



**COMPARATIVE REPORT ON CONSUMER
POLICY REGIMES**

Country Reports - Australia,
Canada, Denmark, France,
Germany, Italy, Japan, The
Netherlands, United
Kingdom, United States,
European Union & Summary
Table

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Australia

Goals/Objectives of Consumer Policy

At the highest level, the goal is to enhance the welfare of Australians through the promotion of competition and fair-trading and the provision of consumer protection. The ACCC has the consumer protection objective of strengthening the position of consumers in their everyday dealings with suppliers, who often have stronger bargaining positions.

Institutions and Resources

Political responsibility for consumer issues is split between the Federal and State governments. At Federal level responsibility for competition and consumer policy now rests with the Treasury. A junior Minister is responsible, the Parliamentary Secretary to the Treasurer (currently Senator Ian Campbell), who reports to the senior Minister, the Treasurer. Consumer affairs appear to have a relatively low profile within Treasury (though the statutory framework is tougher than most regimes and is for the most part not now contentious). Responsibility previously lay with the industry Ministry, and at that time Ministerial agreement was needed for ACCC action. This sometimes led to delays in instituting proceedings.

Australian State and Territory Governments continue to enact and enforce their own consumer legislation. This tends to be modelled on the consumer aspects of the Trade Practices Act, but varies in detail from state to state. At State level the portfolio again often rests with a junior Minister.

Federal competition and consumer law is administered by an independent statutory authority, the **Australian Competition and Consumer Commission (ACCC)**. This was established in 1995 by agreement of the Council of Australian Governments (i.e. of the Federal and various State and Territory Governments). It employs about 500 staff, and had a Federal funding budget of A\$83.4m in FY 2001-2, A\$62.5m in FY 2002-3 and A\$66.6m in FY 2003-4. In addition, fines, authorisation and notification fees amounted to A\$7.2m in FY 2001-2 and A\$7.9m in FY 2002-3. Its responsibilities include utility regulation.

The ACCC is the only agency enforcing competition law. It is accountable to Parliament and to the courts. It is pro-active in its approach to implementation of the legislation, but has no policy function. It has quite a high level of public recognition. Some question its broad role. There has been pressure for a separation of the roles for example the 1997 Wallis Committee recommendations on finance industry regulation, and Bob Baxt, a former Chairman of Trade Practices Commission, has argued that ACCC should not act as both adjudicator and policeman.

Another idea floating in Australia is for firms to have a right to appeal to a nominated ACCC Associate Commissioner who would have particular responsibility for investigating complaints about ACCC conduct or decisions. This would be in addition to existing rights of complaint to the Commonwealth Ombudsman and the Courts. The general question here is accountability. The

ACCC considers that the Commonwealth Ombudsman and the courts provide an effective check on any abuse of power.

The ACCC has jurisdiction (because the Trade Practice Act (TPA) 1974 applies) when complaints concern businesses operating across state borders, and when the breach is by a corporation. Thus the ACCC handles the more significant cases. The ACCC has nine offices; in Canberra, one in each state/territory capital and one regional centre (Townsville). National Office functions are shared between Canberra and Melbourne. The website provides consumers with full contact details.

State consumer policy is administered by state government departments, for example the New South Wales (NSW) Department of Fair Trading, and the Victoria Department of Consumer Affairs. Thus State Ministers directly influence the enforcement of State consumer policy. Most consumer enquiries are handled by State consumer offices, which are located in major towns. NSW for example operates a network of 22 offices, including 5 in Sydney. Advice is commonly sought by telephone and Internet as well as by calling in person.

There are mechanisms for co-ordination of Federal and State policy. A Ministerial Council on Consumer Affairs (MCCA) comprises consumer Ministers from Australian Federal and State and Territory governments as well as the New Zealand government. It meets annually. Supporting MCCA is the Standing Committee of Officials of Consumer Affairs (SCOCA) comprising the CEOs of the various consumer protection agencies. The Commonwealth is represented by both Treasury and the ACCC.

Four advisory committees report to SCOCA:

- Fair Trading Operations Advisory Committee (FTOAC) - deals with enforcement;
- Consumer Products Advisory Committee (CPAC) - product safety officers;
- Trade Measurement Advisory Committee (TMAC); and
- Uniform Consumer Credit Code Management Committee (UCCCMC) - credit officers from consumer agencies.

The MCCA has a rolling list of issues, known as the Strategic National Consumer Affairs Agenda, to focus their efforts.

Advocacy

Education and information provision is a key element in the ACCC enforcement strategy. There is a high flow of publications, and the ACCC aims through publicity to achieve a high level of recognition. The ACCC summarises illustrative past court cases for use in its educative programme and for preparing advice for businesses and consumers. In 2001 the ACCC instituted a Consumer Consultative Committee to facilitate discussions with consumer representatives on consumer issues. The Australian Consumers Association (magazine "Choice", which is similar to "Which?") gives product and business recommendations. The need for consumer input into development of self-regulatory codes is stressed.

Integration of consumer policy with other policies.

Consumer and competition policy are explicitly seen as integral and complementary. The TPA covers both. Anti-competitive conduct reduces choice and increases prices. Fair and ethical competition is good for consumers, giving them price, quality and service benefits. The TPA protects companies that act fairly and competitively. It prevents unfair competition and the deception and misleading of consumers that can undermine consumer confidence.

Government encourages development of industry self-regulation (Codes Of Practice). These mandatory and voluntary standards are seen as light-handed market sensitive ways of securing compliance with TPA. ACCC and State agencies are involved with development and review of operation of industry codes. In theory it should enable them to ensure the codes are effective and fair. In practice they cannot impose terms on an industry, and industry codes tend to have a "lowest common factor" quality.

ACCC staff work in teams responsible for both consumer and competition issues, which helps adoption of competition solutions to consumer problems. It is argued that the lack of any responsibility at State level for competition can result in an over-regulatory approach to consumer issues. ACCC involved in revision of Food Standards Code and related regulations. Also covers food labelling. ACCC is a member of Expert Advisory Committee on enforcement of public health regulations.

Legal Framework

The key Federal legislation protecting consumers is the Trade Practices Act 1974. Prior to this the primary means of protecting consumers was through State legislation. The TPA strengthened and consolidated existing law into one statute and provided a national framework. It is amended and updated from time to time. It covers anti-competitive and unfair market practices, mergers and acquisitions, product safety and product liability. It has covered services since 1980 and education and health since 1995.

A 1978 extension of the TPA made manufacturers directly liable to consumers in respect of "implied warranties", which would not have been possible under common law because there was no contract directly between them. (There is apparently a Canadian precedent for this approach.)

The TPA framework is considered by lawyers to be robust and relatively efficient. The prohibitions are not controversial, and the core provisions such as s52 are more or less sacrosanct. There is no pressure for fundamental change, and policy debate is really about tinkering at the margins. On the other hand enforcement by the ACCC is an issue of concern for Australian industry.

Until recently actions under the Trade Practices Act 1974 had to be instituted with the Federal Court. Some matters involving the consumer protection provisions of the Act, but not those under the unconscionable conduct

provisions, may now be brought before the Federal Magistrates Court. All State and Territory Parliaments have enacted "mirror" legislation (replicating Division 1 of Part V of the TPA - the Unfair Practices provisions) and actions under the respective Fair Trading Acts may be instituted in State and Territory courts.

Key provisions of the TPA

These are bans on misleading or deceptive behaviour, and on unconscionable conduct and harassment. In effect a duty to trade fairly (or not to trade unfairly) is incorporated in the TPA. Section VA deals with product liability and broadly follows the EC directive.

Unconscionable conduct is the exploitation of a weaker party by a stronger party that goes beyond normal commercial dealings. The concept of undue influence has always existed in English and Australian common law.

Unconscionable behaviour implies unfair and unscrupulous behaviour in the circumstances prevailing. The incorporation into the TPA apparently follows the precedent of the American Uniform Commercial Code, which first appeared in US States in 1962.

Section 51 has parts relating to business to consumer (B2C) and business to business (B2B). The B2C ban (s51AA.s51AB) was introduced in 1992. 51AB mentions that the court may have regard to the relative bargaining strength of the parties, the consumer's ability to understand the documentation, whether undue or unfair pressure was applied, whether the conditions imposed went beyond what was needed for the supplier's legitimate interests, and the amount the consumer would have to pay elsewhere for equivalent products or services.

In practice, and the case of B2C, court judgements have so far limited the benefit of the legislation to consumers with some personal vulnerability or disability such that they cannot exercise a worthwhile independent judgement (the 1983 Amadio judgement - Commercial Bank of Australia Limited v Amadio (1983) 151 CLR 447 – although not a case under the TPA). The ACCC and individuals can bring actions for rescinding or amending contracts or compensation

The B2B ban (s51AC) was introduced in 1998, giving SMEs similar protection to consumers, provided the supply of goods or services in question has a value of A\$3m or less. Here the judgement will reflect the nature of the commercial relationship imposed rather than peculiar disadvantage.

Relevant factors include relative bargaining strength, whether conditions imposed were not reasonably necessary, whether the small business could understand the documentation, whether undue influence or unfair tactics were used, whether similar conduct was used in relation to other customers, and whether the supplier unreasonably failed to disclose to the business customer the possible consequences.

The Minister gave a direction to the ACCC to initiate proceedings under s51AC for the specific purpose of establishing legal precedent on matters of specific relevance to small businesses, and to give precedence to initiating such proceedings. Actions for damages can be brought under s51AC. S51AD

requires corporations not to contravene applicable industry codes. A breach of a voluntary code may be taken into account by the court when assessing a case. The court can impose injunctions, damages, and variation or cancellation of a contract.

Section 52 requires businesses not to engage in conduct likely to mislead or deceive. This is the most widely used and considered to be the most effective consumer protection provision. It does not adopt common law language of, for example, liability, but establishes a norm of conduct.

It does not matter whether the conduct did mislead or whether there was an intention to mislead. What matters is whether the conduct was likely to mislead. Conduct is misleading if it is likely to mislead its target audience. It need not be a continuing course of conduct. It can include silence where that may mislead (N.B. this conclusion is not possible under common law). Intent, knowledge, recklessness and carelessness may be relevant. The judgement attempts to be objective and is not qualified by reference to common law principles. S52 can be applied to private contracts. It can be applied to services, unlike the UK Trade Descriptions Act (which drives aggrieved parties to resort to the ASA Code, and a direction to desist, and no possibility of damages).

Only civil action is possible under s52, avoiding the problem of having to demonstrate intent. The civil finding is also based on the balance of probability rather than the tougher criminal test of beyond reasonable doubt. Penalties have recently been toughened, and are up to A\$220,000 for individuals and A\$1.1m for companies for breaches of consumer protection provisions. The ACCC or any person can seek a restraining injunction, and any person can seek damages for suffering or loss arising from the conduct (and it can be easier to demonstrate misleading conduct than common law negligence). The ACCC can also apply for a corrective advertising order. While s52 is broad it is not considered uncertain: court decisions have established the parameters of the prohibition. The ACCC does not have anything like the OFT's "stop now" powers.

Section 53 makes it illegal for a business to falsely represent or describe goods or services. Advertising cases may be caught in this way as well as under s52. This is important in B2B cases.

Conditions and warranties

TPA Part V, Division 2 provides consumers with protection when they buy goods and services. It implies various conditions and warranties into the transaction whether this is a sale, lease, or hire purchase of goods or services. The beneficiary can be a consumer or a business acquiring goods or services of a type normally for household use, or any other type so long as the cost is less than A\$40,000, provide the goods were not acquired solely for resale or for alteration or repair work.

The TPA provides statutory conditions that goods must be supplied to the consumer with clear title (or with any restrictions on ownership fully and clearly

explained) - s69, merchantable quality - s66(2), 71(1), fitness for purpose - s71(2), and for supply by sample or description - ss70, 72.

The conditions apply to all consumers when they buy goods or services from sellers, manufacturers or importers. If goods are not of merchantable quality, not fit for purpose, or do not match the sample or description given by the seller, consumers are entitled to rescind the contract and obtain a refund. Services must be supplied with due care and skill and with materials that are fit for purpose. Manufacturers and importers must stand by their warranties or guarantees.

When rescinding a contract the consumer must either write to the seller giving details, or return the goods with full details of the problem, within a reasonable time in all the circumstances. Once the contract is rescinded the seller is obliged to give a refund. Sellers may offer to replace or repair the goods but the consumer is entitled to insist on a refund. If the supplier refuses they are liable to a penalty.

The ACCC cannot bring an action for breach of any statutory conditions or warranties. A consumer can bring an action for damages in any competent court or tribunal, and can claim damages. Ultimately what is reasonable will depend on the court's assessment. Refund proceedings must be commenced within 3 years of the date on which the consumer ought reasonably to have become aware of the problem, but in any event within 10 years of the date of sale.

In July 2001 Part VC was introduced to the TPA. It provides for criminal actions to be taken for breaches of a wide range of unfair practices and breaches of product safety provisions. It includes false or misleading representations (s53 not s52), false or misleading conduct in relation to land, bait advertising, harassment or coercion, pyramid selling, unsolicited debit and credit cards, demanding payment for unsolicited goods, breach of product safety and information standards, and failure to comply with product recall orders.

Court remedies for offences under Part VC can include injunctions to stop, compensation, corrective advertising orders, community service, probation orders, and fines. Fines can be imposed on both businesses and individuals; breach of TPA consumer protection provisions can lead to fines up to \$1.1m for companies and \$220,000 for individuals.

Industry Codes of Practice

The Federal and State governments have actively encouraged industry to self-regulate by developing effective voluntary B2C and B2B Codes of Practice with Alternative Dispute Resolution Schemes incorporated in these respective Codes. The arguments are that it promotes best practice, enables regulation to be tailored to the specific circumstances of the industry, provides low compliance costs and a quick low cost dispute resolution procedure is good for business. Membership of a voluntary scheme may give trading advantages, through the consumer confidence engendered by membership but also provides access to efficient and cost effective Alternative Dispute Resolution Schemes.

The Trade Practices Act 1974 ("TPA") allows for Codes of Conduct to be prescribed. The TPA empowers the Minister to prescribe a Code, which makes compliance mandatory. A breach of a prescribed Code is unlawful and can be enforced through the courts. The Minister may pursue this route in response to complaints from members of the industry, consumers or reports from government authorities. However the Minister will only consider initiating a proposal for prescription of a code of conduct if:

- the code would remedy an identified market failure or promote a social policy objective; and
- the code would be the most effective means for remedying that market failure or promoting that policy objective; and
- the benefits of the code to the community as a whole would outweigh any costs; and
- there are significant and irremediable deficiencies in any existing self-regulatory regime-for example, the code scheme has inadequate industry coverage or the code itself fails to address industry problems; and
- a systemic enforcement issue exists because there is a history of breaches of any voluntary industry codes; and
- a range of self regulatory options and 'light handed' quasi-regulatory options has been examined and demonstrated to be ineffective.

A mandatory prescribed Code under the TPA is administered by the Australian Competition & Consumer Commission.

Licensing

Licensing of trades has a long tradition in Australia: the ferries between Sydney and Parramatta were licensed as early as 1803 "to oblige them to be more circumspect in their conduct towards passengers." Proprietors had to enter a bond of £50 and two securities of £25 each for due performance of the regulations, a considerable sum in those days.

The States continue to regulate problematic sectors by licensing and/or specific legislation. Victoria licences 160 occupations (but not home builders), and has recently adopted a systematic approach to regulation and licensing, based on the principles in the last but one paragraph. Licensing is seen as a step beyond co-regulation, and more intrusive and potentially costly. Victoria State policy is now to apply licensing only where there is a probability of serious loss to the public, or to public health or safety, if any lesser regulatory mechanism was to be applied.

Victoria is also committed to ensuring retesting of licensees where competence is a criterion, and also to adopting the Californian principle that regulatory bodies and tribunals should have only a minority of members from the occupation concerned, and that the majority should be members of the public, and that their decisions should be made public, to help ensure that the body is not operated in the shorter term interests of the occupational group (the Estate Agents Tribunals were mentioned as examples).

NSW has a similar broad approach. In their view, deregulation of sectors such as home building, second hand car dealing, auctioneering, credit provision, travel agents, and second-hand dealing, either would give rise to serious problems as a

result of asymmetry of information, or would carry a risk of significantly more criminal activity, for example with second-hand dealing in stolen goods. Licensing enables the State government to screen out undesirable people and to withdraw licences from those that behave illegally. NSW plans to spend about A\$14.5m on work connected with the licensing and registration in FY 2002-3. The cost of licensing, industry tribunals and enforcement is met in part by annual licence fees. Victoria raised A\$4.3m in 2001-2 in this way.

An academic lawyer's criticism of the approach is that it is too easy a response to a problem, and that the imposition of licensing is not sufficiently related to the risk inherent in the market. There is therefore a tendency to over-prescription. The more systematic Victorian approach to deciding on the degree of regulation appropriate in a particular case should in theory address this point.

In addition, and against the background of limited success with sector Codes of Practice, some States have begun to introduce sector specific legislation. For example NSW passed The Home Building Legislation Amendment Act in 2001, and the Home Building Amendment (Insurance) Act in 2002.

These provide for reform of licensing to allow the Director General to become responsible for disciplinary action, including a power to cancel licences for bankruptcy, and introduces tougher criteria for licence renewal, including that the applicant does not have an unreasonable number of complaints or failure to comply with consumer Tribunal orders, and a requirement to attend approved education courses. The second Act introduces insurance reforms for the home building industry. Similar legislation was passed in 2001 to toughen regulation of second hand motor dealers. NSW also has legislation to deal with pre-paid funerals and fitness centre pre-payment fees.

Enforcement

Most litigation under the TPA is through private actions by business parties, who are following well-trodden ground to ensure compliance with the law. The vast majority of cases are brought under Section 52. Academic lawyers told us that this has had a significant effect on the law of tort and contract, and that it has made common law concerning misrepresentation irrelevant.

Individuals can bring civil but not criminal cases. S80 permits ACCC or any other person to apply for an injunction; this is different to common law which restricts the power to those affected. Grouped proceedings are also possible. However independent action by consumers is not common, because of the costs and risk of award of costs: legal aid for consumers is rare and they generally prefer the route of small claims courts.

The ACCC have discretion as to whether to act on a complaint. They receive about 60,000 complaints a year. Where appropriate complainants are referred to other agencies, including State regulators. About a quarter concern possible breaches of s52 (misleading and deceptive conduct). Next most frequent, but far behind, are complaints about retail warranties and misleading prices. The most problematic sectors are telecoms services, domestic electrical goods retailing and petrol retailing.

The ACCC undertakes about 400 major investigations a year. The ACCC can compel provision of information, require evidence be given on oath, and enter premises to see or copy documents. It is more likely to act in cases that accord with its broad priorities, namely where there is:

- blatant disregard for the law;
- significant public detriment;
- worthwhile deterrent or educative effect;
- significant new market issues; and/or
- significant effect on disadvantaged consumers.

Court action is only taken in the most serious cases. The ACCC accept undertakings enforceable in the court from businesses or persons. The ACCC settles a much larger number of cases in this way. This is efficient but such cases provide no legal precedents.

ACCC court action, while to some extent driven by the nature of cases, also reflects strategic objectives. They tend to take to court cases which are either blatant and serious abuses, or help establish the limits of the application of the law, by setting precedent, or which have "educational" value. Currently the ACCC is bringing an action under s52 in the field of private medical care, and is also looking at private education, both new fields for the application of the TPA. They also try to act quickly in cases where the vulnerable are at risk.

Resources for court cases are limited, though the ACCC receives specific funding from Treasury to finance large court cases. At any one time the ACCC has about 60 court cases in train. One law firm criticised ACCC for bringing insufficient cases to help define the limits of applicability of s51 (unconscionable behaviour), and for spending too much on cases under s52 (misleading and deceptive conduct), which is considered now to be fairly well trodden ground.

However, misleading and deceptive conduct, in particular fine print and deceptive pricing, remains a priority for the ACCC. In this respect the ACCC seems in large part response driven. From a strategic point of view, the ACCC is giving more attention to the conduct of the professions, health issues, and higher education. It is also giving more attention to examining SMEs claims of unconscionable behaviour by larger firms (in line with Ministerial direction).

The ACCC tends to prefer to bring cases under the civil rather than the new criminal provisions of the TPA. The burden of proof is lower and cases are progressed quicker, but fines cannot be imposed in such cases. ACCC can also sue people indirectly involved, for example those aiding, abetting, counselling, procuring or inducing or knowingly concerned in the breach. The ACCC say they pursue individuals involved as vigorously as the business.

Publicity

A key feature of the ACCC approach to enforcement is their use of publicity. This is generally either at the conclusion of a case, or at the point of introduction of a case into court. In the latter case the publicity is a factual statement of information already publicly available about the allegations made by the ACCC that are to be heard in court. The courts have said this is good

practice. Courts have not reduced fines in the face of complaints about pre-court publicity. In the former case (post decision) the ACCC may release a press statement. It may also, as a part of the injunctive relief sought, ask the court to approve a requirement for corrective advertising.

In a landmark case concerning Target, a large retailer, the company was required to issue a corrective television advertisement on the same channel as it previously issued misleading advertisements about price cuts. The wording of the corrective advertisement was unequivocal and required the approval of the ACCC. It more or less said the company were sorry they had misled consumers about the price cuts.

The ACCC say that only about 1% of publicity is about investigations under way; about 10-12% is about cases listed for hearings in court, and the remainder is post-decision publicity. They also said that only a minority of cases in progress were publicly known (on average there were about 250 cases continuing at any one time, of which about 6 on average would be known publicly).

Publicity is considered by the ACCC to be a very effective remedy. But several commercial lawyers and representatives of big business thought that the ACCC was going too far, and the result was trial by media. Publicity before the case is heard is a particular gripe. The ACCC's use of publicity is the most contentious aspect of the TPA at present, and has been recently reviewed by the Dawson Committee, whose report is now with the Treasury Minister.

State level enforcement

State fair trading departments have enforcement powers in relation to their own State legislation. But, like the ACCC, they must be selective in what they pursue and they only intervene in cases on an exceptional basis. Some States, for example Victoria, have legislation that allows them to reverse the burden of proof when dealing with a trader. These "substantiation" powers can be used to oblige a trader to explain what they have done, otherwise the case may go against them. This is particularly useful in dealing with cases of misleading or deceptive conduct, which can be hard to prove if the onus is on the consumer.

Section 155 of the TPA gives the ACCC limited powers to enter premises and inspect and/or copy documents and to require a person to furnish information, provide documents, and/or attend to give evidence under oath or affirmation.

NSW has recently begun passing sector specific legislation (see Legislation section) to enable them to toughen their licensing procedures. Victoria has also overhauled its procedures. Western Australia (WA) has toughened substantially the penalties for operating without a licence.

In principle, where licensing is based on the presumption of competence, a tougher regime offers an attractive route to deal with the problem of poor performers in markets where asymmetry of information means that the market does not work efficiently to drive them out of the market.

Historically, the number of revoked licences has been small compared to the number of licensees. Industry tribunals, often dominated by representatives of the industry, have been reluctant to revoke licences, and it can be difficult to prove the case for such a drastic remedy. Revocation normally occurs because of criminality or insolvency rather than incompetence. But the NSW annual report suggests an increased ability and willingness on the part of the Fair Trading Department to use its enhanced powers to take disciplinary action directly by imposing fines or reprimands or suspending licences. ACT is following a similar policy. It is too early to judge whether the revised approaches will succeed. We heard complaints in both NSW and Victoria about ineffective enforcement (the tacit tolerance of unlicensed operators).

Consumers are encouraged to resolve routine disputes themselves (see "Redress" section). While the State fair trading agencies may mediate to help to settle disputes they emphasize that they cannot compel parties to accept their proposals. In the end the consumer has the option of recourse to the courts.

The State Magistrates and Small Claims Courts and Tribunals are important mechanisms for redress and enforcement by civil action throughout Australia (unlike the UK where it is said they are limited to criminal cases). These courts can consider cases under the Federal TPA consumer protection provisions and under parallel State consumer legislation, though there are limitations on the remedies these courts can impose. The intention is that these courts should provide speedy decisions. The system seems quite effective. The NSW Conciliation or Tribunal system has resolved about 70% of disputes within 35 days of a dispute being lodged with the court. The NSW courts are also willing to be flexible about rules of procedure in small claims courts, in the interests of making the court a more accessible and less intimidating experience for the ordinary citizen who wishes to represent himself.

In Canberra, Magistrates Courts can since 1982 deal with damages claims of up to A\$50,000, and in some States the upper limit is A\$100,000. Building and building maintenance cases are common. The upper limit for damages claims in small claims courts in Canberra is A\$10,000, and in Queensland it is \$7500. Costs are seldom awarded in cases in these courts, which means they are attractive to consumers, who do not run the risk of having costs awarded against them.

It is common practice for magistrates to try to conciliate rather than consider a case in court, on the basis that this saves money for the court system and for the parties. There is a small fee for the service. A high proportion of cases are resolved in this way. It is also possible for parties to agree to disputes being settled by a referee, who can decide on damages up to a level of A\$1,000: failure to abide by a decision would lead to the case escalating into court, and non-compliance may be held against the party concerned.

While decisions of the court are made public, a magistrate argued that consolidating this information to generate databases about builders, plumbers and the like could infringe IT privacy rights. It may be necessary to provide through legislation a public interest reason for permitting such consolidations to protect consumers.

Redress

The TPA confers private rights and imposes private obligations. The consumer has a right to a refund if goods are defective, not fit for purpose, do not match the sample shown to the consumer or are not of merchantable quality. There is often no precise description of these criteria. Case law is important.

Competitors, customers or consumers can sue for damages if they suffer harm as a result of a breach.

ACCC maintains an information centre. 65% of complaints relate to consumer protection. NSW Office of Fair trading receives about 25,000 complaints a year. The ACCC and State agencies aim to encourage customers and traders to solve problems themselves without seeking formal enforcement action by the authorities.

They provide consumers and traders with copious advice about the extent of their rights and obligations (in other words, the advice goes beyond a statement of rights, and tries to show their limits, and in so doing strikes a balance between consumer and trader which should allow them to settle disputes more easily). They advise:

- customer and supplier to try to agree a solution. Business is reminded that bad reputations (spread by word of mouth) damage business;
- local consumer protection agencies will want evidence from both sides that they have tried reasonably to solve the problem. In NSW for some sorts of dispute (including home building work above A\$10,000 value) the Consumer, Trader and Tenancy tribunal is required by law to hear a case only if parties have first used the Building Conciliation Service to try to resolve the dispute. It may mediate, bringing in a neutral person;
- industry Codes of Practice help businesses and customers; and
- provide accessible summaries of the key consumer legislation, with the obligations falling on businesses and consumer rights.

Codes of Practice

These were seen in the later 1990s as a promising way of reducing and resolving consumer complaints. Codes for dealing with consumers would be drawn up by members of a trade or sector. Those agreeing to the Code would be expected to follow guidance on resolving disputes. So far all codes have been voluntary except for one, governing franchising, which has statutory force.

Since then, the limitations of Codes of Practice have become more apparent. Voluntary codes tend to be loosely worded and often do not go far enough in terms of consumer protection. There is general agreement that they may help to establish among consumers a reasonable expectation of service, but that it may be difficult to enforce compliance by signatory firms either with the Code or with the decisions of tribunals. We heard that in some cases firms cannot even be compelled to attend tribunals. In court cases the law of contract takes precedence if there is any conflict with the terms in the voluntary code.

The ACCC are also wary of mandatory codes. These can smack of over-regulation and unless tightly drafted they would be difficult to enforce and

would absorb disproportionate regulatory effort. Mandatory codes have their own problems.

Codes can be helpful and tend to be more effective when a high proportion of the sector has agreed to it. They must provide for an effective complaints resolution procedure, with internal industry enforcement mechanisms. The most successful codes are in the telecoms and banking spheres, where an ombudsman has enforcement powers.

Product Safety

The TPA contains general product safety and liability provisions, enabling action against a supplier of unsafe or defective goods. The TPA (s65C and D) permits the Commonwealth Consumer Minister to:

- ban unsafe goods from sale;
- set safety and information standards;
- require suppliers to recall unsafe goods, issue public warnings, repair, replace unsafe goods or make a refund.

For bans and recalls the Minister issues a draft notice. Suppliers have 10 days to seek a meeting with the ACCC (s65J). Then the ACCC advises the Minister on the ban. Dangerous goods can be banned without delay (s65M). Ministers can also issue public warning notices (s65B) and compel product recalls (s65F). Suppliers voluntarily recalling unsafe goods that may cause injury must inform the Consumer Minister in writing (s65R). These are then posted on a website: www.recalls.gov.au.

The TPA enables consumers to seek compensation or damages for personal injury or loss caused by a defective product. The manufacturer of defective goods is primarily liable. Manufacturer includes maker, company claiming to manufacture, seller of own-brand goods made under licence, company promoting goods as manufacturer, importers. Retailers can be deemed to be manufacturers when the manufacturer is unknown to the claimant.

TPA provides for joint and several liability. A claimant may serve written request on any known supplier for information about the manufacturer. If there is no response within 30 days the claimant may act against the supplier as if it were the manufacturer. The customer therefore cannot be given the run-around. The claimant may also claim the full amount of damages from anyone liable. The defendant may join other parties by third party action. This arrangement relieves the claimant of responsibility for identifying who ultimately is responsible. Action may be taken within 3 years of the loss, and within 10 years of the time the product was first made by the manufacturer.

Failure to comply with Mandatory Product safety standards, Product Information Standards or banning orders can lead to fines of up to \$1.1m for businesses, or \$220,000 for individuals. Compliance with mandatory standards is the responsibility of suppliers including manufacturers, importers, distributors, and retailers. Again, consumer cannot be given the run-around.

ACCC is responsible for compliance with product standards and sales bans.

The TPA product recall provisions were said to be similar in scope to the UK Product Safety Directive. The formal powers were intended to be a backstop to a voluntary system (which needs a threat of legal or statutory action to make it effective). The legislation was said to have made a difference to the willingness of companies, for example car companies, to arrange recalls. It was not simply a change of climate towards safety. It was pointed out however, that the EC general duty to supply safe goods went further by making safety a prime requirement for a supplier; it is more than arranging recalls to put right mistakes retrospectively.

Each of the states of Australia has a complimentary legislation on product safety.

Consumer Knowledge

An important feature of the Australian system is that the TPA legislation (and State mirror legislation) is drafted in straightforward and readily understood terms. The ACCC website provides contact details (addresses, telephone, fax and e-mail) for each office, its Director, and telephone numbers for each Commissioner. The ACCC and State consumer offices provide straightforward general guidance for consumers and business. Thus the same sources provide guidance to both sides of the consumer contract.

The ACCC website gives businesses comprehensive information about their rights and obligations under the Trade Practices Act and a range of useful links to other useful government sites. The ACCC and State Fair Trading Office websites provide extensive advice to consumers on their rights. This is given in straightforward terms. They also provide advice on how to make complaints, take cases through the courts and in one case (Queensland) even provide model letters for various situations.

The Treasury Department produced this year "The Australian Consumer handbook", an expanded version of earlier directories of consumer dispute resolution and complaints handling organisations. It is primarily intended to help advisory organisations to help consumers. It also contains advice on best practice for dispute resolution procedures, fact sheets and model letters.

Consumer Confidence

There is very little information available on this subject. The 2001 International Complaints Culture Survey by TMI suggests Australians (and New Zealanders):

- are less likely to complain than consumers in most other developed countries;
- do not believe their companies make it easy to complain;
- do not believe companies welcome complaints (only 11% thought companies saw complaints as a basis for improvement);
- complaints are increasing in number, indicating either more confidence or a rise in customer expectations?;
- increasingly use the internet to complain (fast and 50% expect response the same day).

Impact on Markets

Initial criticism of the far-reaching nature of the TPA (and in particular of s51 and s52, has died down. The courts have taken decisions that have set parameters for application of the prohibitions. An academic lawyer considered the effects of the TPA had been more significant than equivalent USA legislation, because of the effect it had had on B2B actions.

S51 is relatively new and has so far had limited impact (but we were told that s52 was a "sleeper" for about 10 years). Small business argues that provision s51AC, which applies particularly to small business, should protect them from unconscionable behaviour by big suppliers or customers, such as supermarkets. The courts have so far not interpreted s51 in this way. Inequality of bargaining power and knowledge is only one consideration. Interestingly, the strongest opposition to s51 at the Bill stage was from the supermarkets and property sectors. It has turned out that property disputes comprise a large portion of the cases brought under s51 (unconscionable behaviour).

It was also said that the comparative certainty of English common law was a chimera. In practice certainty was less, for example the position on exclusion clauses. The UK Unfair Contract Terms Act was considered to have some similarities with unconscionability. It was expected that the TPA would have a similar effect but so far case law has involved procedural rather than substantive unconscionability. There is some uncertainty over whether enforcement of contractual rights and unilateral variation clauses in contracts can be unconscionable. ACCC has brought test cases to try to clarify the scope of s51.

S52 on the other hand is very influential. Industry accepts the broad framework. It has obliged companies to be much more careful over the drafting of contracts. Any effects on costs and profits are not such as to raise objections from business.

The ACCC believe the TPA has had a very significant impact in raising marketing and advertising standards, and fair treatment of consumers and competitors. Not one note of dissent was heard about these legal prohibitions, which were generally regarded as beneficial for the Australian economy. The broad scope of s52 prevents problems arising that cannot be tackled.

Market Case Studies

1. Second Hand Cars

Separate handling on State websites shows it is a major problem. Most if not all States operate a licensing system. State Fair Trading offices provide consumer and trader guidance. Small claims courts and Tribunals are often used to resolve disputes.

In Victoria, sales are regulated by the Motor Car Traders Act (Victoria) 1986 (amended from time to time). Second hand car traders require a licence, renewed annually, and have done since 1973. Licensees need to show they understand the legislation, are of good character, have the necessary financial

resources and can and will train staff in all the legislative requirements. There is a licence fee to cover costs of administration, enforcement and the tribunal. The major barrier to entry was said not to be the licence fee but the requirement that the prospective dealer demonstrate that he has the finance to open and operate a car dealers yard. Traders have to provide for each car a Notice of Particulars, a Defect Notice, which lists what the trader is not putting right and an estimate of the costs of doing so, and a Road Worthy Certificate. Victoria provides for a 3 day cooling off period, and for 3 months or 5,000km a guarantee for cars that have done less than 160,000km.

Queensland has a mandatory Code of Practice for motor traders. The Code is prescribed conduct for licensed traders, by regulation of the State government. It requires dealers to act honestly and fairly and not to act fraudulently or mislead, engage in high-pressure tactics, harassment or unconscionable conduct. If the ordinary industry dispute resolution system does not work the claimant has the option of dispute resolution through the Department of Justice, the small claims tribunal, or contacting the Office of Fair Trading for statutory action.

The Victoria system, which is administered by the Justice Department, has been criticised for not keeping up with the times, and for insufficient enforcement. The legislation is out of date in that it does not deal with Internet sales. Licensed dealers want stronger enforcement against unlicensed illegal dealers. There are said to be about 2,000 licensed and about 1,000 unlicensed dealers in Victoria. The Victoria government say more policing would mean higher licence fees. The WA government has recently (2002) increased the fine for operating without a licence from A\$3,000 to A\$50,000 to try to deal with the problem of unlicensed operators.

The Victoria dealers' licence fee of A\$1,000 includes a contribution to the Motor Car Traders Fund float. If a complaint proceeds to the tribunal and it finds against a trader, the consumer is paid from the fund; the trader is then required to recompense the fund. If the trader refuses to pay then his licence is automatically suspended. Similarly the NSW Motor Vehicle Tribunal (an example of industry self-regulation) can remove licences. The consumer has the option instead of taking a case the local magistrates court.

The car retail industry claims licensing and self-regulation have been successful in lowering the incidence of complaints. Cars were apparently top of the list but have now fallen to seventh or eighth. The number of sustained complaints has also fallen significantly. It was said that when Victoria deregulated and allowed cars to be converted to natural gas by unlicensed operators, there was an upsurge of problems.

2. Travel agents, Holidays and Flights

This is a highly regulated sector with a history of consumer problems. New legislation was introduced in the 1980s following the collapse of a number of travel agencies and significant consumer losses. In WA a Certificate is required to trade as a travel agent, and must be displayed in the premises. All letters, cheques, and similar business cards must include the name of the licensee even

if the business is entitled to carry on under another name. All partners must be shown.

Licensing allows the screening and exclusion of people not regarded as fit and proper persons. Acting as a travel agent without a proper licence can lead to a maximum fine of \$50,000 and/or 12 months in prison. Similar provisions apply in most States.

An applicant for a licence would need to show qualifications and experience (usually of several years selling international tickets and holidays). The Commissioner for Consumer Affairs has a duty to enquire into applications to establish that applicants are fit and proper persons, conduct character checks and ensure they are properly registered under the Business Names Act. New applications are published in the paper, in line with the requirements of the Act. Anyone can raise an objection to be investigated. A travel agent must also lodge an annual statement with the consumer protection agency, otherwise the licence is cancelled. Similarly if the agent withdraws from the Travel Compensation Fund the licence is cancelled.

The Western Australia Department of Consumer and Employment Protection www.docep.wa.gov.au provides advice to consumers on choosing holidays and a handbook of advice to travel agents, prepared with the Australian Federation of Travel Agents. This includes a guide to the principle requirements of the Travel Agents Act and related regulations. The aim is to help travel agents understand their rights and obligations. The WA system has a great deal of transparency

If the travel agent repeatedly engages in "unjust conduct" the WA Commissioner for Consumer Affairs can require an enforceable undertaking (breach of which carries a penalty up to \$10,000) or object to the licence with the Commercial Tribunal. The Tribunal can withdraw the licence. Its decision can be appealed to the District Court.

The licence requires membership of the Travel Compensation Fund, established in 1986 by Ministers in NSW, Victoria, South Australian and WA. (Note: Queensland and Tasmania are not party.) The Fund is administered by officials from the member states, and persons who have a knowledge of the travel industry and (separately) of travel consumers.

The Travel Compensation Fund is however still regarded as inadequate. The recent Ansett collapse resulted in a large claim on the fund, and consumers were not adequately covered. The government had to bail the industry out, and consumers received 60c in the A\$. A leading industry figure believes consumers will have to take out cover themselves to insure against loss.

He also believes the Australian Federation of Travel Agents should have a more prominent role as an industry (self-regulatory) watchdog. It is critical of the lack of enforcement by State authorities, and points to the number of unlicensed traders (a similar criticism to that made by licensed car dealers). It also says the consumer is insufficiently aware of the requirement for travel agents to have a

licence to trade, and that the State government should be more active in raising awareness of the law.

3. Clothing

Not addressed in the interview programme

4. Hotels

There is no special legislation for regulating the hotel sector in either NSW or Victoria.

5. Home Building

Complaints about home building work are high in all parts of Australia. Consumers have little appreciation of the building process and pitfalls and there is no general system to help the consumer identify better builders. Building standards and regulations are silent on non-structural or health aspects, and thus provide no objective basis for dispute resolution about work in other areas, or its quality.

In most parts of Australia builders require a licence; decisions are based on technical skills and personal criteria, for example good character, and on possession of a certificate of eligibility for insurance obtained from an insurer. Insurance has to cover materials and workmanship and job completion. Only in Queensland do builders have to pass a viability test.

Many small builders are undercapitalised. As a result the risks of insolvency are significant. Unfinished work is a frequent problem and cause of insurance claims. Builders may have trouble in securing Home Builders Warranty Insurance. For their part insurers are raising premiums or withdrawing from insuring against certain risks given the rising levels of incomplete or faulty building work. A major home building insurer collapsed in 2001.

Withdrawal of licences, though within the power of the State governments, is rare. It seems to arise mainly as a result of insolvency or criminal acts rather than persistent poor quality work. It may be that it is difficult to demonstrate in court that the performance is the builder's fault rather than for example bad luck or misunderstandings with customers.

NSW Department of Fair Trading published, for the first time in October 2002, a list of 13 discredited builders. Publication of such lists is permitted under new State government legislation in respect of builders deregistered or suspended since the legislation was introduced. It is said that hundreds of builders were serving suspensions imposed before the end of 2001. One had been the subject of 30 complaints since 1989, and has been banned for life. None of the State's Master Builders Association has been suspended in the last 12 months. However the number of builders in NSW runs into many thousands.

A report for the Australian government in 2002 (National Review of Home Builders' Warranty Insurance and Consumer Protection prepared for the Ministerial Council on Consumer Affairs by Professor Percy Allen) concluded the regulatory process does not provide sufficient protection for consumers or honest builders and insurers. Allen believed a free-market option would not be

acceptable to most Australians, who would expect Government protection from the worst excesses of a free market system. He recommended that the government put less emphasis on insurance (though maintaining the home builders' warranty insurance scheme) and give more attention to strengthening the regulatory framework.

It considered a large number of possible solutions and concluded that the key actions needed were to:

- adopt realistic insurance requirements; this included excluding risks that were not fathomable and therefore not insurable. Other risks might have to be covered by a builders' fidelity fund;
- eject cowboy builders from the industry; the report proposed developing a rating system for home-builders based on previous building achievements, business history, financial soundness, disputes record and clients' feedback. A weaker alternative would be to adopt a "Builders Choice" award (by the major insurer) as exists in Alberta, to help consumers identify low risk builders. The aim would be to make it easier for consumers to identify good builders. In the absence of any guide, consumers often decide on price, and are not aware of the quality implications of their choice;
- set clear building standards and enforce them; proposals included a single standard contract and set of specifications for all work above a certain threshold value, and require on-site inspections at each critical stage, and to audit the performance of private and local certifiers. Inspectors would need to be independent, and have their work audited. In the past there have been problems over builders bribing inspectors;
- intervene and resolve disputes early; this included setting timelines for each stage of dispute resolution (mutual negotiation, arbitration, litigation, and insurance claims). The point here is that disputes become harder to resolve if not tackled quickly. Mediators would also need to have the technical skills of a surveyor, and be able to make binding decisions. Sanctions against builders not complying would include qualifying or suspending their licence. This would be a cheaper alternative to resort to the courts, though both builders and consumers would retain their rights to appeal to a civil court or building disputes tribunal. Building disputes account for a significant share of cases coming before small claims and tribunals.

6. Plumbers

Plumbers in Victoria need to be licensed or registered by the Plumbing Industry Commission www.pic.vic.gov.au (PO Box 360, Caulfield East, Victoria 3145). Operating outside this framework is illegal. For jobs costing more than \$5,000 the plumber should issue a Certificate of Compliance, guaranteeing the workmanship for six years.

The National Plumbing Regulators Forum, a national advisory body, issued a draft Plumbing Code of Australia in 2002. This is aimed at providing a national standard for technical work. Code is consistent with the Building Code of Australia. It does not include any complaints mechanisms or system for policing rogue plumbers. Withdrawal of licence is probably the sanction available to State consumer bodies to deal with rogues.

Canada

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Canada

Goals/Objectives of consumer policy

Consumer policy at the central Government level (Industry Canada) is aimed at providing "a fair and efficient marketplace that supports and advances the interests of Canadians as consumers and protects consumer interests in the event of market failure".

In its business plan, the Office of Consumer Affairs (federal) sets out five strategic goals which it is working to:

- assist consumers in obtaining information on how to protect their interests in the marketplace;
- influence the formulation of government policies to reflect consumer interests;
- promote cooperation in the development of consumer policies across Canada;
- assist consumer organisations to represent consumer interests effectively to government and the private sector; and
- work with the consumer movement and the private sector to develop new approaches to consumer protection.

Institutions

Federal-Provincial Division of Responsibility

The Constitution Act does not specifically assign consumer affairs to federal or provincial jurisdiction. The federal government is responsible for the broad rules of the marketplace relating to peace, order and good government, **trade and commerce, criminal law, currency, banking and weights and measures**. In practice the federal government is responsible for national standards relating to **food safety, transport safety, product safety (except electrical), labelling, legal metrology, banking and interest rates, competition policy**. Federal legislation relating to misleading advertising and unfair practices is seen as competition not consumer policy, part of ensuring a level playing field for traders.

Provincial governments, under their power to regulate property and civil rights, regulate individual transactions, contracts and sales of goods and services, and most industry specific issues. They are responsible for sale of goods and services, guarantees, licensing of traders, electrical safety, credit unions and structural safety. Ontario, with the largest population, tends to set the standards which other provinces will follow, for example in the area of electrical safety. There also exist areas which require cooperation between the two levels of government as both have some degree of responsibility (for example, misleading advertising, company registration, financial institutions). Mechanisms for harmonisation in these areas include the Agreement on Internal Trade, the Uniform Law Conference and legislated codes (for example, electrical code, building code).

The **Consumer Measures Committee (CMC)** was created under Chapter Eight of the Agreement on Internal Trade. The Consumer Measures Committee has a representative from the federal government as well as every province and territory. The CMC provides a federal-provincial-territorial forum for national

cooperation to improve the marketplace for Canadian consumers, through harmonization of laws, regulations and practices and through actions to raise public awareness. The CMC is presently co-chaired by the Director General of the Office of Consumer Affairs, Industry Canada and the Director of Consumer Affairs, New Brunswick Department of Justice. The CMC also provides support and develops policy proposals for Federal-Provincial-Territorial Ministers of Consumer Affairs, who meet approximately every two years to take joint actions in consumer issues.

Federal, provisional and territorial ministers are focusing on cooperation in the following key areas: the development of consumer protection measures in electronic commerce, including legislative harmonisation, consumer education and improved cooperative enforcement.

Consumer Affairs in the Federal Government

Within the federal government, several departments and agencies have regulatory or policy roles relating to specific aspects of consumer affairs, focussed on their departmental regulatory duties. Industry Canada is responsible for legal metrology, non-food product labelling, marketing practices and telecommunications. The Minister of Health, through Health Canada, is responsible for the safety of non-electrical consumer products, medical devices and pharmaceuticals, safety of tobacco products and radiation safety. The Minister of Agriculture and Agri-Food protects consumer interests in the area of food safety, food labelling and pesticides through the Canadian Food Inspection Agency. The Agency reports directly to the Minister. By integrating the consumer protection function into a number of sectoral departments and agencies, responsibility and accountability has been placed on the departments and ministers with the greatest capacity to ensure that consumer issues are addressed as part of their specific mandates.

Industry Canada Role

The system relies on the Minister of Industry to bring a broader consumer perspective to the Cabinet table. Under *The Department of Industry Act* (1995, c.1), Section 5 (Objectives):

"The Minister shall exercise the powers and perform the duties assigned by subsection 4 (1) in a manner that will... promote the interests and protection of Canadian consumers."

The Minister has policy and consultation instruments for consumer issues generally. The **Office of Consumer Affairs (OCA)** works to: give consumers tools they can use to make informed decisions by creating award-winning innovative information products, expand practical consumer protections in the marketplace by encouraging the development of voluntary codes and standards, build the capacity of consumer organizations so that they can contribute more meaningfully to public policy development, and to develop a co-operative agenda with the provinces and territories by facilitating harmonisation of consumer protection legislation and regulations. The Minister co-chairs the Federal-Provincial-Territorial Committee of Ministers Responsible for Consumer Affairs.

Resources. The Office of Consumer Affairs has 25 staff. Focus is on policy analysis. Annual funding is C\$ 1.3m (C\$ 850,000 operating budget, C\$

450,000 – Gateway). OCA is responsible for the Contributions Program for Non-Profit Consumer and Voluntary Organisations. Current budget C\$1.75m. This supports a range of project proposals including research. About 11 organisations receive funding each year. Measure impact through Consumer Trends report – due at end of year.

Competition Bureau

The Competition Bureau of Industry Canada is the administrative and law enforcement body charged with the preservation of a competitive marketplace in Canada. The head of the Bureau is the Commissioner of Competition, appointed under the Competition Act. In addition to the Competition Act, the Commissioner is responsible for the administration and enforcement of the Consumer Packaging and Labelling Act, the Textile Labelling Act, and the Precious Metals Marking Act (the “standards-based acts”). The purpose of the legislation is to maintain and encourage competition in Canada in order to promote the efficiency of the economy; to expand opportunities for Canadian enterprises in world markets; to ensure that small and medium-sized businesses have equal opportunities; and to provide consumers with competitive prices, competitive product choices and accurate product information.

The Competition Bureau, Fair Business Practices Branch, is responsible for enforcing the Competition Act, the Consumer Packaging and Labelling Act, the Textile Labelling Act and the Precious Metals Marking Act. The Competition Act has a broad reach. By updating the guidelines it can generally be applied to new practices, for example misleading advertising on the internet.

The Competition Bureau's approach to the administration and enforcement of the Acts is based on five principles: confidentiality, fairness, predictability, timeliness, and transparency. The Competition Bureau seeks to secure compliance with the law through educating business, promoting understanding of the law, seeking undertakings and through litigation as necessary. It will give advisory opinions to companies on request (for a fee). In cases where the Competition Bureau believes someone is engaged in anti-competitive practices in respect of merger or other civil reviewable matters, it can institute formal proceedings before the Competition Tribunal. Civil sanctions comprise one or more of cessation/stop order, corrective order, and administrative monetary penalty capped at C\$100,000.

Criminal prosecutions are the responsibility of the Attorney General of Canada and the Bureau may refer evidence of an offence to the Attorney General who will consider bringing the matter before the courts. Current big issues in this area concern telemarketing and unsolicited mail. Misleading advertising is a criminal offence when it is knowingly reckless. FBP Branch has 155 employees, including enforcement officers, lawyers and economists, 45 – 50 in HQ, 30 in Toronto, 20 in Montreal. The Competition Bureau supports self-regulation and codes. It encourages law enforcement partnerships, for example with police, Fair Trade Commission, “Toronto Partnership”. There was crossover with Measurement Canada on labelling issues. Sharing intelligence was an issue because of confidentiality – more generally, Bureau will not name traders unless they have been named in a court action.

Measurement Canada (MC)

Measurement Canada ensures that goods and services traded on the basis of measure are inspected to ensure they are measured accurately. MC is responsible for policymaking and analysis, legislation and enforcement of the *Weights and Measures Act* and the *Electricity and Gas Inspection Act*. It is responsible for legal metrology – its functions in this respect are equivalent to the National Weights and Measures Laboratory. MC is a national agency divided into 5 regions and 25 districts. Approximately 350 people work in this area, 200 of these are inspectors and enforcement officers. MC is Government funded and any income is returned to the Government. Inspection is contracted out to public and private bodies. Enforcement is done at district level. District officers deal with complaints. The President of Measurement Canada reports to the Industry Canada minister through the deputy minister. There is no formal provincial government involvement although MC can devolve some issues to provincial government, for example taxis.

MC is currently undertaking a Trade Sector review of 39 industries and will make recommendations incorporating stakeholder views. The review was preceded by a number of research /focus groups into consumer views which were funded by OCA. Emerging findings are that MC adds little value to industry-to-industry transactions where there would be scope for more self-regulation.

Weights and measures is a low priority for legislation. Regulations can generally be modified within an 18 month timeframe. New standards in relation to electricity and gas can be signed off by the President. Current trend is to move away from inspection and set rules for the marketplace. Sanctions are weak. Maximum fine is C\$ 5000 – no change for three years. MC provides information through publications and its website, and at trade shows. Impact – Measurement Canada's view was that enforcement was better 20 years ago but that the new targeted approach to sectors would improve things over the next 5 –6 years.

Health Canada – Consumer Product Safety Bureau

The Consumer Product Safety Bureau is situated in the Healthy Environments and Consumer Safety Branch (HECS) in Health Canada. It moved to HECS in the 1990s from what was the consumer protection side so as to give product safety a better focus. The Consumer Product Safety Bureau is responsible for improving and maintaining the quality of life through reduction and prevention of injuries, adverse reactions, illnesses and death associated with the use of consumer products, cosmetics and personal use products. It is also responsible for providing safety information to Canadians who use hazardous materials in the workplace to avoid injury, illness and premature death. The Bureau is responsible for enforcing two pieces of legislation covering product safety issues, the Hazardous Products Act (HPA) and the Food and Drugs Act. At the centre there is a team of 35 – 40 people developing and coordinating policy, legislation, information and education programmes. The Bureau aims to secure stable funding (after a period of decline) to enhance education and to boost its compliance and enforcement capacity. The Bureau has a Product Safety Laboratory (30 – 40 people) and six regional offices employing 60 staff.

The Bureau would like to modernise the legislation. The HPA takes a product specific approach; would prefer to move towards a general safety requirement. There is no mandatory recall at federal level; they rely on provinces to work with industry to recall products.

Department of Finance, Canada

The Finance Department (Consumer issues section) is responsible for development of policy and legislation to protect consumers of federally regulated financial institutions. Federal government has exclusive authority over banks including consumer protection. Consumer protection measures for other financial institutions (for example insurance companies) are mainly dealt with at provincial level.

The Department aims to promote competition and ensure consumers are educated. They aim not to be interventionist. Consumer measures in FI statutes focus on: disclosure regulations, rate of interest/how calculated, service charges, complaint handling provisions, coercive tied selling, branch closure provisions, public accountability statements. The Department preferred voluntary initiatives. Banks had proposed MOUs to avoid being regulated – MOUs on low cost accounts signed with the 8 largest banks; Debit Card code of conduct was revised in 2002; liability on consumer to prove when bank card stolen, consumer must prove not negligent.

A new agency, the Financial Consumer Agency, had been set up to enforce the regulations. To some extent the role of the FCA is still being worked out. FCA would track complaints for systematic breaches and monitor compliance, but would not follow up individual complaints. It will rule on systematic breaches and issue directional notices to banks. Its decisions are subject to challenge in the courts. Also has a consumer education role and monitors the effect of codes, but cannot impose sanctions for breach of codes. Individual complaints go to institutional ombudsman, national ombudsman or courts. A number of consumer groups advocated in this sector. But funding of consumer groups is an issue, with some funding from Industry Canada. Harmonisation of provincial laws is a key issue facing the Department. For example they are working to extend the law on the cost of borrowing beyond federally regulated FIs across the board.

Role of Provincial Government

Ontario (population 12 million). The role of the Ministry of Consumer and Business Services (MCBS) is to ensure fairness and safety in Ontario's overall marketplace. The ministry administers 64 statutes, amending an average 65 regulations each year. The core businesses of the ministry are Consumer Protection and Public Safety, Integrated Service Delivery, Registration and Alcohol and Gaming Management. Consumer protection falls to the Policy and Consumer Protection Services Division (PCPSD). PCPSD develops the strategic policy framework and creates and administers legal framework for consumers and businesses in Ontario. It establishes standards in marketplace, technical / public safety standards, regulation of alcohol and gaming. Statutes prescribe key provisions such as scope of law, mandatory licensing/registration requirements (for example cars and travel agents), and key civil remedies.

Regulations then set out specific requirements for example to adapt to changing marketplace or technology (such as disclosure rules for consumer contracts, technical requirements for public safety). PCPSD monitors, inspects, investigates, enforces. There is sector specific regulation governing cemeteries, collection agencies, condominiums, franchises, bailiffs, consumer reporting agencies, paperback and periodical distributors, theatres and professional boxing.

Delegated administrative authorities have been set up since 1997 to carry out the day-to-day functions of core business areas, while the ministry retains overall control of policy development and the legislation. The authorities operate on a cost recovery non-profit making basis. The administrative authorities are:

- Technical Standards & Safety Authority;
- Real Estate Council of Ontario;
- Ontario Motor Vehicle Industry Council;
- Travel Industry Council of Ontario;
- Electrical Safety Authority;
- Vintners Quality Alliance Ontario.

In 2001 an independent evaluation concluded that the delegated administrative authority models had been a success, leading to more focused attention on consumer and industry needs; new programmes to improve public safety and consumer protection; and enhanced service.

Recent legislation

PCPSD has modernised, harmonised and consolidated six consumer statutes into a new Consumer Protection Act, significantly expanding consumer protection including provisions to foster electronic commerce. Within PCPSD, the Marketplace Standards and Services Branch directly administers 20 statutes. It has four key functions which break down as follows:

- **Consumer Services Bureau:** Call centre, 12 staff. Deals with 45,000 consumer complaints and enquiries per year. Provides advice, mediation and consumer education.
- **Registration and Licensing**
- **Inspections:** 1650 inspections in 01 / 02.
- **Investigations and Enforcement:** 171 investigations, 533 charges. C\$537k in consumer restitution and fines

Quebec (population 7 – 8 million; Montreal 4m). Office of Consumer Affairs. The Office of Consumer Affairs became an independent agency around 1980. It reports to a Board of Directors (nine in total), appointed by the minister. Current President is Maurice Boisvert. It has social and economic goals: to promote consumer rights and ensure a balance between consumer and business interests. It has an advocacy role, to ensure consumer voice is represented among organisations whose actions/responsibilities affect consumers. There are eleven regional offices dealing with consumer complaints, making information available to consumers, enforcing the law and carrying out inspections.

Resources. 115 people work for the agency, 30 in Montreal. There are 7 inspector/enforcement officers. The Agency spends C\$500k on funding

consumer groups, with an additional \$C 80,000 for projects (for example on compliance issues).

Consumer Complaints. The regional offices will provide information to consumers with problems. If the consumer wants to file a formal complaint, he/she can complete the documentation and send it to the office. The office will try to resolve the problem with the trader. If the complaint cannot be resolved, the agency will advise the consumer how to make a complaint to the court. The small claims court will deal with cases involving amounts up to C\$7000. Surveys carried out show that the agency is well known in Quebec. The agency seeks to raise its profile through daily media stories, aimed at warning consumers about scams. Communication department is responsible for educating consumers and provides business guidance.

Enforcement follows a risk management approach. Big issues currently are advance payment for funeral arrangements and motor vehicles. Motor vehicle related complaints represent 21% of all complaints. Resources tend to be used to target specific issues. For example, collection agencies were targeted for a week. The motor industry is similarly targeted. Consumers are given help with contracts, for example leasing. Complaint levels are monitored, if they creep up again the sector can be retargeted.

The Agency has adopted a naming and shaming policy based on the complaints it receives. Following investigation, where the agency is satisfied that a complaint is justified (following careful verification), it is published as part of the trader profile. Trader profiles are available on-line. Business is very nervous about this policy and it has raised privacy issues. Complaints about merchants doing business under their own name are not published.

Self-regulation: A general problem with self-regulation is lack of monitoring and enforcement. The Agency is thinking about legislation which would allow Government to enforce codes of practice. A voluntary code on price accuracy had been agreed and adopted by industry. This was reasonably successful. The voluntary Code on Debit cards had been largely ignored by the industry and was not well known by consumers, so the Agency was thinking about legislation.

E-commerce: The Agency does not receive many complaints about on-line shopping. Quebec appears to be doing relatively little business on-line. They are working hard with provinces and federal government to develop a template to implement the new code of practice.

Non-governmental organisations: Consumer Representation

Overview

Canada seemed to lack strong consumer representation on a national scale. There was better representation of consumers in Quebec where we learnt of two networks of consumer groups. There was little in the way of federal Government funding being put into supporting groups – C\$1.7m (£700k per year). Quebec had a tradition of funding consumer groups, originating from trade union support in the past.

The Consumers' Association of Canada (CAC) was founded in 1947 and is an independent, not-for-profit, volunteer-based, charitable organization. Its mandate is to inform and educate consumers on marketplace issues, to advocate for consumers with government and industry, and work with government and industry to solve marketplace problems. CAC focuses its work in the areas of food, health, trade, standards, financial services, communications industries and other marketplace issues as they emerge. The organisation was not strong as it had been in the 1950s. Its magazine had gone bankrupt and it no longer received federal funding.

Public Interest Advocacy Centre (based in Ottawa)

The Public Interest Advocacy Centre (PIAC) seeks to advance the interests of individuals and groups who are generally un-represented or under-represented in issues of major public concern. It champions those issues that involve the delivery of important public and utility services, primarily concerning telecommunications, energy, privacy, the information highway, electronic commerce, financial services, broadcasting, and competition law. The Centre undertakes solid legal and research services on behalf of consumers. Engages in advocacy on issues associated with fairness, financial consumer protection, and access to banking services

The Public Interest Advocacy Centre is a non-profit federally incorporated organisation. Founded in Ottawa in 1976, PIAC has been especially vigilant in compelling government and private corporations to administer programs or to conduct business in accordance with fairness and due process. PIAC has won many victories on this basis in the courts and tribunals and provides a strong consumer-based voice in the regulation of important public services and utilities. PIAC's main concerns were deregulation and competition. Consumers were overloaded with choice, not enough price transparency. In its view, the Government hid behind competition as guaranteeing sufficient consumer protection. Regulatory bodies had become weaker and consumers suffered from, for example, the permissibility of arbitration-only clauses in standard contracts.

PIAC thought that business was generally against consumer legislation. Self-regulation could be helpful, but code schemes only covered those who wanted to participate (likely to be the better firms) and adherence was variable. Examples of self-regulatory schemes mentioned were those of the Toronto DMA (Direct Marketing Association) and the Canadian Association of Internet Service Providers. There was an Electronic Funds Transfer Code.

Consumers' knowledge of their rights was low in PIAC's opinion. Access to advice was difficult and generally there were difficulties in obtaining redress (although some sectors such as telecoms had special dispute resolution schemes). There were small claims courts (though the \$50 filing fee remained a barrier), and class actions were available in half of the provinces and territories. PIAC viewed the quality of public law enforcement as poor - the authorities concentrated on larger cases. Some common consumer problems included fraud, banking and cell phones (moves to longer contracts, unfair penalties for early cancellation), timeshare and estimates for services like house repairs.

Option Consommateurs (Quebec)

Option Consommateur is a small consumer organisation which gives practical advice to consumers and takes action in the courts on behalf of groups of consumers. It receives funding from Centraid, a charitable organisation which receives contributions from employees and which funds some 250 organisations. Option also receives funding from federal government (for research) and from the provincial government. Further revenue is raised from providing good consumer stories to the media. Option is part of a loose network of about 40 consumer groups in Quebec. It has between 800 and 1000 individual subscribers.

The key issues which caused complaints were financial services especially insurance, sales of goods (warranties), hidden defects, and the used car market including repairs. Food retailing was also mentioned. An article in the Quebec civil code allows the group to take class action. There is a fund for class actions provided by the provincial government. Option has begun about 20 class actions in the year, with 8 of them now settled.

Union des Consommateurs (Quebec)

Union des Consommateurs grew out of the Quebec branch of the old Consumers Association of Canada. It is a federation which represents local consumer groups (not including Option which is part of a different network). Union works on national issues mainly relating to food, energy, telecoms, e-commerce, social and fiscal policy, credit debt and bankruptcy. Union's priorities are set out annually in an action plan which is made up from community plans. Union is supported by a regional group structure.

Union des Consommateurs – views on consumer protection in Canada:

- federal /provincial split is a problem - at provincial level there is insufficient competence to act. For example, Quebec was forced to shut down a regulatory body because it was found unconstitutional. Provincial government fails to act, for example won't challenge unfair contract terms, because of tension with federal level enforcement;
- provincial level enforcement was not adequate- prosecutions had dropped dramatically. Federal level enforcement was even less effective, very formal, bureaucratic and difficult – there was no compensation for consumers, so no incentive for consumers to complain at that level;
- consumer organisations needed to be empowered to take cases. As with Option, Union was empowered to bring class actions – a powerful tool. There had been a successful action against misleading advertising by car manufacturers.

Money counselling is a big issue for consumer groups. 40,000 consumers use counselling agencies across Canada – there will be research into this group to measure impact of debt/lifestyle policies.

E-Commerce: The Director of Union had co-chaired the committee to develop the Code. Union is monitoring compliance with the new e-commerce code.

Canadian Council of Better Business Bureaux

The Canadian Council of Better Business bureaux is part of the Better Business Bureau network which started in the United States - there are 14 bureaux in Canada, with 25,000 members (representing 8-9% market penetration). BBBs are non-profit organisations supported by business. The Canadian Council of Better Business Bureaus (CCBBB), established in June of 1966, is the coordinating and licensing body of the Better Business Bureau (BBB) system in Canada. The BBB system is a public service agency financed by the private business sector with the local Bureaus across Canada serving as the action arm of the BBB system.

BBB system aims to promote high ethical standards of business practice, serving as a vehicle through which the business community manifests its concern for sound consumer relationships and provides a platform for national and local business on matters of business-consumer policy. BBBs offer a variety of consumer services. They provide consumer education materials, answer consumer questions, provide information about a company and complaints about it (where known by BBB), help resolve buyer / seller complaints against a company, including some mediation and arbitration services and provide information about charities. BBBs do not judge or rate individual products or brands, handle complaints concerning the price of goods and services, handle employer / employee wage disputes or give legal advice. Aims to protect business as well as consumers. Sends out scam alerts quickly. Supports self-regulation, fends off legislation.

Top 10 Inquiries & Complaints December 2002

| Inquiries | Complaints |
|--------------------------------------|--|
| 1. Work-at-Home | 1. Auto Dealers New/Old |
| 2. Auto Dealers New/Old | 2. Computer Sales and Service |
| 3. Moving & Storage | 3. Moving & Storage |
| 4. Auto Repairs & Service | 4. Contractor – Home Remodelling/Renovations |
| 5. Computer – Sales & Service | 5. Floor Covering |
| 6. Charities | 6. Contractor – Heating & AC |
| 7. Travel Agencies | 7. Telephone/Cell Phones Co |
| 8. Sweepstakes/Lotteries | 8. Windows/Doors Installation |
| 9. Multi-Level Selling | 9. Internet Services |
| 10. Contractor – Roofing & Guttering | 10. Collection Agencies |

Consumer knowledge

Canadian Consumer Information Gateway (CCIG)

The Canadian Consumer Information Gateway (<http://consumerinformation.ca/>) is a Government Online initiative that includes over 35 federal government departments and agencies, as well as over 250 provincial and territorial partners. These organizations have come together in a unique partnership to promote Canadian consumer interests and awareness. Over the coming months, selected Non Governmental Organizations (NGOs) will join this cooperative initiative, further enhancing its value to Canadian consumers. This site gives

consumers the tools they need to make informed decisions, safe and healthy product choices, alerts them to recalls and scams and provides them with the contacts to seek redress.

The OCA's website, (<http://www.consumerconnection.ic.gc.ca/>) **Consumer Connection**, provides interactive information tools designed to enable consumers to obtain the information they need to protect their interests as quickly and efficiently as possible. New products include: *Fraud Files*, a mini quiz to help assess consumer's vulnerability to fraud; *Annual Financial Service Charges Report* and *Privacy Town* which is a guide to privacy protection in the Canadian marketplace. Consumer education is not included in the school curriculum. A key source of consumer information is "Protegez-Vous" a high quality magazine which provides consumer reports (similar in style to Which? in the UK).

The Canadian Consumer Handbook

The Canadian Consumer Handbook, available on CD-ROM and the Internet (<http://www.consumerinformation.ca/>), offers information and advice to help consumers learn about consumer rights, make informed decisions and protect against unscrupulous merchants. Included in the handbook are points to consider, questions to ask and steps to take when making purchases or signing contracts or, for consumer affairs professionals, when helping consumers with these things. There are tips on how to complain effectively (including a sample complaint letter), things to consider before and after buying a product or service, how to deal with a collection agency, consumer privacy, contracts (for dating services, health clubs, timeshares, etc.), door-to-door sales and electronic commerce. Also included are tips on how to deal with fraud, funerals, home renovations, landlord and tenant problems, mail order, major purchases (houses, cars), misleading advertising, multilevel marketing and pyramid selling schemes, product safety, rent-to-own, telemarketing and travel. Finally, for the most common types of consumer problems, the handbook includes corporate, consumer, government and non-government contacts.

CBC, the main national television network offers consumer advice, tips and news on their website and two consumer programs, "Marketplace" (aimed at younger audience) and "Street Cents". CBC's French network provides "La Factice" (The Bill).

"Straight goods" (www.straightgoods.com) is an online independent source of news and tips relating to consumer affairs.

Consumer confidence

Industry Canada saw the lack of "informed, assertive consumers" as the principal policy problem. One of their goals is to assist consumers in obtaining information to protect their interests in the marketplace. Many consumers do not have sufficient numeracy and literacy skills to evaluate the information they are given. More articulate consumers do not have time to digest the information in the marketplace to make informed decisions.

Demographic changes, lower birth rate, meant that population was now expanding only through immigration. Multiculturalism posed different consumer priorities.

Complaints

Canadian consumers make a significant number of complaints, the top ten (October 2002) being:

1. Moving and Storage
2. Auto Dealers New and Used
3. Auto Repair and Service
4. Computer Sales and Services
5. Paving Contractors
6. Heating and Air Conditioning Contractors
7. Roofing and Guttering Contractors
8. Retail Furniture
9. Home Furnishings
10. Window and Door Installations

Legal Framework

Consumer protection in the economic field is seen by the Competition Bureau as part of the competition framework, especially at federal level where key provisions are contained in the Competition Act. The Competition Bureau is responsible for enforcing the Competition Act, the Consumer Packaging and Labelling Act, the Textile Labelling Act and the Precious Metals Marking Act.

The federal legal framework is the responsibility of a number of departments. Industry Canada, Health Canada, the Finance Department, Transport Canada, the Canadian Food Inspection Agency and Justice Canada are among those with key interests, with provincial governments responsible for regulating individual transactions, contracts and sales of goods and services, and most industry specific issues. Because of the different responsibilities, the framework is described above under the relevant institutions.

Legislation

Competition Law

The Federal *Competition Act* covers such consumer issues as misleading advertising, deceptive telemarketing, and multi-level marketing and pyramid schemes, as well as such competition issues as price discrimination and predatory pricing.

Consumer Safety -- General Consumer Products

The Federal *Hazardous Products Act* and its related regulations provide for nationwide standards of safety for a wide variety of consumer products, ranging from child restraint systems for automobiles, to hockey helmets. The *Food and Drugs Act* regulates the sale in Canada of food, drugs, cosmetics and medical devices.

Consumer Safety – Automobiles

The Federal *Motor Vehicle Safety Act* requires automobile manufacturers to adhere to safety standards in manufacturing their products.

Labelling

The Federal *Consumer Packaging and Labelling Act* ensures that food packages properly identify products -- in terms of quantity and ingredients -- in both official languages.

Unfair Business Practices

Eight Provinces have enacted legislation to control unfair business practices. Such practices may leave a merchant open to investigation or prosecution by Provincial authorities and may create a private right of action by an aggrieved consumer. Although the practices deemed unfair are similar from Province to Province, the remedies available may vary. These statutes are typically named *Business Practices Act* or *Trade Practices Act*. (In Québec and Saskatchewan, the relevant provisions are contained within the more extensive *Consumer Protection Acts*; in Alberta, within the *Fair Trading Act*.)

Protection of Personal Information

The Federal government's *Personal Information Protection and Electronic Documents Act*, which applies to federally regulated entities and to cross-border sales currently -- and, as of January 1, 2004, to the entire private sector in those Provinces without privacy protection legislation -- offers consumers the opportunity to know what information is being collected about them by regulated businesses, and to opt out of businesses' information collection practices, and to correct inaccurate information. Quebec's '*Act respecting the protection of personal information in the private sector*' governs the information practices of businesses in that Province.

E-commerce

Industry Canada's view was that the key concern has been the level of junk email (30% of internet traffic). The level of e-shopping is thought to be low in Canada, even with 70% of population accessing the net. Unsolicited email and abusive mail, typically promoting get rich quick/ pyramid and bogus no-risk investment schemes, seen as main problems. IC recognise the value of electronic mail marketing when done appropriately. IC have approached the problem of unsolicited commercial mail through the application of existing laws, appropriate Internet industry policies, technology and consumer awareness.

Existing law applying to e-commerce: Competition Act, Criminal Code, Personal Information and Electronic Documents Act (2001)

Canadian Code of Practice for Consumer Protection in Electronic Commerce: the code is intended to establish benchmarks for traders conducting commercial activities with consumers on-line. It leaves unchanged rights, remedies and other obligations that already exist as a result of consumer protection or privacy regulation and other general or sector specific voluntary codes. Code was developed by Working Group involving retail and communications industry, BBB, consumer groups (including Union des Consommateurs, Option Consommateurs and PIAC (see above)).

Code based on eight principles: information provision, language, contract formation and fulfilment, online privacy, security of payment and personal information, redress, unsolicited email, communications with children. Code is undergoing pilot testing by a number of industry sectors. This could lead to its revision. Publication of the revised code is planned for Autumn 2003.

Review. IC is currently reviewing policy in the e-commerce area. A discussion paper had been published seeking views on the role of Government, industry, ISPs. Should there be new laws? Is there need for centralised reporting system for fraudulent email? How can public education be improved? It seeks to identify areas where both industry, stakeholders, and consumers will find a common interest in achieving effective solutions.

Goods and services: conditions of sale and warranties

All of the Provinces have laws governing contracts for the sale of goods. For most of the Provinces, see a statute called the *Sale of Goods Act*. (In Québec, see Book Five of the *Civil Code of Québec*.) Certain related warranty provisions may also be contained in other statutes, such as a *Consumer Protection Act*. Such legislation may establish the basis for a private right of action against a merchant. Certain Provinces have also enacted much more extensive consumer warranty legislation. See New Brunswick's *Consumer Product Warranty and Liability Act* and Part III of Saskatchewan's *Consumer Protection Act*.

Product safety

Government, industry and consumers share responsibility for product safety. Within the Federal Government, different areas of product safety have been assigned by legislation to various departments. Where no assignment has been made, and the hazard is chemical, mechanical, electrical, or fire related, the safety of products falls within the purview of the Product Safety Program. As part of the Product Safety Program, the Consumer Products Division has a broad mandate under the Hazardous Products Act. Under Section 6(1)(a) of the Act, the Consumer Products Division is responsible for any consumer products which are poisonous, toxic, flammable, explosive, corrosive, infectious, oxidising or reactive. Under Section 6(1)(b) of the Act, the Division is also responsible for any product designed for household, garden or personal use, for use in sports or recreational activities, as life-saving equipment or as a toy, plaything or equipment for use by children that is or is likely to be a danger to the health or safety of the public by reason of its design, construction or contents. Sanctions under existing legislation for a summary offence are c\$100,000 and/or 6 months imprisonment, and for an indictable offence c\$1,000,000 and/or 2 years imprisonment.

The Consumer Product Division provides daily interpretation of policies as well as technical and other support to the Product Safety Regional Offices in their enforcement work. In addition, virtually all work in support of interventions involving non-regulated products are done by Consumer Product Division staff. The Consumer Products Division is also involved in the harmonization and international work done by the Product Safety Program. The Consumer Products Division covers three major hazard areas: chemical, mechanical & electrical, and flammability safety. It is divided into two responsibility Sections, namely the Chemical Hazards Section and the Mechanical & Electrical Hazards Section. The responsibility of flammability issues is shared by the two Sections. However, consumer product safety issues do not come in neat packages divided along the two responsibility Sections. Indeed some products exhibit all three types of hazards, therefore there is co-operation between the two Sections.

Also the actions taken by the Consumer Products Division in all three areas focus principally on vulnerable populations: children and seniors.

Canada's National Standards System (NSS) is the framework for developing, promoting and implementing national standards in Canada. Almost 15 000 people help write standards and hundreds of organizations specialize in testing, certification and other standards development activities.

The Standards Council of Canada (SCC), a federal Crown corporation, oversees the NSS, accrediting more than 250 organizations involved in standards development, product or service certification, testing and management systems registration in Canada. It regularly audits accredited organizations to make sure they meet detailed criteria and procedures. A 15-member body consisting of representatives from the federal, provincial and territorial governments and a range of public and private interests, including consumer representatives, governs the SCC. The SCC has further acknowledged the importance of the consumer viewpoint by creating the Consumer and Public Interest Committee. It comprises four consumer representatives, members of environmental, labour and occupational health and safety groups, representatives from the federal government and academia and four consumer professionals from organizations that develop standards. The Committee recommends policies to identify and monitor emerging consumer and public interest issues, promotes consumer and public interest in standards, participates in standards development and contributes to SCC volunteer recruitment and training programs. It also advises the SCC on international consumer policy issues related to standards.

There are four standards development organizations accredited by the Standards Council of Canada to develop standards (see below). Each does so using committees representing various interests and by building consensus. These organizations may submit standards to the SCC to be recognized as National Standards of Canada. They also develop standards-related documents, such as codes, specifications and guidelines, that do not have the authority of standards.

Bureau de normalisation du Québec. The Québec government established the Bureau in 1961 to set government procurement standards. Its mandate has since been expanded to include a full range of services, including standards development for the public and private sectors.

Canadian General Standards Board. The federal government set up the Canadian General Standards Board in 1934 to support government programs. As with other standards development organizations, it now offers standardization services to both the public and the private sectors and charges for its services to recover costs.

CSA International (Canadian Standards Association). CSA International was founded in 1919 and is Canada's oldest and largest SDO. It is a private, not-for-profit organization with offices across Canada, as well as in the United States, Europe and Asia, and offers a full range of services, including standards development.

Underwriters' Laboratories of Canada. Underwriters' Laboratories of Canada was established in 1920 as a not-for-profit organization. It offers a full range of services, including standards development. Many of its standards are included in government regulations and codes.

There are bodies that develop voluntary codes, codes of conduct, codes of practice, voluntary initiatives and other specifications that are similar to standards in Canada but that are not part of the NSS. These often serve particular markets and needs.* In some areas, particularly in electronics or computers in which technology changes quickly, a leading company or consortium develops de facto standards. These standards acquire authority or influence due to the market share of the firms that use them. They are not, however, eligible to be National Standards of Canada.

Self-regulation: Competition Bureau supports self-regulation and codes. It encourages this by bringing industry groups together. Industry self-monitoring had proved successful in relation to complaints about grocery products – problems with scanning codes in at checkouts had been sorted.

Redress: Current legislation provides a number of options for consumers who seek redress: they include rescission/cancellation, damages (both general and punitive), specific performance, and injunction depending on the circumstances. While these measures are available to the consumer transacting on line, the difficulty or impracticality of enforcing court redress mechanisms significantly limits, in most instances, the value of any of these remedies. Class actions can be taken by consumer groups in provincial courts. Seen as very powerful tools. Small claims courts are available, governed by provincial rules. The rules, such as those relating to whether lawyers are permitted or on the upper limits on claims, can be very different from one province to another. In Quebec for example, the Small Claims court will accept claims up to C\$7000 and legal representation is not permitted. The court will hear cases from individuals and small businesses (no more than 5 people). 80% of cases are settled by mediation prior to going to court. See Guide to the Small Claims Court for more information.

Enforcement

The protection afforded to consumers is broadly similar (although not identical) in all parts of the country. A review of the statutes would suggest considerable potential for overlap and duplication between the federal and provincial administrations, but these problems are minimized, possibly by the limited **enforcement** resources faced by virtually all federal and provincial **enforcement** agencies, and working relationships, agreements and understandings between agencies (generally unwritten) on which agency would take the lead on particular business practices and types of cases. While these understandings reduce government administration costs, they also reduce the transparency of the total system for business, consumers and other market participants. In fact, the differences across provinces and between the federal and provincial jurisdictions respond to the differing requirements of consumers, businesses, and markets in various parts of the country.

Integration of consumer policies with other policies

Industry Canada is responsible for both competition and consumer policy and coordinates the two. Competition and consumer policy are seen as part of a virtuous circle. The Competition Act which is enforced by the Competition Bureau embodies some consumer protection. The Bureau also enforces labelling and packaging legislation – both a consumer and competition issue. Consumer policy is formulated at federal level by OCA in Industry Canada and at provincial level.

Market Case Study – Airline travel

Canadian Transportation Agency - Office of the Air Travel Complaints Commissioner

Office of the Air Travel Complaints Commissioner was created in July 2000 in response to concerns about the quality of air travel in Canada that arose during the restructuring of the industry. There was some political pressure to set it up. It acts as an impartial third party in the settlement of disputes between consumers and air carriers that operate to, from and within Canada. The Commissioner's principal responsibilities are to review and expedite the resolution of a broad range of air travel complaints.

Complaint handling process: level 1 complaints; Commissioner recommends consumer takes up complaint with the carrier. Generally resolved with little staff involvement.

Level 2 complaints: complaints not resolved with carrier- need intervention from investigation staff or even Commissioner herself. Can take 60-80 days to resolve.

Some complaints, where the carrier does not follow the recommendation of the Commission and has breached terms and conditions of carriage, will be referred to the Canadian Transportation Agency. The enforcement division of the Agency (Agency's court?) has authority to compel carriers to respect their terms and conditions of carriage as set out in tariff. It can order compensation to passenger for certain out of pocket expenses.

Carriers

Dominant carrier is Air Canada, with 70% of the Canadian air travel market. Air Canada acquired Canadian Airlines International in December 1999, leading to period of deep consumer dissatisfaction. Westjet is the Canadian equivalent to Easyjet in the UK.

Complaints

Complaint levels have decreased since their peak in the first half of 2001. In the 2 years since the formation of the Commission, there have been nearly 5000 complaints, 65% of them against Air Canada. Air Canada now setting up an in house ombudsman to help provide alternative dispute resolution.

Top three sources of complaints are quality of service, scheduling, baggage (see page 10, Air Travel Complaints Commissioner's Report).

Impact

View of Commission was that they had helped to bring down the level of complaints and were getting good results from investigations. Seemed to be well resourced and focused on a very discreet problem area.

Future

Commissioner has endorsed a number of recommendations for the future (see page 25 or report), including that the authority of the Commissioner should be extended to responsibility for air travel related complaints concerning such issues as airport signage, facilities and airline advertising practices.

The **Canadian Association of Airline Passengers** provides information on airline passenger's bill of rights and other general information on political undertakings relating to this field.

Denmark

dti

Denmark

Objectives/goals

The main objectives of Danish consumer policy are:

- consumer protection - legal rights against unfair practices, food and product safety;
- providing factual information to allow consumers to make informed choices;
- providing a complaints system so that consumers can obtain redress
- fostering cooperation between consumer and business to solve problems without the need for legislation; and
- ensuring consumer's freedom of choice

The main strengths of the system are broad support for the aims of policy and the active involvement of both consumers and business in implementation, plus the strong media interest in consumer issues. The main weaknesses are a lack of resources and weak enforcement.

Traditionally consumer policy focused on protecting weak or vulnerable consumers. In the last decade the focus has shifted to empowering consumers to make better choices by providing them with better information and greater transparency and more effective means of allowing them to get redress. The new consumer policy announced in January 2003 intends to carry this process further by a re-organisation of the various consumer institutions, improving the level of and access to information and increasing the level of choice available in various services including those provided by the State. These developments will be underpinned by improving the dialogue between business and consumer so that they take greater responsibility for solving problems via self regulation, in particular by placing greater reliance on private rather than public mechanisms to resolve complaints.

Institutional Structure /Resources

The following is a list of the main consumer organisations in Denmark:

| Government Organisations | Non Government Organisations |
|---|--|
| <ul style="list-style-type: none">• Ministry of Economic and Business Affairs | <ul style="list-style-type: none">• Danish Consumer Council |
| <ul style="list-style-type: none">• Danish Consumer Agency | <ul style="list-style-type: none">• Active Consumers Denmark |
| <ul style="list-style-type: none">• Consumer Complaints Board | <ul style="list-style-type: none">• Consumer Groups |
| <ul style="list-style-type: none">• Consumer Ombudsman | <ul style="list-style-type: none">• Environmental NGO's |
| <ul style="list-style-type: none">• Consumer Information Centre | <ul style="list-style-type: none">• Energy Organisations |
| <ul style="list-style-type: none">• Competition Agency | <ul style="list-style-type: none">• Private Companies |
| <ul style="list-style-type: none">• National Food Administration | <ul style="list-style-type: none">• FDB/COOP |
| <ul style="list-style-type: none">• Energy Agency | |

The Danish Ministry of Economic and Business Affairs has overall responsibility for consumer policy, but delegates all but new policy issues to the Consumer Agency. Mr Bendt Bendtsen is the Minister for Economic and Business Affairs, and also the Deputy Prime Minister of Denmark and leader of the Conservative Party. The Ministry is the leading ministry in regards to consumer policy but other Ministries also have responsibility for important areas such as food safety, telecommunications etc.

The budget for 2003 is 100 million DKK (approximately £9 million) for all agencies involved in consumer policy (i.e. Consumer Agency, Consumer Ombudsman, Consumer Complaints Board, and the Consumer Council etc). The Ministry delegates responsibility to the Consumer Agency, and arranges contracts with each agency that they are responsible for. These contracts are specific to each agency, specifying resources and criteria for each goal. In addition to the Danish Consumer Agency, there are a number of government agencies under the Ministry of Economic and Business Affairs, including, the Danish Competition Authority, the Danish Patent Office, the Danish Commerce and Companies Agency, the Danish Maritime Authority, Danish Building and Urban Research, Statistics Denmark, Danish Energy Authority, Business and Housing Agency, and the Danish Financial Supervisory Authority.

In August 2002 the Government set out its views on future economic policy in "The Danish Growth Strategy". This included an outline of the Danish Government's intentions to revise consumer policy enabling it to better underpin growth, renewal and development in the corporate sector, for the benefit of companies and consumers, alike.

On 16 January 2003 the Ministry announced proposals for a new consumer policy, which the Government hopes to implement over the coming 3-4 years. The aim of the new policy is to:

- strengthen the level of consumer protection in Denmark;
- ensure that consumers have greater choice; and
- give consumers and business a role in the development of consumer policy

In order to achieve these goals the Government has suggested establishing a "Consumers' House". This is in reality an amalgamation of the present Consumer Agency, the Complaints Board, The Ombudsman and the Consumer Information Centre into one. The "Electricity Savings Fund" (Elsparefonden) and a new Centre for EU Consumer Information will also be part of the House. The new House will have a Consumers' Task Force, which will liaise with the Ministries. Furthermore a Consumers' Forum with representatives for consumers and companies will be established to encourage the dialogue in consumer matters. The chairman in the Forum will be independent, but the consumer representatives will hold the majority. The objective of the Forum will be to give advice to the Minister for Economic and Business Affairs and the institutions in the "Consumer House" concerning the guidelines for public consumer information, and in relation to central consumer policy.

Danish Consumer Agency was established in 1988, and has day-to-day responsibility for consumer policy. It acts as secretariat of the Consumer Complaints Board and the Consumer Ombudsman. The agency administers the *Price Marking and Display Act*, and the *Product Safety Act*. It is also the general authority of product safety and co-ordinates the activities with other Ministries or agencies to ensure safe products on the market.

The budget for the agency for 2003 was 67m DKK, plus 7m DKK to be spent on the new strategy. This figure was down from 2002 (82m DKK) and 2001 (95m DKK). The agency has approximately 65 staff (15 in the Secretariat, 15 in the policy team, 25 as secretariat for the Consumer Complaint Board and 10 as secretariat for the Consumer Ombudsman). In 2002 www.fs.dk was visited by approximately 307,000 people and received a total of 20.6 million hits.

Danish Consumer Information Centre: The Centre's mission statement is to: *"provide up-to-date, serious and factual consumer information; and provide knowledge and tools through guidance, tests, training and information making it possible for the consumers to choose and act accordingly."* Their main areas of activity is the testing of goods and products in their laboratories, and providing information to consumers through various sources. These activities are both non-profit and commercial activities. The centre has a staff of around 50.

The Consumer Information Centre's laboratory delivers the results of laboratory investigations in the areas of household equipment, food, textiles, hygiene, as well as other subjects concerning nutrition, safety, consumer rights, etc. of current interest to the consumers to the Danish Consumer Council. The test results are then published in the consumer magazine "Tænk + Test" (Think + Test), which is published in collaboration with the Danish Consumer Council. They also publish results at their own internet homepage and have their own publications (Ren Besked). On the information side, the Centre provides information to consumers in a number of different ways, including on the internet, via telephone hotline, consumer magazines and campaigns, and by advising visitors to the office.

The Consumer Complaint Board

The Danish Consumer Agency is secretariat to the Consumer Complaints Board (CCB). The Complaints Board deals with consumers' complaints concerning consumer goods and services. The CCB consists of a chairman together with members representing the interests of consumers and trade and industry. CCB has 25 people working for them, and deals with more than 4,800 cases per year. In addition to the CCB, there are 11 authorised private consumer complaints boards covering finance, insurance sectors etc. If a consumer has problem, they need to go back to the retailer in the first instance. If they are unable to resolve their problem, the consumer can go to the CCB or one of the private boards. Under the new consumer strategy there are proposals to reform the consumer complaints system to encourage more industry sectors to establish private complaints boards (to include IT, telecoms and the energy sector).

The object of the Board is to offer consumers and traders a speedy and inexpensive alternative to settling disputes in court. The Consumer Complaints Board cannot refuse to deal with a complaint, which falls within the field of the Board. The fee for the hearing of a complaint is DKK 80, or DKK 400 in cases involving a motor vehicle. If the main points of the consumer's complaint are upheld, the opposing party must pay the fee. The Board covers the cost of procuring any expert opinions regarded as necessary. Neither party pays the other party's costs incurred as a result of the hearing. In connection to the reform of the consumer complaints system, it is the intention that the fee is raised. The fee will be refunded if the main points of the consumer's complaint are upheld. In connection to the reform of the consumer complaints system, it is also the intention to let companies that lose a case at the Consumer Complaints Board pay part of the cost of processing the case. The reform of the consumer complaints system was adopted by the Danish parliament in June 2003.

The Consumer Ombudsman

In Nordic law the word "Ombudsman" is commonly used about an official whose task is to protect the ordinary citizens against misuse of political or administrative power, a guardian of the civil rights. The Danish Parliamentary Ombudsman has that task, whereas the Consumer Ombudsman makes sure that private and public business activities are conducted in accordance with good market practices. He decides on his own priorities and does not deal with individual complaints. He is an independent powerful figure supported by a staff of 10 from the Danish Consumer Agency.

The role of the Consumer Ombudsman is to keep an eye on commercial communications in the broadest sense taking into account the interests of consumers, business and society. He lays down guidelines for good practices as set out in the general clause of the Marketing Practice Act.

The Consumer Ombudsman's efforts in negotiation may be carried out individually with each company, but often the problems are common to a trade or of importance to the market in general. Over the years the Ombudsmen have made several guidelines e.g. on price marketing, on the contents of guarantees and contracts terms, on environmental claims, on sex discrimination, on the ethics of advice given by banks to customers, and on principles for charge backs.

With the exception of the courts, no one can interfere in the Ombudsman cases (including Ministers). If the Ombudsman wants to stop something, he needs to go to the commercial court (which is made up of a judge, two people from consumer bodies, and two people from the business world). If there were a penalty involved, there would be a need to ask the Police to start an investigation. If they thought it should go to court, the Ombudsman takes it to court. The Ombudsman can put down intermediate injunction (then can go to court to stop it).

The general clause is mentioned in section 1 of the Marketing Practices Act is used quite extensively by the Ombudsman. The general clause is very broad and covers

areas such as discrimination (which are also covered under other legislation). It therefore covers a wider area than the general economic interest.

A new agreement establishing a closer co-operation between the Nordic Consumer Ombudsmen was made in order to protect the Nordic consumers against unreasonable marketing. The agreement obliges the Consumer Ombudsmen to conduct lawsuits on behalf of each other and to exchange information about marketing across the national borders.

The Danish Consumer Council

The Danish Consumer Council represents the interests of consumers and is independent of public authorities and commercial interests. Founded in 1947, the Consumer Council is the spokesperson for consumers' interests, lobbying vis-à-vis the Government, the Parliament, public authorities and the business community. The Consumer Council is involved in a wide range of consumer issues: food quality, environmental protection, health services, financial and legal services, and issues connected with media, telecommunications, universal services, etc.

The CC is closely integrated into the legislative process and has a strong influence in Parliament. No one really questions their right to be consulted and industry often seeks a dialogue and compromise with them. The CC represents the consumers - in councils, on boards and committees and vis-à-vis the Government and the Parliament. The Consumer Council is represented on more than 200 committees, boards and councils dealing with matters important to consumers. The Consumer Council has an extensive dialogue with the business community. This contact has among other things led to the establishment of several private complaint boards covering sectors such as insurance, banking and investments, travel and construction.

The daily work is performed by a secretariat of about 50 staff members. This includes policy advisers dealing with political issues, and also those involved in the magazine "Tænk + Test" ("Think and Test"). The magazine is half test /half campaigning and puts new things on the agenda. The magazine is the main source of the CC's income, and it manages its own economy, and makes a profit. The Government funding covers 85% of the running cost of the secretariat.

Danish Competition Authority

The Danish Competition Authority is an agency under the Ministry of Economic and Business Affairs. The Authority is responsible for matters concerning competition, public procurement and state aid. The Competition Authority is also responsible for administering the statutory rules on energy prices. The Competition Authority is the secretariat of the Competition Council, the Electricity Price Committee and the Gas and Heat Price Committee. The budget for 2001 was 84million DKK. During 2001, it had 130 staff.

COOP Denmark FDB

Denmark's most widely read magazine, Samvirke, is published by FDB for its

members and has some 1.2 million readers. It has a 38% share of the daily goods market. FDB's aim is to ensure consumers the best goods at the lowest prices. FDB has taken a series of initiatives to maintain a high level of food safety for consumers.

Advocacy

The Danish Consumer Council is the main source of consumer advocacy. It represents the consumers - in councils, on boards and committees and vis-à-vis the Government and the Parliament. The Consumer Council is represented on more than 200 committees, boards and councils dealing with matters important to consumers. The Consumer Council has an extensive dialogue with the business community. This contact has among other things led to the establishment of several private complaint boards covering sectors such as insurance, banking and investments, travel and construction.

The Ombudsman can and does go public if he is concerned about particular issues and how they affect the workings of the market and the interests of consumer but he does not see himself as a "consumer advocate".

Legal Framework

The Danish Consumer Agency administers and enforces the *Price Marking and Display Act*, and the *Product Safety Act*. The Agency is also the general authority of product safety and co-ordinates the activities with other ministries or agencies to ensure safe products on the market. The Ombudsman administers/enforces the Act on Certain Payment Instruments, the Marketing Practices Act, and the police enforce the Price and Display Act.

The Danish Marketing Practices Act

The Act is general framework legislation regulating market practices by private companies. By and large the act has two main purposes: on the one hand, it regulates competition (though it is essentially a supplement to the general competition regulation) and on the other it protects consumers. It has general and special provisions. An omnibus clause states that all marketing must be carried out in accordance with good marketing practices, as well as prohibiting the passing of incorrect or misleading information. The Act also contains a number of special bans, such as a ban on quantitative restrictions, trading stamps etc. Some of the provisions of the Act implement EU-regulation.

It is the duty of the Consumer Ombudsman to enforce the provisions of the Act. The Consumer Ombudsman tries through negotiation, either on his own initiative or as a result of complaints and enquiries, to influence businesses to act in accordance with the principles of good marketing practices and with the provisions laid down by the Minister.

Supplementing the provisions of the MPA are other regulations focused on special market practices. These include: price marking (Price Marking and Display Act), consumer contracts which extend credit, predatory pricing and selective distribution (Competition Act), doorstep sales. Also included are specific products like alcoholic beverages, food products (Food Act) and cosmetics, pharmaceuticals (Pharmaceutical Act), and the media (Radio and Television Act). In some of these Acts only a few sections cover marketing practices in order to protect consumers while the rest of the regulation is related to other parts of its specific sphere of law.

Behind all this regulation, Section 1 MPA has a "safety net" which catches breaches of good marketing practices that were clearly not covered by special regulation in these acts. The special provisions concerning illegal market practices are examples. If there are other marketing methods disrupting fair competition or harming consumer interests, the general clause can be applied. According to section 1 MPA ("general clause") the "Act shall apply to private business activities and to similar activities undertaken by public bodies". The new consumer policy strategy announces an updating of the Danish Marketing Practices Act in 2004.

The Danish Price Marking and Display Act,

The Act takes the form of framework legislation with certain detailed rules. Some of the executive orders issued pursuant to the Act implement EU-regulation. The Act on price marking ensures transparency about prices by committing traders (retailers) to mark and display prices. In addition, the Act contains rules on the necessity to display signs which indicate special discounts offered by the individual retailer. The Act is administered by the Danish Consumer Agency. No administrative supervision of compliance with the Act is established. This means any violation of the Act, which is punishable in the form of fines, must be reported to the police.

Act on Product Safety

The Act is framework legislation, which implements an EU directive. The Danish Consumer Agency has been appointed as a general product safety authority. Other authorities are responsible for monitoring the Product Safety Act, such as the Road Safety and Transport Agency, Environmental Protection Agency and the National Board of Health. In these areas the Danish Consumer Agency is the co-ordinating authority. The Danish Consumer Agency carries out the monitoring of the market either by means of spot checks or through testing of special types of products.

In accordance with the Act, an executive order has been issued on safety requirements for toys, which implements a EU directive.

Act on the Consumer Complaints Board Act

The Act on the Consumer Complaints Board is framework legislation which defines the model for settling disputes out of court and provides a basis for establishing industry based approved complaints boards through self-regulation by the trade. The Act is not based on EU regulation but is applicable in relation to the common

EU out-of-court legal remedies where member countries must refer to appeal systems outside the legal system. The act is currently being reformed.

Act on a Travel Guarantee Fund

The Travel Guarantee Fund is a private independent institution, which provides cover for customers of package holidays when the organizer is not able to fulfil his obligations because of financial difficulties. The Danish Consumer Agency administers the Act on a Travel Guarantee Fund. The Act is an example of detailed regulation as it contains detailed rules on the activities of the Fund. The Act is not based on EU regulation. According to the package holiday directive, an obligation, however, exists to safeguard consumers in case of a bankruptcy of a travel organizer.

Act on Action for Injunctions for the Protection of Consumers' Interests

The object of the Act, which implements a EU directive, is to ensure effective enforcement of the EU regulation in the consumer area. According to the Act, foreign authorities and organizations entered in the list published by the Commission in the Official Journal of the European Community can bring actions before Danish courts for an injunction in pursuance of the Danish Administration of Justice Act. An action for an injunction may be brought against Danish companies, which have carried out illegal marketing in the home country of the authority.

Act on Certain Payment Instruments

The Act regulates electronic payment instruments such as Dankort, international credit cards, petrol cards, cards for department stores, telephone cards, Danmøntkort, etc. The object of the Act is to ensure reasonable rules of responsibility, high security and consumer trust in the field of electronic payment instruments.

Bill on Information Society Services, including Certain Aspects of Electronic Commerce (e-commerce Bill)

The Bill implements an EC directive. The object of the bill is to ensure free mobility in the Single Market for information society services. The act takes the form of framework legislation.

Enforcement

Apart from safety, consumer legislation is primarily enforced by the Consumer Ombudsman. There is no local enforcement system. In case of civil law disputes, the consumer can file a complaint at the Consumers Complaints Board. These enforcement activities are supplemented by strong media interest in Consumer matters.

The Ombudsman by administering the Marketing Practices Act can and does enforce consumer protection. If business and trade will not comply with the statements, suggestions or recommendations of the Ombudsman, he may ask the courts to issue an injunction. If for instance the prohibition of misleading advertising

in the Marketing Practices Act is violated, the Consumer Ombudsman can act as Public Prosecutor and ask the court to sentence the companies that violate the law. Cases of principal interest are tried by the Maritime and Commercial Court of Copenhagen. The court is composed of a legal judge and representatives from business and trade and consumer representatives. Appeals from this court go directly to the Supreme Court.

Redress

Redress has been raised as a problem given that all the consumers can get following a complaint is their money back or a replacement. This gives companies little financial incentive to avoid problems. Indeed Courts only levy small fines if consumer laws are broken.

When the consumer and supplier cannot settle things between them, the main form of redress available is the Complaints Boards. These are seen by both business and consumers as a much better route than the courts. The Board consists of a mix of independent judicial, business and consumer interests. Their decisions are not binding or enforceable but are widely accepted. If one party refuses to accept the decision the other party can take the matter to court with every likelihood of the court upholding the Board's decision. The secretariat of the national Board will take the matter to court at the request and on behalf of the consumer.

The publicly run Consumer Complaints Board is seen as cumbersome. Currently each complaint is considered by the appointed Board rather than dealt with by officials. It has a heavy workload and it can take up to a year to get a complaint resolved. New proposals are that some complaints will be dealt with by officials rather than the full Board which should speed things up. Just as importantly the authorities will be encouraging more trade sectors to establish private complaints boards particularly in IT, Telecoms, energy, household appliances, cars and furniture sectors.

Private trade sector boards are seen as faster and more effective than national boards. There is a greater buy-in to them from business and the decisions of the private boards are disseminated throughout the trade to make clear what is acceptable or unacceptable behaviour by business in that sector. This is seen as a clear advantage of private over national board where no such dissemination of best practice takes place.

Danish Consumer Ombudsman

The Consumer Ombudsman's aim is to protect the consumers on basis of the experience and knowledge of the average consumer, the "average norm". The Ombudsman may intervene in civil actions in order to support the individual consumer but he does not take individual complaints. The Ombudsman may also claim restitution for the individual consumer by means of a trial on illegal marketing practices.

Article 23 of the Marketing Practices Act provides that:

"Consumers who comply with provision laid down in section 330 (1) (item 2) of the Danish Administration of Justice Act shall be granted free legal aid in cases of repayment of money covered by an order issued by the court or the Consumer Ombudsman. "

Although class action is not recognized in Danish law, if a number of consumers have equal claims of compensation connected to a violation of the law the Consumer Ombudsman can claim their compensation collectively.

Consumer Council's Legal Aid Scheme

The purpose of the scheme is to obtain judicial decisions in cases of particular interest to the consumers, for example, because the law is unclear or the case may be of importance to the legislative development in the consumer area. Therefore, only borderline cases are taken on. This they do by helping the person through the whole case. However, one of the problems that they have found is that parties are inclined to make an out of court settlement, which can be more financially attractive which means that the CC does not get a definitive decision in the borderline case. The scheme is now getting larger, as the CC are getting extra funding from the Ministry.

Consumer Knowledge

Danish Consumer Information Centre

The Consumer Information Centre is the key source of consumer information. This is provided by:

- **Telephone hotline** - This hotline is shared with the Consumer Agency, which has staff working from both organisations. It acts as a filter, and is the main contact for consumer complaints. If the hot line staff are not able to help, but feel the problem needs to be taken further, they ask the callers to send in a completed complaints form. Statistics from the hot-line are gathered on the topic of query and areas where the number of complaints is high. Last year there were 33,000 calls on the hot-line, which the Centre said they would try to double under the new consumer strategy. Due to the number of calls, the Centre/ Consumer Agency intend to pilot a evening scheme to extend the opening hours for the hot line (for which they have received extra funding from Parliament];
- **Internet** - The centre publishes a substantial amount of information on the website. "Testdatabase", is the most visited part of the Centre's website. It contains free data including test results etc. The website has 130,000 new visitors a month;
- **Ethical database** - This gives consumers and companies direct access to different companies social and ethical procedures relating to their products and/or services. Any company, who wishes to, can voluntarily publicise their policy on environment, employee and human rights, animal welfare and child labour here. All the information available on this site is verifiable;

- **Consumer magazines & Campaigns** - The Centre publishes a number of publications, and also runs campaigns. The media play quite a strong role in consumer issues, and is seen as a strong tool to publicise information that the Centre wants to get over to consumers;
- **New Strategy** - Under the new strategy there are plans for collaboration with libraries to have consumer information spots to advise consumers in 170 public libraries.

The Danish Consumer Agency's web site

The Danish Consumer Agency's web site has grown into an expansive channel of current information where the business community and consumers can help themselves to an array of consumer related subjects. It is also a central tool for the Consumer Ombudsman to provide the public with information. The Agency has had an extensive dialogue with consumers through the site.

Legal Year Book

The Danish Consumer Agency publishes a legal yearbook, which contains legal information on decisions settled by the Consumer Ombudsman and the Consumer Complaints Board (on an annual basis). This acts as a professional tool for lawyers (decisions become jurisprudence). From 2003 the legal year book is extended with a broader and more political part pointing out recent developments in consumer policy and in the activities of the Danish Consumer Agency.

Legislation

Businesses are obliged to provide proper information or instructions in regard to a sale of goods. Section 3 of the Marketing Practices Act provides that:

“At the time of the making of an offer, the conclusion of a contract or, where appropriate, the delivery of goods or the supply of services, proper information or instructions shall be provided according to the nature of the goods or services, where such information or instructions are of importance in the evaluation of the nature or quality of the goods or services, especially including fitness for purpose, durability, the nature of any risks involved, and information as to maintenance.”

Education

There is no common curriculum for consumer education in schools, although it is dealt with in some sectors. For example, the Ministry for agriculture, food, and fisheries run campaigns on food safety. The Consumer Council in the past have in cooperation with Danish Industry prepared teaching material for higher national classes.

Consumer confidence

Consumers tend to be well informed of their rights through the various information that is available (i.e. websites, publications, hot line etc) via various consumer bodies/agencies (i.e. Consumer Agency, Consumer Information Centre, Consumer

Ombudsman, Consumer Council etc). The profile generally of consumers issues is high, as it gets a lot of political attention, as well as being something that is popular in the media. Given the high levels of taxation and the tradition of the welfare state, consumers expect public authorities to provide them with information.

The Consumer Council also tries to educate consumers on their rights. They are trying to move away from concentrating on the poor / weak consumer to more on empowering the consumer to make a choice, and transparency (better informed consumer more able to get redress). One of the problems of concentrating on weakest and un-informed consumers was that it risked damaging the majority.

The Danish Ministry of Economics and Business Affairs believes

"...there is a need to focus more on consumer rights in the years ahead. Denmark performs relatively well in terms of consumer rights but in order to maintain and possibly improve this position, it is necessary to provide better and more efficient ways for consumers to solve conflicts with companies."

[The Danish Growth Strategy, published August 2002]

Product Safety

In June 1994 the Consumer Agency became the general authority on product safety. The Product Safety Act 1994 is the main legislation in this area, and applies to any product placed on the market and any services related to the product. The Agency is the co-ordinating product safety authority and is responsible for enforcement of the toy safety regulation and the product safety act. The Agency handles safety issues, which do not fall under the scope of the other authorities. These other authorities are listed below, with a short background on what each covers:

National Working Environment Authority (Arbejdstilsynet)

Enforcement of regulation concerning personal protective equipment (PPE) apart from bicycles and crash helmets. Furthermore it supervises pressure equipment, machines, e.g. household machines, and contractors' supplies and tools. Aerosols.

Danish Emergency Management Agency (Beredskabsstyrelsen)

Enforcement of the legislation on fireworks, including approval and marking.

Business and Housing Agency (Erhvervs- og Boligstyrelsen)

Enforcement of the building legislation, including the regulations on products which are used in connection with building construction and the dimensioning of bigger playground equipment.

Danish Government Gas Institute (Danmarks Gasmateriel Prøvning)

Enforcement of regulations for all types of gas installations, gas components and gas appliances, including gas lighters.

The Electricity Council (Elektricitetsrådet)

The Electricity Council is responsible for electricity safety enforcement in Denmark. The Secretariat of the Council enforces regulation on the power stations, electrical wiring and material including safety requirements for electrical properties of toys and electrical equipment and other appliances that is not mainly electrical.

Road Safety and Transport Agency (Færdselsstyrelsen)

Enforcement of the regulation on road safety, e.g. the regulations on safety for motor vehicles, bicycles and their safety equipment e.g. bicycles and crash-helmet, car seats.

Danish Veterinary and Food Administration (Fødevaredirektoratet)

Enforcement of health and safety of foodstuff including labeling and marking packaging. The authority can refer to the local authorities.

Railway Inspectorate (Jernbanetilsynet)

Enforcement of the regulation on railway safety and the railway transport of dangerous goods.

Ministry of Justice (Justitsministeriet)

This Ministry is responsible for the regulations on weapons and explosives, and is product safety authority with regard to public entertainment's parks.

The Danish Medicines Agency (Lægemiddelstyrelsen)

Enforcement of the regulations on medical equipment/medical product, e.g. thermometers, baby sleeping pillows, thermometer comforters, glasses and contact lenses etc.

Danish Environmental Protection Agency (Miljøstyrelsen)

Enforcement of the regulation on the chemical properties of products, e.g. the chemical properties of toys, batteries and cosmetics, Oil for oil lamps, and hygiene.

Civil Aviation Administration (Statens Luftfartsvæsen)

Enforcement of the regulations on safety for airplanes and air traffic materials. Permission for parachute jumping.

The National Board of Health (Sundhedsstyrelsen)

Expert authority in questions concerning health risks. Administration of medical equipment belongs to the Danish Medicines Agency.

Danish Maritime Authority (Søfartsstyrelsen)

Enforcement of the regulation on navigation for example safety. Including the safety of leisure boats and safety equipment, which is used at sea and in connection with diving.

National Telecom Agency (Telestyrelsen)

Enforcement of the regulation regarding the EMC-directive.

Under new consumer strategy

Under the new consumer proposals the product safety work is to be taken away from the Consumer Agency and placed under a newly created body called the Security Agency, along with the product safety parts of the existing gas and electricity councils. At the moment, very little part of CA's work involves product safety (the only priority in this area is child toy products). The only involvement tends to be when there is a complaint. Under the new proposals, the plan is to have more co-ordinated information on product safety. At the moment, as there are a number of different agencies/departments with responsibilities for product safety, there is a danger of getting different advice from the different agencies/departments.

Integration of consumer policy with other policies

Formation of consumer policy

Consumer policy in Denmark is formulated by Central Government. The Ministry of Economic and Business Affairs delegates the daily responsibility to the Consumer Agency. The Ministry is involved in new policies, although other issues can be handled by the Agency, including providing the Minister with briefing/answers for Parliament etc. There is no specific consumer legislation on local basis, other than the local monitoring of food safety.

Consumer Policy / Competition Policy

The Danish Consumer Agency and the Danish Competition Authority are both agencies under the same Danish Ministry, along with at least another 8 other agencies, including the Patent Office, the Danish Commerce and Companies Agency, and the Danish Energy Authority. While both recognise the close link between consumer and competition policy, on the whole, the two bodies live separate lives. The Consumer Agency is seen as more cooperative with and the Competition Agency more confrontational with business.

A joint effort by the Consumer and Competition Agencies was the "Well-functioning markets" work from last year (2002). This was a pilot study to establish indicators of how well markets were working. The project selected 48 Danish Industries and trades for a benchmark. The benchmark included both indicators of competition, indicators of comprehensive and reliable information on goods and services and indicators of clear rights for consumers and business.

Utility Markets

Liberalisation of the telecom market has led to concerns about vulnerable consumers in Denmark (due partly to lack of transparency). The electricity liberalisation is likely to produce similar concerns and therefore there is seen to be a need to look at other privatised sectors. There are concerns to protect the vulnerable/poor so that they are not adversely affected especially if they live in

remote areas. The electricity market is one of a number of new liberated markets that will be analysed in a project, carried out by the Danish Consumer Agency and the Danish Energy Authority in 2003-2004. The goal is to increase transparency at the liberated markets through information.

Integration with International Consumer Bodies:

- **Econsumer.gov / IMSN:** Together with 12 other countries Denmark in April 2001 established a co-operation regarding non-serious marketing on the Internet. The Danish Consumer Ombudsman considers the database an important tool for securing a safe and confidence-inspiring Internet market for the consumers;
- **Consumers International:** Consumers International (CI) supports, links and represents consumer groups and agencies all over the world. It has a membership of over 250 organisations in 115 countries (including the Danish Consumer Council);
- **The Transatlantic Consumer Dialogue (TACD):** Danish Consumer Council and the Danish Consumer Co-operatives are participants of the TACD. This is a forum of US and EU consumer organisations which develops and agrees joint consumer policy recommendations to the US government and European Union to promote the consumer interest in EU.

Other consumer policies/legislation

Implementation of the EU injunctions directive in Danish Law - co-operation between the Nordic Consumer ombudsmen

- In January 2001 the Act on Actions for Injunctions, which implements the EU-directive on actions for injunctions came into force. The Act gives authorities and organisations in the EU the possibility of conducting lawsuits and protecting consumer interests across national borders;
- As conducting a lawsuit in a foreign country may involve linguistic and procedural problems the Nordic Consumer Ombudsmen, subsequently to the passing of the Act, have entered into an agreement on co-operation in connection with conducting lawsuits in relation to the Act on Actions for Injunctions. The agreement obliges the Consumer Ombudsmen to conduct lawsuits on behalf of each other and to exchange information about marketing across the national borders. The Nordic agreement is the first attempt of a practical implementation of the Act on Actions for Injunctions. If the project turns out to be a success the Nordic agreement may become a model for similar agreements within the EU;

Insurances

- In spring 2001 "Insurance and Pension" launched a portal on the Internet, (www.forsikringsluppen) where the consumers electronically can find information about insurance matters, and where they are able to compare what insurances cover and their prices. The sector developed the homepage in cooperation with the Consumer Ombudsman, the Danish Competition Authority and the Danish Consumer Council. The purpose is to create a

better transparency for the consumer, thus obtaining an increased competition on the insurance market.

Regulation of Reminder Fees

- On the 1st of July 2001 new rules in the Danish Act on Interests about Reminder Fees came into force. The rules entail a comparatively detailed regulation of when and how it is allowed to use reminder fees. The law is based on a report from the Consumer Ombudsman to the Minister of Justice about the size of the reminder fees.

EEJ-Net

- In May 2000 a council resolution was made in the EU concerning the establishment of a network (EEJNet - European Extra judicial Network) between the European authorities being responsible for extra judicial settling of consumer disputes and establishment of national contact points - Clearing Houses. Since autumn 2001 the Consumer Agency of Denmark has functioned as a national Clearing House;
- The purpose of establishing national Clearing Houses is to simplify the consumers' access to the relevant ex-judicial organs in the other member states. The Danish Clearing House shall make it possible for the consumers to contact one single contact point in order to obtain information about national rules, and in cross-border cases to obtain an easier faster access to ex-judicial settlement of conflicts (in the country of the supplier).

Focus on the internet - project Net-Tjek

- In November 2001 the Consumer Ombudsman initiated a new project by the name of Net-Tjek. The purpose of the project is to strengthen the consumer protection level on the Danish part of the internet. This is done by means of information and guidance to consumers as well as to trade and business about their rights and duties, and by instructing enterprises in case they violate the consumer legislation. As a part of the project a large number of homepages are checked, and the project will have a special homepage where the results of the investigations are published, and where the consumers as well as the enterprises can find information about rights and duties in connection with electronic trade.

Impact on Markets

Although there is no formal evaluation procedure of policy proposals, the extensive consultation and close working with consumer and business groups and other government bodies means that an informed view of the overall cost-benefit can be taken. The Consumer Ombudsman will also be viewing things from the standpoint of the "average" consumer. Representatives of the business community did not see the cost of complying with consumer legislation as a problem.

Self-Regulation

The Government wishes to encourage greater self-regulation. The goal is to make consumers and business take greater responsibility, and to solve problems via self regulation/co-regulation, and legislate only if necessary.

Private Complaints Boards

This is why in addition to the Consumer Complaints Board, 11 private complaints boards have been set up with the encouragement of the authorities. However, in order for the private boards to be set up they need to cover the main part of the industry. Although the decisions are not binding or enforceable, 80-85% are accepted. The alternative is to take the complaint to court.

Market Case Studies

The Consumer Agency provided information based on figures for the year 2000 on the five markets we are interested in (i.e. plumbing, used cars, hotels, clothing and travel agencies). Further analysis was also done last year (2002) on three markets, which included plumbers and the retailing of clothes, by the Agency. Information on these markets is summarised as follows:

- **Plumbing** - this was not seen as a problem sector. The consumers seemed to be satisfied with the waiting time; quality of service and price. Plumbers also have their own complaints boards, although this is not authorised (consumer guarantee). The Complaints Board for plumbing received 158 complaints in 2000 on this sector;
- **Clothing** - consumers felt well informed in this sector. Like the UK people seem to think they have more rights than they actually have;
- **Used Cars** - this is based only on the car, as you can't complain on the servicing (for which you need to go to court). There are attempts to get a private complaints board under the new policy for this sector. The Consumer Complaints Board received 248 Complaints in 2000 (based on the sales of used cars under 82000 DKK);
- **Travel Agencies** - private consumer complaints board received 536 complaints. 98% of these complaints were complied with. [Denmark has a Travel Guarantee Fund which is a private independent institution, which provides cover for customers of package holidays when the organiser is not able to fulfil his obligations because of financial difficulties. The fund covers travel marketed and sold in Denmark. The Danish Consumer Agency administers the Act on a Travel Guarantee Fund];
- **Hotels** - not enough information / statistics on this sector.

France

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France

Goals and Objectives

The two principal objectives of French consumer policy are in order of importance:

- **physical safety** of food and industrial products. Key legislation in this regard are the law passed 21 July 1983 incorporated into the 1993 code de la consommation and European Food Standards; and
- **economic protection**, to enable consumers to become responsible economic players, who are well informed enough to take action and to forge confident and transparent relationships with professionals and business. This objective is intended to help maintain healthy competition for the benefit of consumers.

The last 20 years have been marked by the adoption and adaptation of a legal and regulatory framework enshrining consumers' rights and consumer safety. The focus has been on risk prevention, both as regards consumer behaviour and self-monitoring by industry. The controls, which are carried out at all stages (production, distribution, importation), also aim to promote fair selling techniques and to ensure that consumers are properly informed.

Private associations are strongly supported so that they can play a role as active partners vis-à-vis the public authorities and professionals.

Consumer policy objectives in France are defined by the Minister responsible for consumer affairs in liaison with the other government departments. In addition to measures already under way in different areas of consumer law, recent governmental initiatives have focused on the following:

- consumer debt ("overindebtedness");
- new technologies, notably electronic commerce and mobile telephony; and
- general product safety.

Legal provisions have been sought to facilitate the compensation of victims of medical accidents and more particularly in the event of very serious accidents where no negligence has been established. The government is also examining ways of obtaining compensation in this area through amicable agreements.

Attention has specifically been paid to low income groups so as to enable them to rely on the provisions of an Act passed in 1999, which provides for State financial aid to facilitate access to the courts, legal advice and legal procedures.

Consumer policy objectives concern:

- real improvement in the quality and safety of products by mandating industrial self-monitoring across the board; and
- the mounting of prevention campaigns and the systematic adoption of measures concerning "risk" products or sectors of activity to reduce the number and severity of home accidents.

Consumer policy has been a big issue in France for many years now. Developing rapidly from Nader inspired politics in the late 1960s, the 1970s saw a step change with a Minister having been designated to the specific role. Responsibility for the policy was attached to MINEFI to reflect a neutrality between sectors and interest groups. Governments of both the left and right have differed very little in their approach to the subject although on occasion it has been given added impetus by a particular government.

Under the current government consumer policy was added to the portfolio of Monsieur **Renaud Dutreuil** a minister at the Ministry of the Economy, Finance and Industry (MINEFI). M Dutreuil has announced that one of the ambitions of the new government was to develop consumer policy in a robust but harmonious manner. "The act of purchase is a contract made between business and consumers: this contract should be balanced and transparent. The state should also exercise its role fully as a referee, to keep an eye on existing regulations and to restore the fairness of the contract as required." There seems to be a consensus even within some of the largest consumer bodies that this aim of balancing of business and consumers is a reasonable one in terms of the economics of consumption.

M Dutreuil and Jean Paul Delevoye, Minister for State Reform, are perceived to be trying to shift away from a traditional French preference for regulation over voluntary agreements. There is at the same time a broad consensus that regulation is much preferable to a reliance on a US style litigation culture. M Dutreuil wants to see the existing regulations simplified and therefore more accessible for consumers. He also expressed sympathy for calls for greater effectiveness/efficiency in the national and local structures for consumer policy.

On July 9 2003 Luc Chatel, MP, presented a Parliamentary report to the Prime Minister "De la conso mefiance a la conso confiance" looking at the place of consumers in France and to propose improvements to information, protection and representation of consumers. The response to the report is being considered and the report can be found at <http://www.finances.gouv.fr/DGCCRF/actualites/rapportchatel0703.pdf> .

Institutions and resources

In France, the minister responsible for consumer affairs is M Dutreuil as secrétaire d'État aux PME, au commerce, à l'artisanat, aux professions libérales et à la consommation (parliamentary under secretary, for SMEs, commerce, craftsmen, professions and consumers) at MINEFI. The Secretary of State equivalent at MINEFI is Finance Minister Francis Mer.

The responsible government body is the **Directorate-General for Competition, Consumer Affairs and the Suppression of Fraud (DGCCRF)** and it has a payroll of 3,705 full-time equivalent staff and a total budget of approximately 196.2 Million euro in 2003 (up from 173.6M euro in 1999). It consists of 22 regional directorates and 101 departmental directorates and coverage of the country is virtually complete; in addition there are two national directorates for specialised investigations (competition, prosecution of fraud), seven interregional units for

monitoring competition, and four specialised bodies (wine monitoring, fruit and vegetable monitoring, cross-border relations, motorways).

Every department has its own office responsible to the DGCCRF and covering the same headings of competition, consumers and prevention of fraud. Observers have said that the mere threat of a complaint to these directorates will often have the desired result. The DGCCRF seems well regarded as an enforcer of consumer protection law.

The Directorate-General for Customs and Excise (DGDDI) is responsible for monitoring the quality and safety of products imported from third countries during customs clearance. It employs a total of approximately 1,900 agents. There are 10 interregional directorates, 40 regional directorates, 290 customs offices, as well as specialised investigation services (a national investigation directorate with 10 local agencies and 40 regional monitoring and documentation centres).

Finally there are various institutional bodies such as:

- the **National Consumer Council** (Conseil national de la consommation) (CNC) (meetings chaired by the Minister and attended by the national consumer associations and a similar number of bodies representing industry and other interested groups);
- the **National Consumer Institute** (Institut National de la Consommation) (INC), whose mission is to inform consumers and provide technical support to consumer organisations; and
- the **Consumer Safety Commission** (Commission de la sécurité des consommateurs), which delivers opinions on measures designed to improve risk prevention with regard to the safety of products and services. These are made publicly giving their recommendations significant weight.

Food safety being a particular priority, it is also necessary to mention the work of the **Ministry of Agriculture** and its veterinary services, which perform various controls, notably in the "animal" sector.

The CNC consists of an equal number of representatives of approved national consumer associations and representatives of professional associations, in two colleges. The CNC is chaired by the minister responsible for consumer affairs and has a dual mission of consultation and coordination.

The CNC is consulted on all matters of relevance to consumer affairs and delivers opinions prepared by its working parties. The CNC also delivers opinions on draft legislative or regulatory texts in the field of consumer protection. Finally, this is the body that the ministry responsible for consumer affairs may notify of its intentions in the field of consumer affairs and is a forum for consulting on them with representatives of professionals and consumers. The CNC publishes an annual activity report.

Policy Integration

In France, legislative and regulatory texts are prepared on the basis of close interdepartmental cooperation. The DGCCRF - the market surveillance authority – is responsible for implementing consumer policy. It cooperates closely with the technical ministries (agriculture, industry, environment, justice, health, customs, etc.) and is particularly keen to ensure that consumer interests are taken into account in the other national policies.

The CNC may be consulted for opinion on drafts of legislative or regulatory texts dealing with consumer affairs.

There are other bodies that have a role in consumer protection – consumer groups and public sector or quasi-public sector bodies such as the INC (information), AFSSA (food safety), AFSSAPS (health equipment and products), AFNOR (equivalent of British Standards Institution). Studies can be commissioned from bodies including the CSC, AFNOR, universities, though public funding for these is going down. Other than those referred to there is no widespread use by the Finance Ministry of legal or economic specialists.

Each Government Bill contains an impact assessment. The view seems to be however that these are not normally exhaustive economic analyses, as the economic effects of consumer policies are seen as not always being easy to predict.

Following the adoption of a particular policy, there is no systematic evaluation beyond rates of implementation and enforcement. So the Government does not assess the impact on professionals after the introduction of new policies. That said some Acts provide for progress reports within a few years.

Alternatively the DGCCRF relies on professionals to complain and lobby if new provisions are really not working.

The point was made to us that regulations were not always to be seen exclusively as a hindrance to competitiveness. They can serve as a stimulus to innovation, one example given was glass oven doors. A requirement to ensure they did not become too hot and hazardous led to the development of new technology that gave the domestic manufacturer a big business advantage worldwide.

Advocacy

The consumer movement comprises 18 national associations approved by MINEFI and the INC which is a public body whose duty is to provide information for consumers to use. At local level, there are some 1,300 associations throughout the country, the vast majority of them affiliated to one of the national organisations. As well as consumer interest groups similar to the UKs Consumers Association these range from trade union groupings to family associations. A full list is in Appendix 1. The approval delivered by the public authorities entitles the associations to take legal action to defend consumers' collective interests. Most of these associations are affiliated to one of the approved national associations.

The national associations contribute to the development of official policy through the CNC.

The INC was created by statute in 1966 to serve all consumers and their associations. Its resources come from selling publications and money voted by parliament. It works to provide impartial information to consumers in all fields. The INC publishes a monthly magazine "60 Million de Consommateurs" containing comparative product tests, practical and legal information, loan calculations and insurance surcharges.

The sheer number of consumer associations can make things confusing, but the situation is slowly improving. At the end of 1999 an official structure was created to coordinate the activities of seven consumer organisations. This is Conso-France, an association under the Act of 1901 [prior to 1901 Associations of any kind were illegal as they were perceived as a threat to the state. This seems to have an important legacy in terms of the conduct of relations between the State and such bodies]. That said the fact that the Ministry has approved each of the other 18 associations, that they are members of the CNC and receive subsidies from the Ministry hardly constitutes an incentive for them to merge or realign.

The highly individualistic approach of each association - most of them are attached to a larger entity such as the trade union or family organisations - makes it difficult for these associations to merge. It is recognised that this could constitute a weak point of consumer affairs in France by comparison with the other Member States. One of the ways it may weaken the development of positive measures for consumers is that in order to distinguish themselves from each other there is an incentive to take ever more extreme stances on an issue making real progress difficult.

The national organisations often have distinct regional identities. Alongside these are voluntary advisory services (Les associations de consommateurs) that can help with advice before purchase, advice on rights around purchase/making a contract (for example cooling off periods), coordinating other bodies (state or professional) information for consumers and assistance if the dispute goes to litigation.

In addition at the region (22) level there are the **Centres techniques régionaux de la consommation** (CTRCs, or regional technical consumer centres) and at the departmental (some 100) level Comité de Liaison des Organisations de Consommateurs COLOCs (sometimes alternatively titled CTDCs Centres techniques départemental de la consommation). These are groupings of associations which, like the INC, provide technical back-up (legal, economic and documentary assistance and training for activists) for local consumer organisations and produce television programmes for the latter. They also provide the means for studies to be carried out, common propositions to be made and, when possible, enable consumer associations to speak to professionals as a united body about subjects of concern. An interesting example from COLOC Normandy of the type of work was "Advice to Consumers" – handily in English and French – on where to buy the cheapest petrol.

Public financing of the consumer movement in France is provided via the subsidies allocated to consumer associations and to the CTRCs.

Legislative Framework

France has its own strict consumer protection laws, where the price of goods and services must be clearly displayed and indicate whether tax and service is included. Founded on law of contract and backed up in particular by legislative Consumer Code that covers virtually all areas of consumption.

Consumer protection regulations come under the following:

- Nouveau Code de commerce;
- Code de la consommation – recent and comprehensive bringing together of consumer protection legislation;
- Stratégie pour la politique des consommateurs 2002-2006 (Communication de la Commission au Parlement européen, au Conseil, au Comité économique et social et au Comité des régions - [COM(2002) 208 final])

Comprehensive guidance on all the relevant legislation can all be found on the DGCCRF website. <http://www.minefi.gouv.fr/DGCCRF/consommation/>

French law is more comprehensive than the European Directive on **unfair terms**. It provides for:

- protection of "non-professionals": the notion of "non-professionals" covers for example private individuals who make financial investments, friendly societies, associations, and co-properties; and
- coverage of all contracts containing unfair terms; hence French law avoids the interpretation problems which may arise from the - often artificial - distinction between contracts of adhesion and individually negotiated contracts.

In French law, it is for the courts to strike down unfair terms. This is because, very often, terms can only be declared unfair in the light of the overall economic circumstances surrounding the disputed contract. Since the legal definition of an unfair term is very open-ended, the courts may rely upon the guidelines on unfair terms in the shape of:

- the list in the European Directive (this list of 17 general terms is also annexed to the Consumer Code); and
- the recommendations issued by the Commission des Clauses Abusives (CCA- Unfair Terms Commission).

These guidelines are "grey lists" of terms which the court may use as guidance, while retaining its freedom of interpretation in regard to the criteria laid down by the law.

The CCA is an independent authority under the wing of the Minister responsible for consumer affairs. It includes, on a parity basis, representatives of professionals and consumers, judges, and specialists in contract law (law

professors, lawyers). The CCA recommendations are a guide enabling consumers to identify unfair terms and to single out the best contracts, or again to renegotiate contracts, by inviting the professional to review his terms on the basis of the recommendations.

In the event of a dispute, CCA recommendations can be relied upon in actions seeking the injunction of unfair terms brought before the civil courts by individual consumers or by consumer organisations. The Consumer Code permits approved consumer associations to sue in the civil courts for the prohibition of unfair terms in standard-form contracts regularly proposed by professionals to consumers and in contracts intended for consumers proposed by the professional organisations to their members.

Consumer associations may bring actions for the injunction of unfair terms on their own motion, even if individual consumers have not been harmed. Consumer associations may also intervene in out-of-court dispute resolution, by trying to reconcile the consumer and the professional.

In contracts of sale the code de la consommation (partie réglementaire) outlaws terms whose object or effect is to exclude or attenuate the consumer's remedies against professionals who fail to meet their obligations. Terms whose object or effect is to reserve for the professional the right unilaterally to alter the properties of the good to be delivered or the service to be provided are also outlawed. Finally, the law prohibits professionals from supplying a warranty on the good to be delivered or the service to be provided without stating clearly that, in any event, the purchaser's statutory rights are unaffected. These rights require professional sellers to provide a guarantee against all damage resulting from patent or hidden defects of the goods sold or the service rendered. The guarantee is currently provided for by civil law and work is in hand to put this into statute.

Redress

Temporary measures (valid for up to a year) enforced by the DGCRF can include the suspension of the manufacture, importation, sale or provision of the goods or services under suspicion, and their recovery from consumers. A wide range of penalties are possible across the gamut of offences, with harsher measures (doubling of the penalties shown here) possible for repeat offenders. Some examples are shown below.

| Offence | Penalty |
|--|--|
| Deception relating to the quality, nature or origin of goods or services | 2 years' imprisonment, 37,500 euro fine |
| Corruption or falsification of food or feed products | 4 years' imprisonment, 70,000 euro fine |
| Misleading advertising | As for Deception and 50% of the cost of the advertising plus payment for corrective advertisements |
| Abuse of vulnerable or ignorant consumers | 5 years' imprisonment, 9,000 euro fine |

There was some scepticism as the effectiveness of codes of practice and they were felt to work best when backed up by legislation. The format and the performance of the codes that do exist are very varied.

In 1993, the French Official Journal published guidelines on the use of these guides, the conditions of their production, their treatment from the public authorities and how to publicise them. In 1995, Association Française de Normalisation (AFNOR) issued a methodology guide on putting together codes of conduct to help professional organisations.

Some of the most highly developed seem to be in the food sector, covering good practice on hygiene – ie going beyond the regulatory minimum standards – and on the quality of some products, for example cold meats (*Code de la charcuterie*). The code of good practice for food hygiene, for instance, is recognised by public bodies.

The code on direct selling, designed to boost consumer confidence in door-to-door sales, is by contrast a simple chart drawn up by the industry without official backing. In terms of inspection, establishments which abide by codes of conduct will be viewed favourably by the authorities. As the codes are voluntary, the only way the authorities can sanction those who pretend to respect them and do not is under provisions relating to misleading advertising.

Product Safety

The DGCCRF's powers in regard to the safety of products and services are set out in Book II of the Consumer Code. They regulate and monitor all products and services, including both food and non-food products.

The Consumer Code empowers DGCCRF officials to identify and ascertain infringements of safety legislation. It also authorises them to take samples and to require professionals to provide all information relevant to assessing the danger associated with a given product or service. To this end, it may order the provisional withdrawal from the market – pending further investigation – of products suspected of being harmful to consumer health or safety and may have them permanently withdrawn if the suspicion is confirmed.

The Consumer Code also empowers the public authorities to take permanent or temporary regulatory measures prohibiting the manufacture, importation, exportation or placing on the market of products that endanger the health and safety of consumers or ordering their seizure or destruction. The Code also entitles them to enjoin the dissemination of warnings or precautions for use or product recalls with a view to replacement or alterations or full or partial refund in respect of the unsafe product or service.

All texts adopted under the Consumer Code provide for penalties in the event of infringement. Generally fines are imposed; these sanctions may be increased by the courts, which may order, at the defendant's expense:

- publication of the Court's ruling;
- withdrawal or destruction of the offending products;

- seizure of all or some of the offending products on the market.

Each year the DGCCRF performs numerous controls in the fields of product safety and the safety of services. In 2002 it performed 214,827 safety controls, 86,144 of which were related to food.

Consumer Knowledge

The CTRCs make television programmes on consumer topics, with the cost of producing and distributing the said programmes being covered by government subsidies. Each CTRC makes 15 original programmes which are shown three times.

The INC produces specialised consumer programmes on behalf of the national consumer associations (the Consomag programmes shown four times a week). The INC also produces a monthly magazine that competes with the well-established Que Choisir (the consumer association UFCs publication).

Via the French forerunner of the Internet, Minitel the DGCCRF, provides information (some 5,000 screen pages) including lists of addresses, changes to the relevant regulations, events and economic policy. Information specifically devoted to consumer questions is also available on the MINEFI website (www.finances.gouv.fr or www.minefi.gouv.fr, older material to be found on "finances").

The awareness amongst consumers of the enforcement agencies, consumer associations and alike seemed to be on a par with the levels seen in the UK, ie fairly high but far from complete coverage. There appeared to be no use of and no desire for the naming and shaming of businesses in France, driven in part by concerns about legality. DGCCRF targets education at young consumers in collaboration with the education ministry. They also run their own campaigns and the CNC plays a role in recommending the particular issues to cover.

Consumer associations are provided with funds by the state specifically to inform consumers through publicity.

In order to select educational documents on consumption, the INC has created an original tool, the pédagogothèque, which is a database containing educational documents on consumption, the latter available in every possible form. Teachers wanting to use a document can obtain from the pédagogothèque all the information they need to obtain it, together with a description of the document and a critical analysis to help them make their choice.

A number of national consumer associations include in their activities measures with an educational slant aimed at young consumers. These campaigns targeted at young people are mainly concerned with safety in the home and sports-related safety measures (for example, regarding the use of mountain bikes). Also, there are information campaigns about the sort of consumer questions that young adolescents may be asking themselves (for example, about banking, insurance, means of payment, credit, sales, a balanced diet). Some of these schemes take place in schools.

The Ministry responsible for consumer questions also finances a number of specific training and educational activities aimed at young people, this is in addition to the general operating subsidy received by these associations.

Germany

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Germany

Goals and Objectives

The German Federal government has this year published an Action Plan on Consumer Protection. At the time of writing we are unclear about the nature of the plan, and whether it contains any overarching goals or objectives in relation to consumer economic protection. The Federal government has for a considerable time been very active in respect of consumer policy relating to matters of health, product safety and the environment.

The Federal Government sees no need for specific and direct state action to enforce the economic rights of consumers. The approach is predominantly one in which state sets the legal framework of civil law and consumers are responsible for looking after their rights.

The system relies primarily on self-regulation by business, by providing for companies and business bodies to take action against unfair competitive practices. Designated consumer bodies also have a right to seek injunctions against unfair competitive practices. Otherwise consumers can seek redress under common law. Consumer information and education is provided through independent consumer organisations that are partly funded by the state.

Promotion of keener competition is not regarded as a key plank of consumer protection: price competition is welcome but is no more important than quality and safety considerations. The main consumer body, the Federation of German Consumer Organisations (the Verbraucherzentrale Bundesverband or VZBV), seems to go along with this approach. This system is supplemented by incorporation in German law of EC directives aimed at strengthening the economic protection of consumers.

Institutions and Resources

Political responsibility for consumer policy at Federal level is dispersed. The Ministries for Consumer Affairs, Nutrition and Agriculture; Justice; and Economics and Labour each have important general roles. The Ministries of Health and Transport have special responsibilities.

At regional level the Laender governments have a monitoring and enforcement role in relation to food and product safety and provide support for consumer advice bureaux. Federal/Laender Committee meetings take place six-monthly, and can cover consumer affairs.

The Federal **Ministry of Consumer Protection, Nutrition and Agriculture** was established in January 2001 following the general election and the SPD/Green governing coalition. The Minister is Renate Kuenast, a Green. The Department is very active in matters concerning food safety. Until this year it had only two small sections covering more general economic aspects of consumer protection. Staffing to cover this area has now been reinforced significantly. The Ministry has a co-ordinating rather than lead policy role. It may initiate policy proposals affecting other areas of consumer policy, but the decision on and development

of policy proposals still rests with the responsible Department. Other Departments must consult the Ministry on their consumer policy initiatives.

The Ministry of Justice is responsible for the Law Against Unfair Competition, for trademarks legislation, and for civil contract law. It is thus responsible for the key consumer economic protection legislation and the current proposals for changes to that legislation. Justice officials thought their Ministry was able to strike a balance between the interests of the Consumer Affairs and Economy Ministries.

The Economics and Labour Ministry is responsible for competition policy, product safety and some network industries (including e-commerce). Prior to the last general election the Economy Ministry had nominal responsibility for consumer policy. Some of those to whom we spoke believed that consumer interests at that time carried less weight in policy thinking than did the views of producer organisations.

The Ministry of Transport is responsible for consumer interests in roads and railways.

Conclusion: the introduction of a Consumer Affairs ministry is said to have given consumer issues a higher political profile, though until very recently nearly all of the Consumer Ministry's consumer work seems to have concerned food quality and safety. This, the fact that consumer affairs are brigaded with agriculture, and that other Departments retain the lead on consumer issues falling to them, suggests that the influence of the Consumer Affairs Ministry is modest. The new Ministry has yet to do much outside of the area of food safety. Overall, the political profile of aspects of consumer protection other than safety and food quality seems to be low.

At Laender level the regional Economy or Finance Ministries are usually responsible for consumer economic protection, though in Berlin responsibility had recently been passed to the Health and Social Problems Department (which the local VZ did not believe properly understood the economic problems of consumer protection).

In Berlin the role is limited to providing funding for consumer advice centres. The budget is decided by the Finance Minister and looks modest; currently it is 1.5m euros p.a. The Laender have no direct enforcement or advisory role in relation to consumer economic protection. The Berlin city consumer protection budget looks to have low priority, and its size does not seem to be a left/right political issue.

Advocacy

The main advocate organisation is the VZBV. This was set up in November 2000 by merging three other organisations. It also acts as an umbrella organisation for consumer associations of the 16 laender, and provides information and training for their staff. It receives 80% of its funding from the Consumer Affairs Ministry through a specific funding line in the Ministry vote. The VZBV described the funding now as stable following an increase when the

three bodies were brought together. Its three roles are lobbying government, information and training for laender and local consumer organisations, and enforcement. The VZBV is recognised by government as representing the consumer viewpoint.

The Federal government uses consultative bodies to take account of consumer interests. The Ministry of Consumer Protection, Nutrition and Agriculture uses a Consumer Consultative Committee to represent consumer opinions and table suggestions. Members were appointed by the Minister. In addition the Food and Consumer Goods Act requires consumer organisations (amongst others) to be consulted before any regulation is issued under that Act, and the German Standards Institute (DIN) has a Consumer Council that provides for input from consumer interests on standards matters. But it was put to us, by consumer bodies amongst others, that a formal mechanism was needed for government to consider the economic impact on consumers of new legislation or regulations.

Some of those interviewed considered the courts over the past 20 years have done more to advance consumer interests than has new legislation. They take the view that in dealing with misleading advertising the EC courts have moved ahead of national courts, which some believe have tended to protect the interests of business. Consumer protection organisations have no standing in court consideration of competition cases. The BKA is only charged with ensuring competition, not with furthering consumer welfare.

The VZBV would like to establish consumer protection as the goal of competition law, improve consumer access to information, introduce a right to dissolve contracts unfairly concluded, and introduce a right for individual and collective compensation claims for unfair treatment. The VZBV does not give consumers advice directly, steering consumers to regional and local VZs. There are about 300 local consumer advice centres that, like the regional bodies, are funded by the laender. Most consumer complaints are dealt with through these local consumers' advice bureaux. Financial services and unfair contract terms are common problem areas, along with used cars, insurance, guarantees, repair of machinery, home building, and health.

Conclusion: excepting the areas of food quality and product safety, the influence of consumer interests on government policy looks limited, although the VZBV seems to be growing in influence since its formation.

Integration of consumer policy with other policies

In theory consumer interests are taken into account in other policies through consultations and where necessary through special meetings of the Inter-ministerial Committee for Consumer Affairs. Many of those interviewed thought that in practice consumer interests received too little weight.

The Treaty of Amsterdam 1997 requires consumer protection to be taken into account in defining and implementing other EU policies and actions. One could expect spin-off from EU to German national policy in time. Competition and consumer policy are not closely linked. Strong price competition is not seen as a key consumer protection, though fair competition is seen as important to

consumers. There is a much greater concern with product quality and safety, reflected in Ministerial speeches by Renate Kuenast.

Legal framework

Consumers may defend their rights and claim redress for harm under contract law and there is legislative protection against unfair contract terms. However we were told by consumer bodies that the costs of going to court are often high, even in small claims courts, and the protracted process and the risk of losing, with an award of costs against the consumer, discourages direct consumer action. The information given to us by consumer groups and legal experts suggests that the number of individuals taking court action is relatively low.

The 1909 Act against Unfair Competition [the UWG], which contains the basic rules on fair trading, provides indirect economic protection for consumers. It bans acts contrary to honest business practice, including acts which are against 'public morals' (article 1), and misleading advertising (article 3) in general terms. These are the two most important provisions of the UWG. The original concept was aimed at protecting traders against unfair competition. Extensive case law has developed interpretation of the Act.

The vast majority of UWG enforcement actions are taken by competitors or business organisations. In effect the consumer interest is deemed to coincide with those of disadvantaged competitors, who will act in their own and indirectly in the consumer interest. Since 1966 UWG has also provided for a right of action by designated consumer bodies (but not individuals). This must be on grounds of unfair competition. The idea of consumer protection is not expressly mentioned. Consumer bodies can seek court injunctions to stop unfair competitive behaviour but unlike competitors cannot claim for damages or compensation for consumers for actions contrary to honest business practice. There is no provision for punitive sanctions and individual consumers do not have a right to bring an action.

Article 1 of the UWG is also used to govern unsolicited telephone, fax and e-mail marketing, direct mail advertising, the sending of unsolicited goods, enticement (for example offering prices which turn out to apply to only a small number of goods or in special and undisclosed circumstances) and touting (selling door to door and in streets and public places). In many cases the underlying principle is the protection of the privacy of the individual (which is guaranteed by the constitution). Such marketing, which directly impacts on the consumer's freedom of choice, is considered unfair except in special circumstances. Article 6 UWG deals with pyramid selling. Articles 7 and 8 deal with aspects of sales pricing. According to our Embassy, both the Government and consumer bodies see the UWG as the best available tool to protect consumers' interests, providing it can be updated.

The Justice Ministry is proposing reform of the UWG. The proposals centre on protection of competition, consumers and the public interest. They would make the consumer interest explicit and not just implicit and indirect; that would be a

major change. There are also proposals to deregulate and liberalise the retail sales laws, which industry sees now as unduly restricting price competition.

The Ministry has rejected proposals by consumer bodies that individual consumers be allowed to bring actions under the UWG, something that external legal experts have identified as the biggest single failing of German consumer law. The Ministry seems concerned that this may lead to multiple actions against a firm for, say, misleading advertising, and perhaps also about the effects on court operations of a large number of actions. Industry opposition is no doubt also important.

The Ministry also propose allowing grouped actions where there has been an intention to breach the UWG, but not to allow actions on grounds of effect only. The penalties for intentional breaches of the UWG could include skimming the excess profits made illegally by a business: the skimmed profits would pass to the federal government, not to consumers or consumer bodies. The courts would determine the excess profit. Industry is opposed to the proposal. The consumer lobby had asked for profit skimming in all cases, whether or not the breach was intentional.

The **Prohibitory Injunctions Act 2001**, which implements the EU Prohibitory Injunctions Directive, supplements the UWG. It enables authorised bodies (including consumer bodies with at least 75 members and which have been operating for at least a year, to act for consumers and bring court actions against firms using abusive contract terms and conditions 'and other consumer laws'. These bodies also include representative associations that promote commercial interests, including chambers of commerce. One interviewee thought the EC Directive legislation did not really add anything to existing protection and had not really been used since its inception.

Product safety is mainly regulated under the **Act on product safety**, the LMBG (Lebensmittel und Bedarfsgegen Staendegesetz) covers food and articles in everyday use, the Equipment Safety Act, and the Product Safety Act. It is planned to consolidate and update the last two pieces of legislation.

The **Product Liability Act 1990** implements an EC Directive, and establishes that manufacturers, importers and suppliers are liable for the safety and performance of products they supply. Liability ceases only where scientific and technological knowledge at the time meant the suppliers could not have known about faults. Compensation is available for personal injury (up to 160m DMs - about 80m euros) and for material damage.

The German Government is on record as taking the view that an EU fair trading directive that was limited to the area of consumer protection would be a backward step. The Treaty of Amsterdam 1997 requires consumer protection be considered when framing other EU policies. But EU policies shall not prevent MSs maintaining or introducing more stringent consumer protection measures.

Enforcement

Individual consumers do not have the right to take court action under the **Act Against Unfair Competition (the UWG)**. Consumer bodies can take action under the UWG to seek a direction for cessation of the behaviour, but they cannot claim damages on behalf of consumers.

The circumstances in which VZVZ may act seem to be restricted by the terms of Section 13 of the UWG, which sets tough conditions for legal intervention by consumer bodies. Justice Ministry officials said the VZBV budget for legal actions was limited. The regional VZs also have limited budgets (we were told that the Berlin VZ had a budget of only 7,000 euros for legal action, though it also receives cheap legal advice from sympathetic lawyers, and has about 10 cases in train at any one time).

The VZs consider their priorities carefully before becoming involved in court action. They may take up cases where issues of principle arise or where the problem is "topical". For the last year VZs have also been entitled to represent the consumer in court (though they have little experience so far). The decision to take legal action is often made following discussion by a joint body of the consumer centres.

Comments varied about the use of publicity as a tool of policy or enforcement. There is currently no official means of publicising legal decisions, though this is permitted under article 23 of the UWG. On the other hand the Berlin VZ said they regularly made press releases and sometimes "named names" (depending on the legal risks), although these were not made under article 23 of the UWG. They tried to maintain a high press profile.

Conclusion: the costs of court action are a major deterrent to consumers and consumer bodies. The national VZBV and regional VZs in principle have considerable scope, but in practice budget restrictions limit their role.

Redress

The Justice Ministry takes the view that **contract law** is the most efficient means for protection and for the individual consumer to seek redress. This is the route the consumer must use to seek restitution for loss (i.e. damages). However the cost of court action, even if in the small claims court, is high. (Small claims courts have a limit of 600 euros, i.e. about £400, on the size of claim, a low level compared with say Australian small claims courts. This and the risk of having to bear the costs for both sides deter most consumers from legal action.

Court action in Germany is expensive and cases often take a long time to resolve (we were told 6 months minimum and sometimes years – cases ending up in the high court can take 5-10 years to resolve). Small claims courts in Germany are not necessarily cheaper. However a judge might have a preliminary informal discussion with both parties to see if a compromise could be reached without going to court. Whether or not this happened seems to depend largely on the disposition of the judge.

There are ombudsmen for the insurance and banking markets, but not

otherwise. There are some voluntary **Codes of Practice**, sometimes developed as a response to political pressure. They vary: some are considered useful, while others are judged to be ineffective, lacking enforcement and delivering the minimum protection. Consumers' organisations in general would prefer state regulation. There is no general certification of codes and enforcement is a problem.

Many consumers use **consumer advisory bodies** (Verbraucherzentrale or VZ) for advice. These provide information about the law, including unfair contract terms, and may also pursue court actions. The VZs usually advise consumers to try to deal with suppliers directly and manage routine problems themselves. They may write on a consumer's behalf to a supplier, setting out their view of the law where they think traders are breaching the legislation. They may sometimes try to conciliate. The Berlin VZ seems to have a high credibility and resolves the majority of cases brought to it in this way.

On rare occasions the **VZBV** or a regional VZ or local consumer body may decide a case is of such significance (for example if it is an example of a topical problem or concerns a point of principle on which a legal decision would be helpful) that they will take it up through the courts for the consumer. But the budgets of the consumer bodies we met do not permit many such actions.

There does not seem to be a right for the consumer to terminate agreements concluded on the basis of unfair practices (though the validity of the contract can be contested under civil law). Nor is there a right for consumer bodies to seek damages for loss or "disappointment" (as in France) on behalf of consumers through court actions: it follows that they also cannot bring collective "class" actions.

Conclusion: currently it remains difficult for the consumer to secure redress if a supplier is resistant. The legal and administrative framework does little to redress the imbalance of power in the relationship.

Product safety

This seems to be a very strong aspect of consumer protection.

Food safety aspects are the responsibility of the Consumer Affairs and Agriculture Minister and receive a lot of attention. Product safety is the political responsibility of the Economic Ministry. The two leading organisations responsible for advising consumers about product quality and safety are the Stiftung Warentest (foundation for testing goods), which is 10% Government funded, and the TÜV, which is not. Chemical research offices and institutes and veterinary offices test food. Aside from foodstuffs there is no sector approach to product testing.

State and Federal governments co-operate on enforcing product safety requirements. They monitor products and may arrange for TÜV to test products in question. They can enforce withdrawal of dangerous products from the market and destroy them. It is more difficult to close retailers who repeatedly deal in faulty products.

The Berlin Senate Occupational Health and Safety Office have a staff of about 10 dealing with product safety and 5 with public health matters. They check selectively about 6,000 products p.a. technically, of which about 15% are found to be faulty.

Consumer Knowledge

The VZBV is the main body providing information to consumer organisations. Education is part of its remit. Lander VZ and local advice centres provide advice to individual consumers with problems.

The Stiftung Warentest (and its sister organisation the Stiftung Verbraucherinstitut) is an important source of consumer information, through its consumer magazines. It produces the equivalent of "Which?" magazine and its product quality testing is regarded as the best in Europe. It is the most important contributing member of the International Consumer Research and Testing organisation (ICRT). SW is a not-for-profit organisation, 90% funded from its magazine sales and website charges, and 10% by Federal government (which we were told was to compensate for the loss of revenue from advertising, which it does not carry). It aims to provide independent objective information and is clearly highly respected.

The state does not set priorities for raising consumer awareness. The Berlin VZ considered consumer awareness (other than food and health issues) to be low. For example consumers express concern over contract terms only when a problem arises. [N.B. This points to the need for preventive rather than corrective action in this area.]

Impact on markets

The impact on markets of the consumer protection regime would seem to be modest, except in the case of action in relation to food and safety.

Market Case Studies

1. Travel Agents/ Holidays

The Package Tours Act 1994 requires package tour agents to take out insurance or bank guarantees to protect customers' advance payments against loss arising from bankruptcy or insolvency. But the government did not implement the EC Package Holiday Regulations promptly, leading to problems for consumers. (Similarly, the government did not implement by 2001, as required, the EC Directive requiring that car manufacturers provide consumers with information about fuel consumption. We were told this was because of lobbying by car manufacturers). Travel agents are also subject to detailed rules about their duties to inform customers before and after concluding contracts.

2. Home building

Regulation of this area falls to the Consumer Affairs Ministry. Their main concern is the financial viability of builders. This is partly a matter of the

financial weakness of builders but also the problem for builders of securing payment by consumers.

The insurance market is weak, which must reflect on the frequency of problems in this market. Currently a customer may take out insurance against a failure by the builder to complete the work. The Ministry is interested in the idea of getting the builder to take out insurance, in the belief that mandatory insurance will bring down the level of complaints. This is only likely to work if premiums are set for individual builders that reflect their individual risk.

Builders need a "masters" certificate to work. This is a technical rather than a commercial qualification (i.e. they need no business training though this will be available through local chambers of commerce). New homes are inspected only at the planning stage, by an independent inspectorate. There is no quality check during construction. Contract law provides the main route for resolving disputes between a customer and a homebuilder.

There is no rating system for builders. Consumers rely on word of mouth to identify a good builder. Court judgements about decisions on complaints are available but not listed by reference to the name of the company concerned. There is a possibility that the Consumer Information Bill of 2001, which was dropped, may be reintroduced. This was intended to allow consumer protection bodies to access public information (N.B. This does not seem to fit with removing article 23 of the UWG.) . Other than warranties and information, there are no plans for the state to get more involved with the problems of this market.

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Italy

Goals and Objectives

The goals of Italian consumer protection policy are closely linked to the objectives of the European Union. The aim of the key Directorate responsible for consumer protection within the Ministry for Productive Activities is to consolidate and coordinate consumer policies in cooperation with the European Union and with a view to reforming the Italian public administration in accordance with the principles of geographical decentralisation of powers and functions.

Institutions and Resources

Consumer protection policy is the responsibility of various ministries, public departments and independent authorities. The **Ministry for Productive Activities** (*Ministero delle Attività Produttive*) plays the major role in co-ordination and formulation of consumer protection policy in Italy. The Minister for Productive Activities is Antonio Marzano. The Presidency of the Council of Ministers also plays a coordinating role usually through the individual Ministries or other bodies concerned.

There is a process of decentralisation in progress which is strengthening regional powers in relation to consumer policy and will enhance the role of local authorities. Central government will continue to maintain responsibility on issues such as competition, safety and weights and measures issues (but see role of Chambers of Commerce). The regions are responsible for measures on sales and sales promotions.

Other Government Departments

Health protection and safety are the responsibility of the **Ministry of Health** (Ministero della Salute) and the bodies attached to it, such as the Anti-Fraud Unit of the Carabinieri (*NAS – Nuclei Anti Sofisticazioni dell'Arma del Carabiniere*) and the National Institute of Health, the regions, the municipalities and the Local Health Units.

The **Ministry of Agricultural Policies** (*Ministero delle Politiche Agricole e Forestali*) and its subordinate bodies, in particular the Inspectorate for the Suppression of Fraud and the National Nutrition Institute, also have an important role to play as regards certain aspects of health protection, relating to food products and the development of initiatives with a view to orienting consumption and nutrition education.

The **Ministry of Economy and Finance** (*Ministero dell'Economia e Finanze*) Customs Service is responsible for monitoring product safety at the country's external frontiers.

The **Ministry of the Environment** (*Ministero dell'Ambiente e Tutela del Territorio*) is responsible for environmental protection, while the **Ministry of the Interior** (*Ministero dell'Interno*) is involved by virtue of the safety duties of its subordinate bodies, notably the Fire Brigade.

The **Ministry of Justice (Ministero di Giustizia)**, handles problems in regulating numerous judicial institutions referred to in the Civil Code and in special laws (timeshare, restrictive agreements, etc.) and all aspects of consumer access to justice.

The **Ministry of Economy and Finance** and the **Bank of Italy (Banca d'Italia)** are responsible for consumer credit and the transparency of banking rules, whereas the **Ministry of Education (Ministero dell'Istruzione, Università e Ricerca Scientifica)** has an important role to play in the case of consumer education initiatives, particularly the organisation of campaigns and information courses in schools.

The **Ministry of Transport (Ministero delle Infrastrutture e Trasporti)** is responsible for protecting users of means of transport both as regards the safety and quality aspects, and it is mainly responsible for safe housing,

Ministry of Productive Activities: Directorate General for the Harmonization of the Market and Consumer Protection (*Direzione Generale per l'Armonizzazione del Mercato e la Tutela dei Consumatori (DGAMTC)*)

The Consumer Protection Directorate was established (originally as the Directorate General for Harmonisation and Protection of the Market) at the end of 1997, as part of the restructuring process involving the Ministry of Industry. The aim of the Directorate General is to consolidate and coordinate consumer policies in cooperation with the European Union and with a view to reforming the Italian public administration in accordance with the principles of geographical decentralisation of powers and functions. It combines the following responsibilities previously shared by various Directorates-General:

- price monitoring;
- links with the Competition and Market Authority;
- protection of consumers' economic interests;
- organisation of weights and measures and analysis services for precious metals;
- monitoring procedures and activities for the certification of products and equipment; and
- safety checks and conformity of products with Community legislation.

The Directorate liaises with the various public and sectional bodies and with consumer associations. It is also called upon to contribute to measures and proposals concerning other sectors which in one way or another affect consumer interests. It monitors activities related to the preparation and adoption of consumer protection rules at Community level and is responsible for their transposition into national law.

Emphasis must be placed on the importance of the process of administrative decentralisation in the Italian public administration¹. Thus, the trend in defending consumer interests is to delegate as many activities as possible to local

¹ Article 5 of the 1948 Italian Constitution explicitly acknowledges local autonomy and provides the basis for its development. Title V of the Constitution (art 114ff) set up the division of the Italian

authorities, so that consumers and businesses can deal with the authority which is closest to them. To help overcome the fragmentation to which this can lead, the Directorate General helps to promote practical collaboration between the ministries and other administrations (especially on the subject of product safety) and between the central and regional authorities.

The Directorate General for the harmonisation of the market and consumer protection is divided into 5 areas: areas A to D and the National Consumer Council (CNCU). The C Area deals with consumer affairs (except product safety, metrology and precious metals which fall to area D) and is subdivided into 4 offices:

- Office C1 - Coordination for consumer policies (it deals with the promotion of consumer rights and interests. It supports the General Director in the definition stage of consumer policies and initiatives);
- Office C2 - European and international activities (it cooperates in elaborating consumer policies at EU level, it coordinates the work for the European Consumer Council, it maintains institutional links with consumer bodies of EU member states, with international organisations, it implements international agreements to promote consumer protection, it provides consultancy for consumer protection on European legislation);
- Office C3 - National policies and consumer rights (it ensures the implementation of Italian law no.281 of 1998 on the discipline of consumer rights; it deals with consumer association members of CNCU, with Italian legislation to implement European legislation, and with economic interests and consumer rights at national level);
- Office C4 - Running of the National Consumer Council (provides secretariat to the Consumer Council and maintains relations with consumer associations).

The General Director is Mrs Daniela Primicerio who was appointed in October 2002.

Product safety and quality are the main responsibilities of the D Area of the General Directorate for the harmonization of the market and consumer protection. There are two offices (Quality of products and services and Security of Products) dealing with this subject. The **National Consumer Council (CNCU)** is part of this Directorate under the provisions of the 1998 framework law on consumer rights. Mrs Primicerio is also the Director of CNCU. CNCU consists of representatives of the 14 most important consumer associations organized at national level. The CNCU replaced the Council of Consumers and Users' (*Consulta dei consumatori e degli utenti*), which acted as a consultative body and had been attached to the Ministry of Industry for around thirty years. The remit of CNCU is:

Republic into Regions, Provinces and Communes (*Comuni*). Article 117 gives a "concurrent" legislative power to every region. The scope of the regional legislative power is very wide, and it includes several fields, such as tourism and the hotel industry, transport at regional level, agriculture and craftsmanship. Article 118 explicitly gives to the regions the power of carrying out administrative functions in the fields under its jurisdiction. They are, however, usually delegated to Provinces, Communes and other local agencies.

- to express opinions on draft bills of the Parliament and/or of the government and on the schemes concerning the rights and interests of consumers;
- to suggest proposals for consumer protection with reference also to European programmes;
- to promote studies, researches and conferences on consumption problems, on consumer rights, on quality and safety of products;
- to elaborate programmes to spread information to consumers;
- to support initiatives to promote the access of consumers to justice tools, to promote the solution of controversies;
- to support the coordination among national and regional policies on consumer protection; and
- to establish links and contacts with similar bodies in EU member states.

Competition and Markets Supervisory Authority (*Autorità Garante della Concorrenza e del Mercato*) is an independent authority established by law no. 287 of 10 October 1990 (the Competition and Fair Trading Act). As an independent authority, it has the status of a public agency whose decisions are taken on the basis of the Act without any possibility of interference by Government. The Authority is a collegiate body composed of several members who take their decisions by majority vote. It has a Chairman and four members appointed jointly by the Presidents of the Senate and the Chamber of Deputies. The Chairman and the four members remain in office for a seven year non-renewable term. The Authority has a Secretary General, appointed by the Minister for productive activities, who is responsible for overseeing the organisation and operations of the staff and of the offices. The Authority employs up to 220 people.

The Authority is responsible for enforcing the Competition and Fair Trading Act (Law 287/1990) which governs agreements that impede competition, abuses of dominant position and mergers and acquisitions which create or strengthen a dominant position with the effect of eliminating or restricting competition. The Authority also enforces the provisions on misleading and comparative advertising. It is also charged with submitting reports to parliament and to the Government and to providing them with consultancy services.

The aims of the Authority are to:

- foster and protect market conditions which allow economic entities equal opportunities to compete and to gain access to the market; and
- to protect consumers by encouraging lower prices and improving the quality of products as a result of free market forces.

On misleading advertising, the aim of the authority is to prevent the dissemination of advertising messages deemed to be deceptive. Misleading advertising is prohibited not only because it is likely to deceive consumers and cause detriment, but because it indirectly distorts competition. The Authority is responsible for verifying that comparative advertising is lawful. The Authority is funded by central Government through an annual budgetary allocation (25.3 million euro in 2002).

Italian Consumer Associations

There are 14 associations recognised by the framework law². Their responsibilities are growing but there is no central Government funding (except in support of CNCU). Five or six of the 16 regions provide some funding to consumer groups (for example one region makes available 150,000 euros). There are less than 1 million members of all the consumer groups.

Website link for CNCU is <http://www.tuttoconsumatori.it> This includes contacts for all the consumer associations (under Associazioni Consumatori CNCU). The national consumer associations are funded from the organisations' own resources from membership fees and voluntary work. This is supplemented by project grants from national or local bodies and the European Commission. Key areas of consumer complaints identified by consumer groups were: insurance, car insurance, financial services, telecoms, schools education costs, and transport (railway).

Consumer groups are empowered to take action on behalf of the collective interests of consumers as a whole. They successfully challenged a rise in solicitor's fees in this way. Consumer groups can seek injunctions. In certain circumstances, where a judge thinks that it is appropriate, a group or an association may also start a legal action on behalf of a number of consumers and ask for a refund.

Profile of a consumer association: Altroconsumo

Altroconsumo, established for 30 years and based in Milan, is one of the largest consumer groups in Italy with 280,000 members. It is independent and has no political affiliation. It is resourced from membership fees and subscriptions to its magazine, which does not accept advertising. It receives EU funding for some projects. Altroconsumo disseminates information and provides an advisory service involving legal and specialist opinions. Basic information is available to

² Consumer Groups

ACU — Associazione Consumatori Utenti — Onlus

Adiconsum

Altroconsumo

ADOC — Associazione Difesa Orientamento Consumatori

Centro Tutela Consumatori Utenti Onlus - Verbraucherzentrale Südtirol

Cittadinanzattiva

Codacons — Coordinamento delle associazioni per la tutela dell'ambiente e per la difesa dei diritti degli utenti e consumatori

Comitato Consumatori Altroconsumo

Confconsumatori

Federconsumatori — Federazione Nazionale di Consumatori e Utenti

Lega Consumatori

Movimento Consumatori

Movimento Difesa del Cittadino

Unione Nazionale Consumatori

all consumers, some services are reserved for members. Altroconsumo has its own credit card with the Banca Sella.

They see competition as essential although the opening of some markets has not yielded the benefits expected. They believe consumers need to be able to make an informed choice. Altroconsumo is a strong lobbying group at central Government and at EU level. In the EU they are advocating legislation on consumer credit and debt. Through their expertise in testing and conducting surveys they are able to present evidence on the problems faced by consumers. The main office in Milan runs a national helpline with 80 operators. The main office produces publications.

Independent Authorities

Other bodies involved in consumer policy are the Italian independent authorities which control the markets. 16 authorities have been set up to monitor standards established by Government under Citizens Charter policy. During recent years independent authorities have become involved in the protection of consumer rights. The following are the most important:

- Autorita' Garante della Concorrenza e del Mercato (Authority for Competition and the market) <http://www.agcm.it/>;
- Autorita' per l'energia elettrica ed il gas (Authority for energy and gas). Law 481/98 entrusts the Authority with the task of protecting and guaranteeing consumers' and users' rights and interests through regulation or individual procedures. <http://www.autorita.energia.it/>;
- Garante per la protezione dei dati personali (Authority for data protection) <http://www.garanteprivacy.it/garante/HomePageNs>;
- Autorita' per l'informatica nella Pubblica Amministrazione (Authority for IT in Public Administration) <http://www.aipa.it/>; and
- Istituto superiore per la Vigilanza sulle Assicurazioni Private e di interesse collettivo (Supervisory body for private insurance) <http://www.isvap.it/>.

Chambers of Commerce

Chambers of Commerce are public institutions and, in their respective Districts (Provinces), they support and promote general interests of businesses as well as the administrative and economic functions related to the business sector, subject to the competences attributed by the Constitution and laws of the State to Government and Regional Administrations. The Chambers of Commerce also execute the functions for which they are empowered by the Government and the Regions, as well as those deriving from international conventions. The Chambers may form regional unions for the promotion of activities of interest to more than one District and for coordination of relations with the other territorially competent regional bodies.

There are 103 local Chambers of Commerce and 19 regional unions. Businesses are required by law to register with the local Chamber of Commerce. The number of member businesses is therefore about 5 million covering all sectors of enterprise. Each chamber of commerce is financed by its members' compulsory contributions, charges for administrative services, sale of services and public funds. Membership fees are upward of 60 euros depending on turnover.

Contributions are made to a central fund which supports chambers needing additional help. Chambers of commerce enforce the criminal law in respect of weights and measures. This includes monitoring and inspections. Activities are coordinated by the Ministry.

Since 1997 the Chambers have had an enhanced role in consumer protection and have been asked to identify a person responsible for this. Often the General Secretary of the Chamber will coordinate activities to support consumers. Some chambers provide a consumer help desk and signposts to other services. Task forces may be set up to look at specific sectors, involving business and consumer representation. Chambers monitor the drawing up of contracts and encourage the use of standard contracts which make provision for dispute resolution if things go wrong. Chambers can intervene and challenge unfair clauses in contracts, if necessary in the courts where they can obtain a prohibition. The Chambers are involved in providing alternative dispute resolution (see ADR below). They are promoting mediation, conciliation and arbitration services, especially the larger chambers such as Rome and Milan. Historically the chambers have always done this, especially for business disputes, but are now required to do so by law. All the chambers can provide conciliation, in both consumer / business and business / business disputes. 70 of the 103 chambers (covering most of the country) can provide arbitration services. In 2001, a survey showed that 800 cases were handled by the chambers. 20% were business to business disputes, 80% involved consumers and business.

National Chamber of Commerce

Local Chambers are members of Unioncamere (Italian Union of Chambers of Commerce, Industry, Agriculture and Handicraft), the National Chamber of Commerce, which provides support to members. Unioncamere represents and promotes general interests of Chambers of Commerce; it fosters, provides and manages services and activities of interest to the Chambers of Commerce and to economy sectors either directly or through its own special companies, as well as by participating in bodies, including associations, agencies, consortia and companies even with a majority private shareholding.

Integration of consumer policy with other policies

In Italy, the necessary link between consumer policy and other policies is currently assured through a series of general legal instruments which provide for coordination between the various authorities and bodies involved in the different sectors. In this connection, mention should be made of the **Conference of the State and Regions** (*Conferenza Stato-Regioni*), whose job is to ensure coordination and liaison between the activities of the central government and the regional bodies, and the **Conferences of Services** (*conferenze di servizi*) provided for in Article 14 of Act No 241 of 7 August 1990, for cases in which there is a need to examine in parallel the various interests that will be affected by an administrative procedure.

Moreover, within the framework of its powers, each administration plays its part in consumer affairs, where necessary.

Advocacy

Although there is no umbrella consultation body for the different consumer associations (with the exception of the CNCU), the public authorities very often ask the organisations to participate in studying consumer related problems, or request their views and suggestions when designing and/or implementing measures concerning them.

In particular, the central-level consumer associations participate actively thanks to their regular contacts with the Directorate General for the harmonisation of the market and consumer protection. They are consulted on the main problems with which it deals, notably in the context of work with a view to adopting EU Directives or transposing them into national law.

Legal Framework

Overall framework

The framework law no. 281 of 30 July 1998 introduced significant reforms to the Italian system of consumer protection. It:

- gives consumers rights to public services;
- gives legal standing to consumer associations before the courts, to act in defence of consumers' collective interests. If an association proceeds with legal action on behalf of consumers, it also provides legal assistance during the law suit and may make a request for compensation as well: and
- gives such associations the opportunity of instituting conciliation proceedings through Chambers of Commerce, Industry, Craft and Agriculture (CCIAAs) under para 2(iv)(a) of Law 580 of 29 December 1993.

The framework law sets out the criteria for recognition of consumers associations. There are 14 recognised consumer associations. They have national powers including cross border powers to act on behalf of consumers. To qualify for recognition, a consumer group must have at least 28,000 members.

Law no 281/98 also reformed the administration to establish contact points at the Chambers of Commerce to interact with the central administration, and also to carry out consumer information activities in line with EU policy. The functions previously carried out by the provincial weights and measures offices and the provincial offices for industry, commerce and craft trades have been transferred to the Chambers of Commerce.

The 1998 law has been criticised for linking the National Consumer Council to the Ministry of Industry because of possible conflicts between consumers' interests and the remit of the Ministry of Industry.

Utility services are bound by the Public Services Charter on the provision of public services, which defines citizens' rights and the obligations of the bodies providing the public service.

The framework law is supported by specific legislation transposing EU directives into Italian law.

There is no General Duty to Trade Fairly. There is duty to behave in good faith before, during and after the operation of the contract.

The Civil Code did not provide additional protection for consumers although it has been reformed in recent years to adapt it to EU requirements

Sale of Goods legislation

Law 24/2000 implements the EC Directive. Introduces 2 year guarantees for returns, partial refunds. There is no general legislation in relation to services.

Misleading and comparative advertising

The legislation aims to protect people involved in commercial, industrial, craft or professional activities, consumers and the public in general from misleading and unfair advertising and promote confidence that advertising is fair.

Legislation on misleading and comparative advertising (law no 74/1992 as amended by law 67/2000) implements the EC requirements (Directives 84/450/EEC and 97/55/EC) in this area.

Advertising is deemed to be misleading when, in any way whatsoever, including presentation, it deceives or is likely to deceive those to whom it is directed and, as a consequence, it is likely to affect their economic behaviour or cause harm to a competitor. The notion of advertising is very broad, and includes the packaging of products. The legislation requires that advertising is clearly recognisable as such and that it must be "clear, truthful and fair". Particular emphasis is placed on advertisements relating to products that might damage consumer health and which may reach children or adolescents.

Legislation on comparative advertising (law no 67/2000) provides that a comparative advertisement should not be misleading or unfair.

The Competition Authority enforces the legislation on misleading and comparative advertising.

Enforcement

Criminal proceedings are overseen by the public prosecutor, the Attorney General. Generally, enforcement of consumer protection laws in Italy is the responsibility of a number of bodies responsible for monitoring compliance with the law. In practice in many instances enforcement is done at local level, under guidance from the centre, primarily by Chambers of Commerce.

The functions previously carried out by the provincial weights and measures offices and the provincial offices for industry, commerce and craft trades (UPICA) have been transferred to the Chambers of Commerce. The functions of the latter included product safety, planning laws, and verification of product worthiness. They could also impose penalties and fines for breaches of food safety in cafes and bars, safety installations and foodstuff labeling.

Enforcement of misleading advertising

The Competition and Market Supervisory Authority enforces the legislation on comparative and misleading advertising. The Authority cannot take action on its own initiative but may only act on the basis of a complaint filed by private consumers, consumers' associations, competitors of companies disseminating allegedly misleading advertising, the Ministry of Productive Activities or any public agency or authority which may be interested in relation to its institutional objectives, for example, following a public complaint. There is a standard complaint form to report a misleading advertisement.

The Authority's sectoral directorates work with other Government departments and agencies, in particular with the national regulator for communications (*Autorita per le garanzie nelle comunicazioni*). In the case of investigations into misleading and comparative advertising, the Authority is required to seek a non-binding opinion from the regulator when advertisements have been broadcast or disseminated in the press and on the lawfulness of comparative advertisements.

If the Authority considers that the advertising is misleading it can order the prohibition of the advertising before it is published or prohibit its continuation if it has already been published. The Authority's decision is binding and reasons for its decision are given. Acceptance of the complaint may be accompanied by publication of the decision in full or in part, and in appropriate cases of a corrective statement with a view to eliminating the continuing effects of misleading advertising. The power to require companies to make corrective statements is seen as significant, is contentious and the source of many appeals by business.

In especially urgent cases the Authority can issue a reasoned order and arrange for provisional suspension of the misleading advertising. In the event of non-compliance with the Authority's final ruling, the penalty may be a fine or criminal penalties. There has been some criticism that sanctions are not large enough to be deterrent. If the advertisement is found to be misleading or the comparative advertising is deemed to be unlawful, the advertiser must immediately stop disseminating it and in some cases must, at his or her own expense, publish the decision by the Authority in the press, on the radio or on television. Any advertiser who fails to comply with the Authority's decisions is liable to imprisonment of up to three months and a fine up to 3,000 euros. Decisions of the Authority may be appealed to the Regional Administrative Tribunal (*Tribunale Amministrativo del Lazio*). Further appeals can be brought before the Council of State (*Consiglio di Stato*). The Authority receives about 1,000 consumer complaints per year. Many complaints about misleading advertising are made to and resolved by the self-regulatory body, IAP, (*Istituto di Autocertificazione Pubblicitaria*) whose findings are binding on the media as well as the advertiser. The Institute regulates TV, radio and the press.

| Numbers of investigations | | | | | |
|---------------------------|------|------|------|------|------|
| Year | 1997 | 1998 | 1999 | 2000 | 2001 |
| Misleading advertising | 506 | 468 | 358 | 333 | 289 |
| Judged to be | 361 | 300 | 275 | 266 | 240 |

| | | | | | |
|---------------|--|--|--|--|--|
| infringements | | | | | |
|---------------|--|--|--|--|--|

Top topics of complaints of misleading advertising: financial services, food labelling (area of origin), environmental “green” claims, non-transparent advertising eg product placement on tv programme, tourism (false descriptions, omissions), cosmetic products, money up front schemes (homeworking, prize draws) telecommunications, insurance products, private schooling & tuition.

Unfair contract terms

Chambers of Commerce, Industry, Crafts and Agriculture have the power to establish mechanisms for identifying unfair terms in contracts; to prepare and promote standard contracts between firms, trade associations and consumer organisations. Under Law no 52 of 6 February 1996, Consumer associations, professional associations, Chambers of Commerce may summon to court the seller or supplier or the professional association using general contract conditions and ask the competent judge to prohibit the use of terms deemed to be unfair. An interim injunction may be granted where there are justified reasons for urgency under Articles 669a ff. of the Code of Civil Procedure. The judge may order that the measure be published in one or more newspapers, of which at least one shall have a national circulation.

Collective interest actions

The 1998 framework law gives consumer organisations the right to commence legal action to act in defence of consumers’ collective interests. 14 groups have been recognised. In addition, Decree No 224 of 23 April 2001 implements Directive 98/27/EC on injunctions for the protection of consumers’ collective interests.

Self-Regulation

Codes of Practice are not as widespread as in the UK, but are becoming more recognised by the judiciary. There are established codes on advertising and on violating the principles of fairness. They only apply to parties who have undertaken to abide by them

Redress

Individuals must bring action in courts. Consumer associations will try to negotiate a solution on their behalf. Citizens may apply to ordinary courts if their rights have been infringed and they wish to obtain compensation for non-fulfilment of contractual obligations. An attempt is made to reach an out-of-court settlement in the preliminary phases of court proceedings. Articles 183, 185 and 350 of the Code of Civil Procedure (which cover judicial conciliation) require judges (of first instance, or at the first level of appeal) to take steps to assess whether in practice the conditions exist for terminating the case by means of an agreement: a document embodying the terms of the parties’ reconciliation would then be given the status of a court order.

There were several reforms in the 1990s which attempted to simplify and expedite court procedures in Italy following criticism that they were unacceptably long, prohibitively expensive and complex. Despite these

measures, the average length of a civil case pending trial before court is above three and a half years. Also, Italy has the highest number of cases in which it has been found guilty for infringement of Article 6 (right to a fair trial) of the European Convention on Human Rights, mostly because the delay of civil cases did not meet the requirement of "a reasonable time" imposed by Article 6 of the Convention.

Small claims

Other reforms have also established new decision making bodies in an attempt to expedite proceedings. Notably, a law issued in 1991 which amended the Code of Civil Procedure established the "justice of the peace", who is responsible for small disputes, the current limit being 1,100 euros, and for which no legal assistance is necessary. There are drawbacks to this initiative. They are limited to awarding damages up to 2,500 euros (there are plans to increase this to 25,000 euros for credit recovery and 15,000 euros in case of road accidents).

Alternative Dispute Resolution

One way in which the Italian Government is improving access to civil Justice is through the increasing use of alternative dispute resolution. In the field of consumer protection, the Government has introduced measures to enhance the role of mediation/conciliation (*conciliazione*) and arbitration (*arbitrato*) through the Chambers of Commerce.

Chambers of commerce and alternative dispute resolution

Law 580 of 29 December 1993 "Reform of the Chambers of Commerce, Industry, Craft and Agriculture (CCIAA)" redefined the role of Chambers of Commerce; new powers were introduced and others, previously granted only to some Chambers, were formally extended to the whole system. This applies to the organisation of services for alternative dispute resolution, formerly left to the discretion of a few Chambers, but now both a right and a duty for all Chambers of Commerce. A right because under its para 2(iv)(a) of Law 580 "The CCIAAs may, inter alia, initiate the constitution of arbitration and conciliation panels for the resolution of disputes between firms, and between firms and their customers". A duty because successive laws make attempts at arbitration and conciliation through Chambers of Commerce, compulsory.

Mediation (known as Conciliation in Italy)

Chamber of Commerce mediation Service aims at settling economic disputes especially those arising between companies or companies and consumers. The mediator does not settle the dispute. He/she helps parties find their own, mutually satisfactory settlement. All the Chambers provide this. It is cheaper than arbitration and potentially more attractive to consumers, although it is not used extensively. Businesses use mediation/conciliation successfully in disputes with other businesses. The adversarial culture in Italy limits the scope for settling disputes through conciliation. Steps are being taken to promote conciliation procedure, to ensure it is provided by all chambers to a similar standard and to train conciliators to recognised national standards.

Costs. To commence mediation, the Milan Chamber of Commerce charges 40 euros where the value of the case is up to 1000 euros and thereafter more as

the value of the case increases. Commencement costs are not charged where one of the parties is a consumer, mediation is required by law or where the parties file a joint request.

Arbitration

The arbitration procedure follows the Italian procedural code on arbitration. Chambers provide “administered arbitration” where the settlement of a dispute is entrusted to a panel as alternative to court. Process ends with a “settlement report” which creates a binding private-law contract between the parties. This can be appealed to a court. Some Chambers of Commerce have decided to carry out the arbitral role attributed to them by law in collaboration with other Chambers or in conjunction with other organisations. Regulations on arbitration and conciliation are enforced and included in contract clauses.

Consumer groups and alternative dispute resolution

Consumer groups are also focused on ADR. ADICONSUM policy is favourable to conciliation and negotiation of an agreement with the producer. Consumer groups will try to negotiate a solution before a court action. Courts appear to be disposed towards encouraging a settlement which will become incorporated into an order (see judicial redress). Law 281 of 30 July 1998 also gives consumer associations the opportunity of instituting conciliation proceedings through the Chambers of Commerce under para 2(iv)(a) of Law 580. Since the reform, the Chamber Councils, representing all branches of the economy, include a consumer representative.

Ombudsman

The Banking Ombudsman (Ombudsman *bancario*) acts as an intermediary for disputes in the banking sector. The Banking Ombudsman was set up in May 1993 as one of a series of initiatives promoted by the Italian Association of Banks to improve customers’ relationships with their banks by making information more freely available and improving the level of consumer protection. It is a collegiate body made up of five members chosen for their qualifications and expertise in economics, banking and law. They serve a three-year, renewable term of office. Anyone having been employed by the Italian Association of Banks and/or its associates or having done cooperative and continuous work with them on a self-employed basis over the previous three years is not eligible.

The body consists of a Chairman, appointed by the Governor of the Bank of Italy; two members, appointed by the President of the Italian Association of Banks; one member appointed by the National Bar Council (*Consiglio Nazionale Forense*); and one member appointed by the President of the National Council of Graduates in Economics and Commerce (*Consiglio Nazionale dei Dottori Commercialisti*). Members who are absent from three consecutive meetings of the Ombudsman without justification forfeit their seat. This penalty is ratified by the college at the session which marks the third absence. The Banking Ombudsman has the power to resolve any consumer disputes concerning banking transactions or services except those of a professional or business nature provided that:

- the dispute has not yet been examined by a court or arbitration body;

- the amount at stake is no greater than ITL 10 million (5,000 euros); and/or
- a complaint was lodged with the bank's Customer Complaints Office, but no reply was provided within the prescribed time limit, or the complaint was wholly or partly rejected, or the complaint was accepted, but the bank failed to comply.

In order to bring a dispute before the Ombudsman, the consumer must first lodge a complaint with the bank. In practice, therefore, lodging a complaint with the Ombudsman is an appeal against the bank's decision. There are no specific forms to be filled in, but the dispute must be clearly described, and any supporting documents and other useful information must be included with the complaint. Neither side is required to appear before the Ombudsman. The dispute will be investigated by the technical secretariat of the Ombudsman. The secretariat has the right to request in writing any further information which may help clarify the dispute from the bank's Customer Complaints Office and/or the consumer lodging the complaint. No charge is made for lodging a complaint with the bank's Customer Complaints Office or with the Banking Ombudsman. The Ombudsman's operating costs are paid by the banks who are signatories to the "Agreement to set up Customer Complaints Offices and a Banking Ombudsman", i.e. practically all the banks operating in Italy.

The procedure ends with a decision by the Ombudsman. This must be delivered within 90 days after the request for intervention was made, and is binding on the bank concerned. If the Ombudsman discovers that the bank has not applied the decision delivered, it sets a final deadline for the bank. If this deadline is not met, the Ombudsman publicises the non-fulfilment of the obligation in the press, at the expense of the bank at fault. In practice banks invariably comply with a decision of the Ombudsman. More information on the background and the regulation ruling the bank ombudsman can be found on the following websites:

http://web.tin.it/ctrce/ombudsman_bancario.htm

http://www.mps.it/reclami/down/Regolamento_Ombudsman.pdf.

Product Safety

Italian product safety legislation is largely the result of the implementation of European Directives. For example, Italy transposed the General Product Safety Directive (59/92/EEC) through legislative decree 115-95 of 17 March 1995, replicating the provisions of the Directive almost exactly. The Consumer Protection Directorate publishes three guides on product safety, covering toy safety, sunglasses and lighting chains. Article 5 of decree no 115/95 implementing the general product safety directive (59/92/EEC) lists the authorities responsible for ensuring that only safe products are placed on the market. These are the Ministry for Trade and Industry, the Health Ministry, the Ministry for Labour and Social Welfare, the Ministry of the Interior, the Finance Ministry and the Transport Ministry.

The relevant areas of responsibilities of these organizations are:

- Ministry for Productive Activities: beside a general competence, it is responsible for the protection of specific products, toys for example;

- Ministry of Health: it is competent when the circumstances of the risk affect health;
- Ministry of Welfare: its competence covers either products used in the professional sector, or those intended for consumers;
- Ministry of the Interior: safety with regard to fires;
- Ministry of Economy and Finance: tax matters and customs controls; and
- Ministry for Transport and Infrastructures: cars, ships, boats.

These authorities check, within their respective sphere of responsibility, that the products placed on the market are safe. In relation to the level of risk, the authorities:

- arrange, even after a product has been put onto the market as a safe product, appropriate checks of its safety features up to the time of use or consumption and can carry out inspections at production and packaging plants, in warehouses or sales outlets;
- demand all the necessary information from the parties involved;
- take samples of a product or range of products for testing and analysis in order to see if it meets the criteria in the implementing decree, and draw up a report on this work, a copy of which must be sent to those concerned;
- impose prior conditions for placing the product on the market in order to ensure that it is safe and that it bears appropriate warnings on the risks which it may cause;
- arrange for persons who might be exposed to the risk arising from a product to be warned of such a risk in good time and in a suitable form, including by the publication of specific notices;
- introduce a ban - for as long as is necessary to carry out checks and, in any event, for a period not exceeding 60 days - on supplying, proposing to supply or displaying a product or a batch thereof if there is any specific information pointing to an impending risk to public health and safety; the duration of the suspension must be specified in the measure;
- introduce a ban on putting a dangerous product or a batch thereof onto the market and adopt the necessary measures to ensure compliance with the ban;
- order that the product or batch thereof that has already been put onto the market be made to conform, within a mandatory period, with the safety requirements laid down in the implementing legislative decree, provided that there is no impending risk to public health and safety; and
- order the withdrawal from the market and, where necessary, destruction by the producer, or, in any event, at his expense, of a product or batch thereof if the required rectification has not been carried out or if the product or batch thereof does not meet the standards laid down in the safety criteria set out in Article 4 of the implementing legislative decree or if it is established that, even though the product meets the standards, it is dangerous and constitutes a serious, direct risk to the health and safety of consumers.

Controls are carried out by each Ministry through its own bodies and laboratories (except that the Ministry for Industry does not have its own laboratory and has to use private laboratories to carry out necessary tests). For example, the Ministry for Productive Activities acts through Chambers of

Commerce (*Camere di Commercio*) which sit in the main town of each Italian province. The Ministry acts as the coordinator and the Chamber of Commerce as its executive agent. The 103 Chambers of Commerce throughout Italy are qualified within the limits of their respective territory. We believe the Chambers of Commerce have the necessary legal policing powers and must also impose administrative penalties in the case of infringement of product safety laws.

"*Conferenza di Servizi*" is an organisation created specifically by decree no 115/95 to coordinate the activities of the various Ministries. It has to convene at least twice a year in the premises of the Ministry for Productive Activities, which constitutes the responsible authority. Problems which might emerge with the coordination of tests are settled through this official body. Organisations for consumer protection can communicate their comments to the administration through the *Conferenza*.

Article 10 of legislative decree no 115/95 provides that, except in the case of a more serious offence punishable by law, producers who put on the market dangerous products or who do not comply with certain enforcement provisions can receive a prison sentence of up to a year or a fine of 30 million Lire [10,000 Euros]. In addition, besides the criminal sanctions just mentioned, there exist a number of administrative sanctions, laid down in the second paragraph of Article 10 of the Italian law. The producer or distributor which does not provide monitoring authorities with all necessary information requested under the terms of Article 6 par.3 lett. b), is liable to an administrative fine of 1 to 6 million Lire (500-3,000 Euros).

Consumer Information

In developing consumer policy, particular importance is attached to information. In this field, a general law has been promulgated (Act No 126 of 10 April 1991, "**Regulations concerning consumer information**") together with relevant implementing provisions: legislative decree no. 101 dated February 1997 "**Enforcement regulations**". This broad outline is believed to take the form of an evolving "corpus" of standards.

In Italy, consumer information activities are organised by:

- the public administrations in the framework of their specific powers;
- public bodies operating at central or local level, such as the regions, provinces, municipalities and Local Health Units, or;
- private bodies, notably consumer organisations.

In addition, a number of consumer programmes are regularly broadcast on Italian television. Use of the media is seen as a powerful tool by the consumer groups. Besides consumer organizations, there is the **European Consumer Information Agency** based in Turin, which was established in 1994 and is co-funded by the European Commission and the Piedmont Region. The agency has a wide range of tasks in informing, advising and helping consumers; it has a documentation centre on consumer law and consumer economics in Europe, an information office open to associations, groups and private individuals, and a Centre for Comparative Research which publishes studies, brochures and documents in the field.

"Ten Golden Rules for Consumers "

To mark the 10th anniversary of the misleading advertising legislation, the Competition Authority launched its 10 golden rules.

"Read the small print/ check the real price / miracles are rare/ think twice before signing / beware of slogans / don't pay dearly for what will never happen/ check out the real cost / it's only make believe / beware of hazards/ safeguard children"

Market case studies

1. Second Hand Cars

Consumer associations had agreed a standard form of contract. Traders using the contract could use the logo. Feedback from consumers was the only way of monitoring the success of this. It was not clear how consumers would be made aware of it.

2. Plumbers

The service sector was a problem for consumers. Some sectoral agreements existed. The new Directive guarantees product and professional services. Some city and local authorities enter into agreements with individual professionals, agreeing standard charges and rules. Consumers can contact the agency for advice. But there appears to be no control or monitoring of the outcome.

Japan

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Japan

Goals and Objectives

As part of broader structural reforms of the Japanese economy, initiated by Prime Minister Koizumi, the government is seeking to redress the imbalance described above through the establishment of several institutions and by bringing in new laws. The aim is to increase consumer sovereignty in Japan.

Consumer policy has been shifting its stance from aiming for consumer protection by pre-regulations under conventional government administration to consolidating fair and clear market rules and strengthening post surveillance functions. In such a policy environment, consumers themselves are requested to positively collect information, take a reasonable judgment and action on their own responsibility. The Cabinet Office offers the following four reasons why it feels it is necessary to increase the level of consumer protection measures in Japan:

- it is normally difficult for each consumer to get accurate information on manufacturing process or the quality of products due to the complexity of products and production. It is also difficult to judge the safety of products only by their own knowledge and experiences;
- with the spread of mass production and mass consumption, the number of injuries caused by defective products has been increasing;
- it is often difficult for consumers to specify the real cause or responsible person of an accident of injuries because the complexity of the production and distribution system; and
- with the development of advertising and marketing skills, enterprises in some industries have monopolistic power through product differentiation in the market and hold a dominant position over consumers.

The Cabinet Office Quality of Life Policy Bureau is currently considering a new framework for consumer administration under the title "Considering the Way 21st Century Consumer Policy ought to be". This review will try to take into account the following changes in Japan which have occurred since the Consumer Protection Fundamental Act was brought in during the 1960s:

- development of market economy, away from the post war economic system, which involved a large degree of government direction over markets;
- globalisation of economy and increased internet trading;
- significant shift in consumption patterns from daily necessities to upmarket goods;
- growing emphasis on service goods; and
- forms of trading have become more diverse and complex, as have methods of payments.

The review will aim to address what is perceived as the growing information and negotiation gap between businesses and consumers. The concerns of consumers have also shifted from problems of product pricing, quality, capacity and other relatively simple issues to issues concerning service, agreements and cancellations – more complex problems.

The government recognises that consumers suffer from an asymmetry of information between consumers and business operators, insufficient development of a fair and transparent market and underdevelopment of remedial programs with insufficient damages available. To solve the government's aim is to improve the transparency and availability of information, improve the functioning of the market by removing the asymmetry of information and build up a mechanism of equitable conflict resolution.

The basic directions for reviewing consumer policy are to:

- promote the establishment of rules so as to provide a system that is transparent and easy for consumers to understand;
- ensure safety in consumption and use and construct stricter penalty system for serious offences against consumer's rights;
- set up a system that provides for the fair and speedy resolution of conflicts; and
- create an environment for adequate education, training and information in order to enhance consumer's abilities to assume responsibility for their own decisions and actions.

Specific Considerations of Consumer Policy in 21st Century:

- *Purpose of consumer policy* – should consumers be viewed as agents responsible for realising their own rights rather than regarding them as the weak to be protected?;
- *Development of fair market, as perceived by consumers* – more than just promoting consumer 'profit' as is reflected in competition policy;
- *Positioning of voluntary action standards and other regulations* – clarify their position in order to promote the establishment and observance of such standards;
- *Consumer rights* – should a 'declaration of consumer rights' be drafted?;
- *Role of administrators, business operators and consumers* – should consumers be more self reliant in exercising their rights? Should business disclose more information? Should there be more focus on how these parties relate to each other?

Institutions and Resources

Consumer policy organisations in Japan were first set up in the mid 1960s including the Quality of Life Policy Bureau in the Economic Planning Agency (1965). This agency was then recently subsumed into the powerful Cabinet Office, highlighting the increased importance placed on consumer protection measures as part of broader structural reform measures.

Conference on Consumer Protection – is chaired by the Prime Minister is a ministerial council to plan draft the basic direction of the government's consumer policy and to promote related policy measures. The council consist of 15 ministers all of whom have their own role in the government's consumer policy. Furthermore, an inter-ministry meeting on consumer policy at the director level is held several times a year for the purpose of daily coordination and follow-up of the measures, which are decided by the Consumer Protection Council. The Head of the Cabinet Office Consumer Policy Working Group serves as Chairperson of this council.

Quality of Life Policy Council – this is a consultative organ for the Prime Minister, which was established in the Economic Planning Agency in 1965. The council consists of experts in this field, namely scholars; representatives of consumer organisations and representatives of major industries. The council studies and deliberates basic and important problems and issues on consumer protection policy. The Consumer Policy Subcommittee was established at the 50th General Meeting of the Quality of Life Policy Council held in July 2001 to study and deliberate on measures to rebuild confidence between the consumers and business and to evaluate policies for ensuring that consumers are subject to proper contracts.

The **Cabinet Office**, formerly known as the Economic Planning Agency, coordinates fundamental consumer policy measures of related ministries and agencies and is the secretariat of both the Conference on Consumer Protection and the Quality of Life Policy Council. The Consumer Policy Division and the Consumer Affairs Divisions fall under the Cabinet Office's Quality of Life Bureau.

The **Ministry of Trade and Economy (METI)** consumers affairs division is structured as follows:

- Consumer Affairs Policy Division - deals with the planning side of the Specified Commercial Transactions Law. This law covers issues such as door-to-door sales, mail order sales, telemarketing sales, multi-level marketing and specified continuous service offers;
- Consumer Protection Division – deals with the enforcement of the Specified Commercial Transactions Law;
- Product Safety Division – governs the four product safety laws: Consumer Product Safety Law, Electrical Appliance and Material Law, Law Concerning the Securing of Safety and Optimisation Transaction of Liquefied Petroleum Gas and the Gas Utility Industry Law. This division also enforces the Household Goods Quality Labelling Law;
- Commercial and Consumer Credit Division – is responsible for the Instalment Sales Law; and
- Commerce Division – governs the Commodity Exchange Law, Law concerning Consignment and Other Matters Relating to Futures Transactions in Foreign Commodity Markets and the Law Regarding Regulation of Business concerning Commodities Investment.

There are 80 staff in the Tokyo headquarters of METI who work on consumer affairs issues and 69 who work in the different regional branches of METI.

The **Japan Fair Trade Commission (JFTC)** is the body responsible for monitoring business practices in the country and for protecting consumers. The chairman of the JFTC five-man commission comes from the Ministry of Finance and there is also a representative from METI on the board. The aims of the JFTC are achieved through the implementation of the Antimonopoly Act.

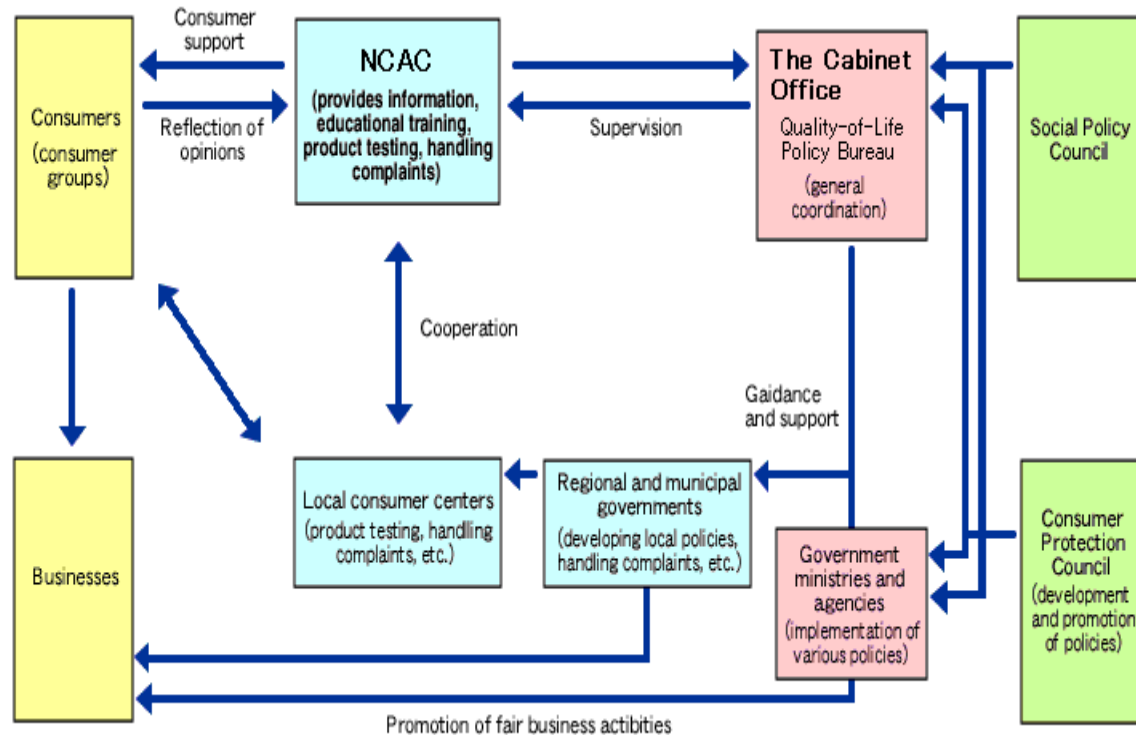
The **National Consumer Affairs Centre of Japan (NCAC)** is a "special status organisation established by the government to improve and stabilise people's lives" (formerly known as Japan Consumer Information Centre (JCIC)). It was founded in 1970 and its role to answer consumer inquiries, publish a variety of

information such as the results of product testing and has to come to play an important role in aiding consumer choice. It acts as an umbrella organisation for a network of around 400 local government consumer centres across the country.

The NCAC collects data on accidents using a similar system to the HASS system in the UK. This information is widely accessed by consumer organisations by consumer bodies and organisations. The NCAC has sophisticated product-testing facilities in a separate location on the outskirts of Tokyo, which is capable of testing a wide range of products under varying conditions. It also collates information on complaints and has staff on hand that answers calls or emails regarding consumer problems.

The following schematic shows how consumer policy is formulated in Japan and how the individual ministries, agencies and organisations all fit together.

Consumer Administration Structure in Japan



Source: NCAC

The **Japan Consumers Union** (Shodanren) was founded in 1956 and covers product testing and consumer education. It is a full member of Consumers International. It was established in order to provide a place for cooperative activities so that consumers can establish their rights and protect themselves.

The **Japan Consumers Association** was established in 1961 as foundation. The major work of the JCA is to offer information mainly consisting of results from product tests and to educate consumers. As the first consumer organisation in

Japan it introduced the following principles of the consumer movement into public debate:

- securing fair competition in the market;
- increasing choice;
- distributing accurate information;
- respecting consumers demands;
- establishing consumers administration; and
- increasing social responsiveness of consumers.

The JCA trains between 50 and 100 consumer consultants each year, mainly housewives. After a 2 month training course these consultants act as consultants of nationwide distributed consumer centres, lecturers or leaders of consumer groups. The work of these consultants is to make specialist and complex information simple for consumers to understand and to prepare counter measures to solve consumers' problems. The JCA also holds seminars, runs correspondence courses and training for those people in companies who deal with consumer complaints. The organisation also publishes a monthly magazine on consumer's issues entitled "Monthly Consumers". This has a circulation of 50,000 including 30,000 subscribers.

The **National Institute for Consumer Education** is an organisation supported by the Cabinet Office whose main objective is to educate school children about consumer issues. It does this through the distribution of brochures, holding seminars and through a database of information available to the public.

The Japanese central government budget for consumer policy was just under 30 bn Yen in 2000 (circa £180 million). We do not have details on the extent of local government funding for local consumer centres across the country. The budget was spent as follows:

Japanese Government Budget for Consumer Related Policies

| Item | £ million |
|--|------------------|
| Prevention of Injury | 59.4 |
| Standardisation | 9.0 |
| Proper labelling | 4.8 |
| Securing of fair competition | 3.8 |
| Proper and fair contract terms | 2.7 |
| Consumer education | 17.5 |
| Reflection of consumer opinions | 1.7 |
| Improvement of test and inspection facilities | 0.7 |
| Improvement of complaint handling system | 4.6 |
| Organising of consumers | 0.6 |
| Other | 74.5 |
| The National Consumers Affairs Centre of Japan | 16.8 |
| Promotion of consumer policies at local level | 2.2 |
| Total | 179.4 |

Source: OECD using average exchange rate 2000

The budget suggests that Japanese consumer policy is highly centralised with promotion of consumer policies at the local level accounting for just over 1% of the total consumer policy budget. The largest single category is prevention of injury, which makes up a third of the overall budget. The two other significant parts of the budget are spent on consumer education (10%) and funding for the NCAC (9%).

Advocacy

The consumer lobby in Japan appears to be very fragmented. Organisations such as the Japan Consumers Association feel, however, that progress has been made in redressing the imbalance between the strength of the business voice versus the consumers' voice. Some consumer organisations point to the decreasing gap between the introductions of new consumer laws as evidence of this (almost 30 years between the Consumer Protection Fundamental Act and the Product Liability Law but just 6 years between the latter and the latest law, the Consumer Contract Law)

Integration of consumer policies with other policies

Covered by Consumer Protection Fundamental Act. The Cabinet Office is responsible for coordinating consumer policy with others and has a specific aim to ensure consumer protection policies fit well within the program of regulatory reform being proposed by the government

Legal Framework

The **Consumer Protection Fundamental Act** was enacted in 1968 and forms the backbone of Japanese consumer policy. The aim of the Consumer Protection Fundamental Act is to promote comprehensive measures for protection and improvement of consumer's interests. The Act defined the responsibilities of the central and local governments and business enterprises as well as the role of consumers:

- the central and local governments should plan and implement comprehensive consumer policies in accordance with the development of the economy and the society;
- enterprises should take necessary actions for consumer protection and follow government policies; and
- consumers should play a positive role in the improvement of consumer life by taking the initiative to acquire necessary knowledge on consumer life and by endeavouring to behave self-reliantly and rationally.

The Consumer Protection Fundamental Act also defines the government's basic policy stance on consumer policy. In order to promote this policy stance, a government organisation named the 'Conference on Consumer Protection' was set up. Based on this law, national laws and numbers of local government ordinances have been legislated. Various consumer policy measures in Japan have been implemented in accordance with these laws and ordinances.

The **Consumer Contract Law** was passed in April 2000 and has been enforced since April 2001. It sets out new civil rules to contribute to the fair and speedy

settlement of disputes relating to consumer contracts. Such disputes have been increasing in recent years against the backdrop of the gap in quality and quantity of information and in negotiating power between consumers and business. This Act enables consumers to avoid their declarations of intention to offer or accept contracts when they are mistaken about the contents of the said contracts or distressed by certain acts of businesses and nullifies, in part or in whole, clauses that unfairly impair the interests of consumers.

Before this law was enacted it was not possible for individuals to take lawsuits against corporations. Previously, aggrieved consumers had to rely on an article of civil law against public order. In general observers believe that progress has not been as significant as expected. Only six cases have been sentenced through this law.

Enforcement

Enforcement of consumer policy in Japan appears to be very weak. Several parties have told us that the level of enforcement is not high enough to provide adequate incentives to businesses. JFTC has powers of enforcement under the Consumer Protection Fundamental Act. The Consumer Contract Law brought in 2000 allows consumers to nullify contracts.

Redress

Most consumer complaints regarding goods and services are handled through negotiations between consumers and businesses. The NCAC and local government consumer information centres handled 883,827 complaints in 2001.

The Consumer Product Safety Association gives approval to affix the SG-mark on a product when it conforms to the standard. When a defective product bearing this SG-mark causes an accident the consumer is entitled to compensation under the remedy system. In 1999 only 30 such cases occurred.

The Consumer Contract Act provides for the avoidance of a declaration of intent from a consumer. This may be possible under the following conditions:

- the consumer is solicited by the seller to enter into a contract:
- the seller performs one of the enumerated prohibited acts:
 - misrepresentations:
 - false evaluations in respect of future prices, of amounts of money that consumers should receive in the future:
 - intentional failure to represent disadvantageous facts:
 - failure of seller to leave a consumer's place when requested by consumer to do so (door-to-door selling); and/or
 - not allowing a consumer to leave a place where he is solicited to enter into a contract.

A consumer is not held liable for a contract that has been made under the conditions mentioned above. However, avoidance of a declaration of intent is only possible within 6 months from the time ratification was possible.

Product Safety

The **Product Liability Law** came into force in July 1995. The aim of this law is to “relieve the injured person by setting forth liability of the manufacture etc. for damages when the injury on a life, body, or property is caused by a defect in the product and thereby contribute to the stabilisation and improvement of the people’s life and to the sound development of the national economy”. The liability is subject to a three-year time limit from the time the subject is aware of the damage. The Product Liability Law ensures the safety of all products. Before this law was in place consumers had to negotiate with companies by themselves to obtain any kind of compensation. However, a point stressed to us what that Japanese consumers are reluctant to go to court so there have been only a few cases where this has happened.

Various measures are currently being promoted which include improving an alternative dispute resolution system, preparing a cause instigation system, strengthening of the gathering and providing of information related to product accidents and improving product safety education. The Japanese believe their product safety laws are stricter than EU laws but less strict than those in the US.

The **Consumer Product Safety Law** is responsible for ensuring there are adequate levels of safety measure son consumer products, regulates manufacturers and sales companies to prevent the distribution of hazardous products with the mandatory PSC-mark system. The law was amended in August 1999 to abandon governmental certification and introduce third party certification.

METI has designated five products as being self-confirmation products, deemed to be particularly hazardous to consumers. These products are required to have conformity assessment by the relevant third-party conformity assessment body. In these special cases the products are deemed so potentially hazardous that it is considered manufactures and importers cannot fully ensure the safety required to prevent the occurrence of injury to life and body of consumers.

These five products are:

- baby (cot) beds;
- mountain climbing rope;
- motorcycle helmets;
- pressure cookers; and
- laser products.

In Japan there are three other specific product safety laws, which provide for the obligatory recall on the orders of the relevant ministers:

Electrical Appliance and Material Safety Law covers 452 electrical appliances and materials designated by the METI as machines, tools and materials that are used by consumers. Of these 112 are designated by statute as specific electric appliances and materials, requiring conformity assessment tests by the third party conformity assessment body. There are technical standards for those products and regulations to ban the sales of non-PSE marking and non-

conformity products. The number of spot inspections was 3039 in fiscal year 2000 of which 74 received improvement guidance.

Gas Utility Industry Law covers four gas appliances as designated by METI as they possess safety problems in view of their construction, the methods and conditions of use and other matters. These products require third party conformity assessment tests by a third party body. There are technical standards for those products and regulations to ban the sales of non-PSTG marking and non-conformity products.

Law Concerning the Securing of Safety and Optimisation of Transaction of Liquefied Petroleum. Twelve products are designated by METI as machines, tools and materials which are used by ordinary consumers when they consumer LPG (Liquid Petroleum Gas). These products also require conformity assessment tests by a third party body. There are technical standards for those products and regulations to ban the sales of non-PSLPG marking and non-conformity products.

Only two recalls have been ordered under the Consumer Products Safety Law. There have significantly more voluntary recalls.

A mandatory quality labelling standards system, and a voluntary Japanese Agricultural Standards (JAS) system are being implemented. As of March 2001 there were a total of 352 JAS standards. The **Industrial Standardisation Law** aims to improve the quality of mineral and industrial products. To achieve this aim **Japan Industrial Standards (JIS)** have been established. As of March 1999 approximately 190 consumer goods are covered by the JIS marking system. In January 2001 the Japanese Industrial Standards Committee (JISC) established the Special Committee on Consumer Policy under its General Assembly in order to incorporate consumers viewpoints into national and international standardisation activities.

The **Household Goods Quality Labelling Law** regulates the labelling of the quality of household goods. As of March 2001, 90 goods have been designated.

Comparative Testing – As part of administrative reform, the NCAC has been ordered to halt conducting comparative testing by decision of the cabinet in December 2001. Since April 2002, the NCAC has focused on carrying out investigative tests on products that have caused accidents.

The **Japan Consumer Product Safety Association** determines which products receive the "SG" mark an abbreviation for Safety Goods. This stipulates the safety requirements of products that may cause injury or death due to their construction material or operation. If a person is hurt because of defects in a product bearing a SG mark the Association will take necessary action for compensation.

CSPA has concluded a product liability insurance contract with a non-life insurance company for the provision of compensation for injuries caused by defects in products bearing the SG mark. The maximum compensation payable is 100 million Yen (about £500,000) per person and the amount depends on the

cause of accident and degree of injury. This is a significant increase from the 30 million Yen that was available in 1996. For deaths or serious repercussion 600,000 Yen is paid out immediately except in instances where the accident is clearly the fault of consumers.

Consumer knowledge

The Cabinet Office implements a program to dispatch experts specialised in consumer education to various regions as lecturers for training seminars mainly targeting teachers. The Cabinet Office also holds meetings for consulting and explaining about consumer problems mainly for the elderly.

In addition the **National Institute on Consumer Education** was established in February 1990 under the joint auspices of the Cabinet Office and the Ministry of Education (MOE). The activities of the centre include research, conducting seminars and symposia, designing instructor manuals and teaching materials and establishing international and domestic information networks.

In 1988, the 20th anniversary of the enactment of the Consumer Protection Fundamental Act, the government decided to make May every year "Consumer's Month" in order to actively promote the education of consumers. The Cabinet Office carries out educational projects every May which include holding the National Assembly of Consumer Affairs, the preparation of posters and handbooks

Advisory Services – at the Central government level the ministry of Agriculture has 64 offices in its headquarters that handled almost 16,000 complaints in 2000. METI has 10 such offices and handled around 10,000 complaints in 2000 where as the MLIT (ministry of transport) had almost 4,000.

To drive consumer education in **school education**, a symposium shall be held for teachers, etc. who are actually practicing consumer education in "period of integrated learning" and "home economics" and at the same time, supplementary reading materials helpful for consumer education shall be prepared for them. Consumer education in schools started in 1992 as a result of long-term appeals to the Ministry of Education.

Consumer education will be included in the new Courses of Education to be implemented in 2002 at the elementary level and lower secondary level and 2003 at the upper secondary level.

At the local government level there were a total of 455 consumer centres in Japan as of April 2001 that contribute to the implementation of consumer policy at the local level.

Consumer confidence

Japanese consumers have very high expectations of product/service quality. Japanese consumer policy is quite distinctive in that it emphasises the responsibilities of consumers to adequately educate themselves. However, in the last few years policy seems to have shifted from relying on 'better consumers'

to increasing the amount of consumer legislation and enforcement available (for example, new consumer contract law brought in 2000). There are no surveys carried out which directly measure consumers' awareness of their rights in the way that the DTI uses the MORI survey.

Impact on Markets

In Japan wide use is made of business codes of conduct. However, industries themselves can decide on what is included in these codes.

Market Case Studies

1. Plumbers

Plumbers do not seem to be a big problem in Japan; however there have been some problems with homebuilders. Problem workmen are occasionally named and shamed in newspapers but this is very rare – only happened ten times in a year, throughout the whole of Japan. It appears white ants are far more of a menace than plumbers.

2. Used cars

The number of complaints of problems with used cars is growing. This is largely due to the fact that the ratio of used cars to new cars is increasing steadily – compared to the bubble years when Japan was something of a rarity in having more new cars than used cars on the roads.

Most (70%) used cars are sold through sophisticated auction sites. The biggest of these sites handles 10,000 cars a day. At each site there is a team of specialists to evaluate the quality of the cars. The odometer is checked at the auction as well to ensure it has not been tampered with. These sites seem to be an effective way of sorting out the lemons.

In order to become a used car dealer a license must be obtained from the Japan Used Car Dealers Association. No one can sell second hand cars as a business without permission from the local public safety commissioner.

Netherlands

dti

Netherlands

Goals and Objectives

The Netherlands Government's response to the Green Paper on European Union consumer protection states that "the most important principle for Dutch consumer policy is that of "mature consumers", i.e. that consumers guide the market by making choices, not the other way round. The aim is to help consumers to make these choices in a responsible way, as far as possible".

The Netherlands places importance on the existence of sound rules to support and protect the consumer's position in the market for goods and services, without placing an undue burden on business. Many of the consumer protection rules in the Netherlands are now based on European directives, which provide for a uniform, minimum level of consumer protection throughout the EU.

There is a strong emphasis is on self-regulation involving close cooperation and dialogue between the social partners, which is characteristic of the Dutch cultural approach of reaching agreement by consensus. This consensual framework (Polder Model) is not restricted to consumer affairs but appears to be widespread across many areas of economic and social life (such as employment or environmental affairs).

Currently a new consumer policy is being formulated by the Ministry of Economic Affairs. The stated objective of the review is to ensure that consumer interests play a more central role in the development of government policy and the determination of policy goals. There are three aspects to this review.

- ensuring that consumers have information of the right content and quality in order to be a strong market player;
- ensuring that markets and policies operate in such a way that consumers can play an active part and that benefits realised are for the consumer; and
- ensuring that if things do go wrong the consumers can be aware of the possible avenues for complaints, reinforcing their position in the market.

The role of the State in enforcement appears to be concentrated on the maintenance of product safety although the State also has enforcement responsibility for door-to-door selling, price indications and consumer credit. In other areas the Netherlands favours enforcement of consumer law "by" the consumer instead of "on behalf of" the consumer. The Netherlands asserts that consumers themselves must (with the aid of a sound legislative framework) be placed in a position where they can enforce their own rights. To this end, they must be able to make informed choices in the marketplace, they must know their rights (information and support) and be guaranteed the means of enforcing them (accessibility). This approach to enforcement has been criticised by the Dutch Consumers' Association as leading to a weakening of consumer protection in the Netherlands, citing evidence from their own and other research that the necessary information, support and accessibility are not currently in place.

Institutions and Resources

The **Ministry of Economic Affairs** (*Ministerie van Economische Zaken (EZ)*) leads on consumer and competition policy in the Netherlands. The Ministry employs some 4,700 civil servants. It consists of four Directorates-General, eight directorates and a number of agencies. Ministerial responsibility for consumer policy lies with the Secretary of State for Economic Affairs, Joop Wijn (at the time of the visit).

The main task of the EZ is ensuring an efficient economy with a strong and dynamic private sector. It encourages the free market in two ways. Firstly through competition policy, designed to create maximum scope for competition between companies, and secondly by keeping superfluous and unnecessary regulation at a minimum.

The EZ leads, with the **Ministry of Justice** (*Ministerie van Justitie*), on the Competition, Deregulation and Legislative Quality (MDW) project. This project, which was launched at the start of the first Kok cabinet (1994), aims to revise outdated legislation. The project recognises that regulation is necessary to guarantee public interests, but these regulations must do as little as possible to disrupt competition and economic dynamism unnecessarily. It therefore focuses as much on the quality of necessary legislation as on scrapping outdated and unnecessary rules. Amongst other things this programme has largely deregulated the Law of Establishment which contained licensing restrictions for many trades: very few now remain, for example plumbers, electricians, butchers.

Consumer policy is subsumed within the competition department. The annual budget of the competition dept is 5 million euro, of which approximately 1.5 million euro is spent on consumer policy. In the previous year this was spent mostly on a website providing consumer information and research into consumer satisfaction. There are 65 staff in the competition department of whom 15% work on consumer policy. Policy advisers in the Ministry are all educated in economics, law or social science.

Until the mid 1990's the consumer policy budget was somewhat larger because public funding was provided to the Consumers' Association. This was ended in the mid 1990's due to budget cutbacks.

The **Netherlands Competition Authority** (*Nederlandse Mededingingsautoriteit, NMa*) is an agency of the Ministry of Economic Affairs and has responsibility for enforcing the Dutch Competition Act. The NMa also contains the energy regulator (*Dienst toezicht en uitvoering Energie (DTe)*) and transport regulator (*Vervoerkamer*). It employs over 300 people. One of its explicit goals is to enforce competition law for the benefit of consumers and the NMa in its decisions explains the effect of its decisions on consumers. There is no general remit or responsibility to enforce consumer protection regulations although the energy and transport regulators have sector specific consumer protection functions. There is no equivalent consumer agency.

The **Economic Monitoring Service** (*Economische Controledienst*) operating within the Ministry of Finance has investigative and enforcement powers in certain

areas of consumer law which carry criminal sanctions (for example the Door-to-Door Act (*Colportagewet*) and the Price Indications Decree (*Besluit prijsaanduiding producten*)).

The **Ministry of Public Health, Welfare and Sport** (*Ministerie van Volksgezondheid, Welzijn en Sport*), appears to lead on most aspects of public safety, including food and product safety. Within the Ministry of Public Health, the Food, and Health Protection Directorate is responsible for product safety. This policy directorate is responsible, inter alia, for drawing up proposals for legislation, implementing European directives, formulating policy outlines, managing and coordinating activities and implementing policy research. Where relevant official consultation takes place between the various ministries. The Ministry of Economic Affairs coordinates policy in the area of the New and Global Approach to technical harmonisation directives.

The **Food and Non-Food Authority** (*Voedsel en Waren Autoriteit, VWA*) is the new, independent Dutch government organisation, in which the public bodies responsible for the inspection and supervision of food and non-food consumer products have been brought together. Livestock disease prevention and animal welfare are also VWA's responsibility.

The VWA is part of the Ministry of Health, Welfare and Sports (VWS) but is also a delivery agency for the Ministry of Agriculture, Nature Management and Fisheries (LNV). VWS is responsible for its health protection activities, and the LNV is responsible for its activities relating to food production, the food chain, and the production chain.

The Food and Non-Food Authority consists of a central coordinating unit and two delivery units: the **Inspectorate for Health Protection and Veterinary Public Health** ((KvW) and the **National Inspection Service for Livestock and Meat** (RVV). The KvW was already part of the VWS while the RVV was part of the of the LNV. Supervision, research and communication are the three main tasks of the VWA. The central umbrella organisation is responsible for strategy, programming and direction of research, communication, legal and administrative affairs, policy advice and coordination of organisational affairs.

The **Inspectorate for Health Protection and Veterinary Public Health** (KvW) originates from the merger on 1 September 1988 between the Inspectorate for Health Protection and the Veterinary Public Health Inspectorate. The most significant task of the Inspectorate is the enforcement and promotion of compliance with regulations for foodstuffs, non-food consumer products and veterinary matters. There are a number of exceptions to this where other departments are responsible, for example, the transport inspectorate for motor cars. The Inspectorate is not responsible for the safety of services. The KvW is also the Netherlands national authority for the General Product Safety Directive.

The Inspectorate for Health Protection consists of 5 Regional Inspectorates. The Netherlands is divided into 5 regions and the Regional Inspectorates are responsible for all the enforcement activities in their region. A Regional Inspectorate consists of an enforcement department and a laboratory where most of the samples are tested. Each Regional Inspectorate has a specialised

function or area of expertise. Two of these specialise in product safety. The Regional Service for the North specialises in chemical product safety, and the Regional Service for the Southwest specialises in physical/mechanical/electrical product safety.

The Inspectorate for Health Protection employs approximately 900 persons and is the largest specific Enforcement Body in the Netherlands. Out of the 900 employees, approximately 300 are inspectors doing fieldwork, of which 40 inspectors work on non-food products. This involves particularly engineers and chemists, but also lawyers. Their training is often supplemented by in-house training. Each regional inspectorate employs approximately 160 persons. Each has veterinary inspectors, inspectors for food and non-food products. The monitoring of the market is therefore ensured horizontally at regional level.

The Regular Consultation Meeting on the Consumer Goods Act (*Regulier Overleg Warenwet*) is a consultation body that examines proposed amendments to the Consumer Goods Act and the enactment of statutory instruments. Trade associations, consumer groups, Ministry of Public Health, the Ministry of Agriculture, the Inspectorate for Consumer Goods and Veterinary Affairs and relevant public industrial organisations can all be represented at the meetings. Although there is no legal basis for the meetings, they play an important intermediary role between the Government and relevant interested parties and the government pays notice to the outcomes of the meetings. There are two types of meeting, general meetings to consider policy issues and expert meetings to consider technical issues.

Non-Governmental Organizations

Advertising in the Netherlands is largely controlled by self-regulation by the industry. The main authority is the Advertising Code Commission (*Reclame Code Commissie*) although for certain products, such as medicinal and health products, separate authorities exist. General advertising rules, restricting deceptive and derogatory advertising, as well as passing off and advertising that is against standards of public decency and good taste, are laid down in the Dutch Advertising Code (*Nederlandse Reclame Code*). However, for many products and services (for example alcohol, cigarettes, door-to-door sampling, sweepstakes, etc) special advertising codes exist. These codes are based on agreements between the organised media, advertising agencies, advertisers and the Consumers' Association. The Advertising Code Commission is a complaints board and is not involved in active surveillance or enforcement. The Advertising Code Commission can, in case of breach of one of the codes, only impose (legally non-enforceable) individual or public "recommendations". However these recommendations are nevertheless generally followed by the industry. Dutch Courts also tend to follow such recommendations when court proceedings are initiated.

The **Foundation for Consumer Complaints Boards** (*Stichting Geschillencommissies voor Consumentenzaken (SGC)*) was established in 1970 to provide a low cost dispute resolution mechanism for complaints between consumers and suppliers of goods and services. SGC is a cooperation between

trade associations, businesses, Dutch Consumers' Association and the ANWB (Royal Dutch Touring Club). The Foundation itself does not resolve disputes. There are 29 Complaints Boards operating under the SGC. The Complaints Boards (which are recognised by the Ministry of Justice) and the trade organisations that cooperate with them are: automobiles; banking matters; central aerial installations; Code of Conduct for Mortgage Financing; dating agencies; dry-cleaning; electrical goods; funeral services; furniture removals; home furnishings; hospitals; horticulture; installation technicians; laundry services; leisure; mail order; odd-job companies; ophthalmic matters; painting and decorating; parquet floorings; post; public transport; public utility companies; solicitors; taxis; telecommunications; textiles; travel; water sports.

For a Complaints Board to be able to function under the umbrella of the SGC certain conditions must be satisfied. First, it has to satisfy the conditions laid down in the Recognition Rules published by the Ministry of Justice. Second, it must have adequate grade and organisation and has to contribute towards its cost. Third, members of the trade association must not use unfair terms in their standard contracts with consumers. Therefore before a Complaints Board is set up branch and consumer organisations must review contract terms used by its members for fairness. The SGC does not take part in these negotiations. These are negotiated in the forum provided by the Consumer Committee of the Social and Economic Council (*SER*) by the Consumers' Association and the relevant trade association and govern standard term and conditions. Finally, trade associations must give a guarantee of compliance with the binding decision of its members of the Boards. The aim of these requirements is to guarantee due process of law and impartial decisions. There are some limited exceptions to these criteria. For example the telecommunications board was set up as a result of the 1998 Telecommunications Directive and there is neither a representative trade association nor agreed terms and conditions.

The complaint boards cover those businesses that are members of the relevant trade association. Businesses that are not members of the relevant trade association may submit to the complaint boards but are not obliged to. The Ministry of Justice has the power to apply the standard terms and conditions to the activities of non-members of a particular code but has not to date chosen to do so. Almost all the Complaints Boards of the SGC consist of three members: a chairman, a member nominated by the trade association concerned, and a member nominated by the Consumers' Association or the ANWB. Some Complaints Boards have a secretary. Where necessary, experts can be called in. Chairmen, members and experts are appointed by the SGC Board. They are completely independent and impartial. They are appointed for a period no longer than four years. They are then immediately eligible for re-appointment. The costs of the SGC are covered by the subsidy given by the Ministry of Justice. The costs of the Complaints Boards are covered by the trade associations, the Dutch Consumers' Association and the ANWB. Consumers pay a complaints fee when lodge their case, which is reimbursed if the complaint is found to be justified. Consumers may be asked to place disputed money on deposit with the board.

The Dutch Consumers' Association (*Consumentenbond*) is a membership-based, non-profit association, dedicated to promoting consumer interest in the

marketplace. It has approximately 600,000 members out of a total Dutch population of 16 million, making it the largest consumers' association per head of population in Europe. Approximately 1 in 10 households is a member.

The Association has an annual turnover of approximately 30 million euro derived mainly from membership subscriptions (45 euro). It does not receive any direct State funding, although several ministries providing subsidies for specific projects. The Association has 220 employees of which 30-40 staff deal with a consumer helpline. The helpline deals with approximately 300,000 calls per year, with each member calling on average once every 2 years. There are 15 policy workers and 40 research workers.

The Association's main activities consist of:

- *promoting social interests*: standing up for the interests of the consumer against politics and industry, so that consumers can enjoy – and continue to enjoy – freedom of choice;
- *choice supporting information*: providing independent information about products and services on the basis of tests or other evaluations, so that consumers can make an informed choice; and
- *consumer rights*: offering legal assistance or advice to members when suppliers fail to fulfil their obligations.

The Association's magazine "Consumentengids" is sent to members through the post each month. Members can also make use of a telephone Helpline if they have queries about tested products, financial matters, or about their legal position as a consumer.

Other regular publications from the Association include *ConsumentenGeld* (Consumer & Money), *Nieuwsbrief Gezond* (Health Newsletter), *de Digitale Consument* (Digital Consumer) and *Consumenten Reisgids* (Consumer and Travel). The Association also publishes and sells books and CD-Roms about a wide range of consumer issues. These items can also be purchased by non-members.

The Association's website provides a host of free consumer information. Members of the Association can consult the results of any of the tests. The Association works closely with social partners including businesses, other international consumer protection organisations and the European Commission. It is effective in raising the consumer agenda both in Parliament and more widely, for example it gets items into the media several times a day.

The Association has taken a few legal cases on behalf of groups of consumers in recent years. However these are limited in number, one or two per year, partly due to financial constraints and partly because of concerns about this role. The Consumers' Association is campaigning for the government to create a state enforcement agency to take on this role.

Advocacy

The Committee for Consumer Affairs

The SER (*Sociaal-Economische Raad*) Committee for Consumer Affairs (CCA) has operated for more than thirty years as the main consultative body to the Dutch government on consumer policy. Consumers, business associations and independent members are all represented on the CCA, each holding six seats. The consumer members are appointed by the Consumers' Association (*Consumentenbond*). Four of the business members represent the Federation of Netherlands Industry (*VNO-NCW*), and the remaining two the Association of Small and Medium-Sized Enterprises (*MKB-Nederland*). Officials attend the meetings and give a briefing on the requests for advice received from the government. So far, the CCA has issued more than forty advisory reports, some of which were unsolicited such as ICT (Information and Communication Technologies) and the consumer, and a dozen or so reports focusing on a variety of issues affecting the position of the consumer. The CCA's activities are derived from the advisory task performed by the SER, in conformity with the Industrial Organisation Act.

Promotion of self regulation

The SER (Coördinatiegroep Zelfreguleringsoverleg) is the forum for dialogue at the industry or market level between business and consumer organisations to obtain agreement on self-regulation such as standard contract terms. The *Consumentenbond* always participates in these discussions but may be supplemented by sectoral consumer associations. More than 50 sets of contract terms have thus far been concluded within the SER framework.

Integration of consumer policies with other policies

The year 2000 Progress Report on "Structural Reform in the Netherlands" states that "over the past few years, consumer policy in the Netherlands has become a fully integrated part of marketing policy. It primarily targets the role of the consumer as a fully-fledged market player and examines the way in which the market serves the consumer. The aim is to keep the thresholds and obstacles for consumers as low as possible; consumers must be able easily to access and function on the market."

Legal framework

Many of the consumer protection regulations in the Netherlands are now based on European directives, which provide uniform, minimum level of consumer protection throughout the EU. These directives are on the whole implemented into Dutch law through their incorporation into the Dutch Civil Code (*Burgerlijk Wetboek*).

Rules on doorstep selling and on price indications are contained in the Door-to-Door Act (*Colportagewet*) and the Price Indications Decree (*Besluit prijsaanduiding goederen*). Failure to comply with certain provisions of these regulations (for example, failure of a doorstep selling to include cancellation rights) carries criminal sanctions. These are economic offences within the meaning of the Act on Economic Offences.

Consumer credit is regulated by the Consumer Credit Act 1992 (*Wet op het Consumentenkrediet*). Responsibility for this regulation rests with the Ministry of Justice.

Other rules aimed at protecting the economic interests of consumers are contained in the Dutch Civil Code (*Burgerlijk Wetboek*) (in this paper the DCC). The DCC consists of nine books. Books 6 to 8 set out the law of obligations.

Within the law of obligations, there is a general part (Book 6) followed by some more specialised parts (Books 7 and 8). Book 6 includes regulations on general contractual conditions (art 6:231-247), which is in its basic structure and a number of details is modelled after the 1977 German law of contract (*Gesetz zur Regelung des Rechts der allgemeinen Geschäftsbedingungen – the so-called AGB Gesetz*). The general contractual conditions regulations protect every “other party” irrespective of whether it is an individual consumer or a company. They offer the consumer more extensive protection than Article 3 of the Directive on Unfair Terms in Consumer Contracts (93/13/EEC) because they apply not only to general contractual conditions “which have not been individually negotiated”, but also to terms which have been individually negotiated. Book 6 also contains special provisions on deceptive or misleading advertising stemming from the general provision on tort.

Book 7 deals with the specific contracts, like contracts for the sale of goods, leasing, the labour contract, building contract, etc. Some of the contents of this Book are derived from European directives, like the ones on timeshare, distance contracts, the medical contract and the travel contract. Book 8 is concerned with transport law, and is strongly influenced by international treaties. The DCC provides that “goods or services must live up to the expectations a consumer should reasonably have”. Title 7 of Book 7 contains, apart from provisions concerning the “legal guarantee” for all buyers in art. 17, specific provisions concerning “consumer sale”, for example, article 18 and special rights for consumers in article 22 (the EC directive concerning consumer guarantees has been implemented in Book 7, Title 7)

The DCC also contains rules on collective interests actions which, with one exception, are contained in Book 3. The exception is Article 6.240 whereby consumer organisations can apply to a special court, requesting a ban on the use of unfair contract terms.

Article 3:305a and 3:305b of the DCC allow private law associations or foundations as well as public law entities to bring actions, under certain conditions, for the purpose of protecting “interests similar in kind which are held by other persons”, in other words actions to enforce collective interests. Actions brought pursuant to those articles cannot however relate to damages in money. Those articles came into force on 1 July 1994. However, before they were even enacted, the right of associations to bring actions in tort for injunctive relief and even for compensation was recognised in judicial decisions.

The condition that private law associations or foundations have to meet to bring an action under Article 3.305 is that the interests they raise in their claim have to be represented in their statutes. In other words an organization can sue in

defence of certain interests if this is in accordance with the objective of this organisation. There is an expectation that the organisation will first endeavor to settle the dispute voluntarily with the defendant without the need for court action. According to the Consumers' Association these negotiations can prove very labour-intensive.

In addition to the general rules in the DCC restricting deceptive and derogatory advertising, in the Netherlands there are some specific laws and many self-regulatory codes that restrict advertising. For example, the advertising of medicinal products is regulated by the Medicinal Products Advertising Act ("*Reclamebesluit Geneesmiddelen*"), which implements EC Directive 92/28 on the advertising of medicinal products for human use.

Product safety

The Netherlands has had since 1935 a framework act of public law covering the safety of products, the Food and Commodities Act (*Warenwet*). This Act, many times amended, applies both to foodstuffs and non-foodstuffs. It comprises a general safety obligation, enables the authorities to take specific measures on individual products and entitles them to regulate the marketing of the products. The Act lays down in addition another regulatory power to transpose the Community directives concerning product safety, when the power to regulate the marketing of the products is not sufficient. It also gives several powers to the authorities enabling them to organise the necessary checks in order to ensure compliance to the Act. Any infringement of the provisions of the Food and Commodities Act is an economic offence within the meaning of the Act on Economic Offences. The latter envisages economic frauds for the whole of the Dutch legislation.

The Food and Commodities Act has been the subject of numerous modifications since its adoption. The last important modification dates back to 1988; it is on this occasion that the general safety requirement for non-foodstuffs was introduced.

The Food and Commodities Act as well as the Act on Economic Offences already largely transposed into the Dutch internal legal order the EC Directive on general product safety (92/59/EEC). Transposition of the Directive was completed by the Decree on general product safety issued in 1993 under the Food and Commodities Act: it entered into force on 29 June 1994 and has not been modified since.

More than twenty sectoral decrees have been adopted under the terms of the Food and Commodities Act concerning non-food products. Although not all the decrees adopted under the terms of the Act are of Community origin, sectoral Community directives on the safety of products intended for consumers are always transposed by such a decree.

The general safety requirements provided for by the Food and Commodities Act and the Decree on general product safety do not apply to products covered by sectoral regulation which already envisages a general safety requirement. However, if the safety aspects of these products are not covered by this

regulation, the general safety requirements of the Act and Decree applies to them. Thus, for example there is a sectoral decree of Community origin covering toys and including the applicable safety requirements. The Act and Decree nevertheless apply in relation to the safety of noises emitted by toys, safety aspects not covered by the sectoral decree. The Act and Decree therefore provide a horizontal safety net covering all products. They supplement sectoral regulation and so ensure that a safety obligation is still applicable to all safety aspects of a product, in addition to the authorities powers regarding all products.

The Food and Commodities Act applies to any to any person who markets a product out of the framework of private domestic activities. The Act prohibits the placing on the market of unsafe products. In fact two different prohibitions are envisaged, one targeting foodstuffs and the other, non-foodstuffs (Article 18a and 18c of the Act). Thus the Act stipulates that it is prohibited " *to market foodstuffs which, because of their poor quality, can endanger the health or the safety of persons* " (Article 18a). This obligation applies not only products intended or likely to be used by consumers, but to all foodstuffs provided out of the framework of domestic activities.

The Act lays down in addition the ban " *on marketing goods other than foodstuffs, intended or adapted by their nature to be used within the household, when the person who markets them knows or must reasonably suspect that they can present a danger to the health or safety of persons, under foreseeable conditions of use because of their destination* " (Article 18c). This obligation applies only to non-foodstuffs for consumer use. These provisions envisage implicitly two definitions of "dangerous product" according to whether this involves a non-food product or a foodstuff.

There are also additional prohibitions concerning foodstuffs. First, the Act lays down a ban " *on marketing foodstuffs unsuitable for consumption* " (Article 18d) which supplements the general safety requirement: it would cover the cases where a product is not dangerous. Second, (and reflecting an obligation in the GPSD) it is prohibited " *to prepare foodstuffs by using elements whose incorporation in these products has for consequence that these can endanger, through their poor quality, the health or safety of persons*" (Article 18b). This indirect obligation applies therefore before the marketing of the product, which is characteristic of the legislation on food safety where the phase of the preparation is also regulated.

Redress

Judicial redress

The Dutch consumer can enforce his rights before a civil court on the ground of Article 112 of the Dutch Fundamental Law. Enforcement through the courts is governed by the Civil Code on Access to Justice (*Wetboek Burgerlijke Rechtsvordering*). For cases brought before the District Court (*rechtbank*), the Regional Court of Appeal (*gerechtshof*) or the Supreme Council (*Hoge Raad*), the consumer needs to be represented by a lawyer, otherwise the judge will refuse to hear the case.

Although there is no direct equivalent of the UK small claims court, there are cases where a consumer can bring an action before another court, namely an administrative court. On 31 December 1991, a new procedure was introduced before the Cantonal Court (*Kantongerecht*) which has jurisdiction in the case of:

- claims not exceeding 5,000 euro; and
- claims concerning rent of housing or hire purchase, regardless of amount.

This procedure is simpler than one before a civil court. The consumer can represent him or herself, or may be represented by another person with legal training, e.g. a bailiff. However, at minimum, the consumer must employ a bailiff to serve the court notice on the trader. The judge can also try to effect conciliation (if the parties asked for it or on his own initiative): to this end he can order the appearance of the parties in person. However, recent changes have made this route less attractive for consumers because they must now pay 150 euros to bring proceedings and risk an award of costs being made against them if they lose their case. If the court rules in favour of the consumer the consumer is responsible for enforcing that order, via bailiffs if necessary.

Alternative Dispute Resolution

In the Netherlands most disputes between consumers and suppliers of goods or services are settled by alternative dispute resolution, rather than by the courts. These alternative procedures are informal, cheaper and faster than court procedures. The most important form of alternative dispute resolution for consumers in the Netherlands are the **Consumer Complaints Boards** (*Geschillencommissies*), many of which operate under the umbrella of the Foundation for Consumer Complaints Boards (SGC).

Consumer Complaints Boards have been established in various sectors since the 1970's. The Complaints Boards are set up jointly by trade associations, businesses and the Dutch Consumers' Association. The complaint boards are usually composed of a consumer representative, a representative of the trade association and an impartial chairman. They deliver a judgement in the form of a *binding decision*. Most Complaints Boards are recognised by the Ministry of Justice on the basis that they satisfy the Recognition Rules of the Consumer Complaints Boards (*Erkenningsregeling geschillencommissies consumentenklachten*). They do not fall under any regulations they do not wish to, but to operate under the Foundation of Consumer Complaints Boards (SGC) and to be recognised and subsidised by the Ministry of Justice then they have to fulfil certain criteria laid down in the Recognition Rules. These criteria are intended to ensure a fair procedure. In addition, to operate under the SGC, Complaints Boards must give a guarantee of compliance. There are some Complaints Boards which are not recognised, for example in the financial sector.

Traders who are not members of a trade association linked to a Complaints Board are not subject to the jurisdiction of the Complaints Board. However, a trader who is not a member of a participating trade association can decide to be subject to a decision of a Complaints Board.

A survey carried out in 1995 on the social relevance of the Complaints Boards operating under the SGC found that they were cheaper than court proceedings for consumers, business and the Government. However their application is

limited because although coverage varies from sector to sector, overall it is quite low with only about 10% of traders being subject to the jurisdiction of a complaints board. For example, in the telecommunications sectors all businesses are covered because membership is a legal requirement whereas in the furniture sector only 5% or less of traders are members of a trade association linked to the Complaints Board.

In general, there are only two important categories of disputes that cannot be dealt with by a Complaints Board:

- disputes regarding the non-payment of an invoice that are not based on a substantive complaint; and
- disputes that pertain to death, physical injury or illness.

Nor can Complaints Boards deal with matters that have already been submitted to an ordinary court.

Procedure

A consumer who wants to submit a dispute to a Complaints Board must always first try to resolve the dispute with the supplier concerned. Only if this fails can he or she submit the dispute to a Complaints Board. A supplier's terms and conditions of supply and payment will contain specific provisions regarding the way in which and term within which a complaint has to be submitted to that supplier and to the Complaints Board concerned. Complaints Boards operating under the SGC work with a standardised procedure. A complaint to a Complaints Board has to be submitted in writing, but a simple letter will suffice. The consumer will then receive a questionnaire which he or she can use to submit the dispute to the Complaints Board. Following the receipt of this completed and signed questionnaire the supplier concerned is given an opportunity to inform the Complaints Board of his/her standpoint. After the written phase of the procedure, the parties concerned are invited to present their case verbally at a hearing of the Complaints Board. Witnesses and experts can be heard at the Complaint Board or the parties' request. The procedure is set up with the view that the consumer should be able to settle the dispute without legal representation. The duration of the procedure is about six and a half months according to the 2002 Annual Report.

Costs

The Complaints Boards require fixed contributions which vary from about 20 euro to 80 euro depending on the amount invoiced for the product or service in question. This includes the cost of any expert reports required. If a Complaints Board finds in favour of the consumer the supplier will pay the complaint fee back to the consumer.

Binding decision

The Complaints Boards deliver decisions that are legally binding on both parties (Article 7:900, paragraph 11 of the Dutch Civil Code). It is not possible to lodge an appeal against a decision made by the Complaints Board. The only way to have a decision tested is to submit it to an ordinary court within two months after it was sent. A judge can, however, only marginally test the decision, as provided for in Article 7:904 of the Dutch Civil Code. This means that a judge will only declare the binding decision to be null and void if the decision,

according to reasonable and fair standards, is unacceptable in view of its contents or the way in which it was reached under given circumstances. This means that a decision by a Complaints Board will only be rejected by the courts if the Complaints Board has ignored the fundamental principles of procedural law, such the right of both parties to be heard. If a court rejects the decision it can deliver a judgement itself.

Enforcement

An important disadvantage of a binding decision compared to an arbitral judgement is that it does not have executive title. This means that if the consumer wants the other party to perform, he has to bring court proceedings for an order to comply with the binding decision. This difficulty is overcome in the case of Complaints Boards operating under the umbrella of the SGC because of the guarantee of compliance they are required to give. The result is that if a supplier does not voluntarily comply with a binding decision the trade association guarantees that its members will act in accordance with the binding decision. Such a guarantee entails that a trade association takes over the obligation the Complaints Board poses on one of its members whenever the member in question does not voluntarily comply with the obligation, nor submits the binding decision for testing to an ordinary court within two months after it was sent. This compliance guarantee ensures implementation of the decisions made by the Complaints Board operating under the SGC.

In addition to Consumer Complaints Boards there are a number of **Ombudsman schemes** in the Netherlands, mainly in the financial sector. In terms of the number of complaints received, the most important of these are the **Life Insurance Ombudsman** and the **Damages Insurance Ombudsman**. There is also a **Savings Banks Ombudsman**, a **Pensions Ombudsman** and a **Care Insurance Ombudsman**.

The schemes are set up by the relevant trade association who finance them. The ombudsman handles complaints arising in connection with a business which is a member of the trade association. He will only handle complaints concerning non-members where those non-members have agreed to submit to the regulation of the ombudsman. Nor can an ombudsman handle complaints which are the subject of more formal dispute resolution, for example court proceedings.

The services of the ombudsman are free. Usually the procedure is not public and does not include a hearing. The ombudsman tries to reach an agreement between the parties through mediation. When mediation does not succeed, a recommendation can be given in order to resolve the dispute.

The recommendation of the ombudsman is not a binding recommendation. It is not a declaratory agreement within the meaning of the Dutch Civil Code, which has the effect of a contractual obligation. Nevertheless, the recommendation of the ombudsman will usually be complied with by trade association members. The duration of the procedure is about three months.

Enforcement

There is no state agency with a general remit to enforce laws and regulations intended to protect the economic interests of consumers. This is in line with the

