activity have driven the changes which, in many instances, have provided significant benefits to consumers. Relatively little attention has been paid to the challenges these developments have posed for consumers. More choice and more complexity in many markets have made it increasingly difficult for them to compare and assess the value of products and services. The challenges for consumers have raised similar challenges for the government authorities responsible for protecting them from unfair commercial practices and fraud.

This book examines how markets have evolved and provides insights for improved consumer policy making. It explores, for the first time, how what we have learned through the study of behavioural economics is changing the way policy makers are addressing problems.

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