

Addis Ababa, Ethiopia

Dealing with Unfair Trade Practices

Day One

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This paper is not a comprehensive account of ‘unfair trading practices’. The author has confined this paper to those unfair trading practices that he thought would be most relevant to this training workshop.

This paper reflects the personal views of the author and not necessarily those of his employer, the Australian Competition and Consumer Commission (ACCC).

An opening thought

A number of the papers I read during the preparation of this paper included a quote from Ron Bannerman, the first Chairman of the Australian Trade Practices Commission (TPC), the predecessor of the ACCC, and I think it is appropriate to reproduce it here:

‘Consumers not only benefit from competition, they activate it, and one of the purposes of consumer protection law is to ensure they are in position to do so.’

We should also remind ourselves that the preface to Ethiopian Proclamation No. 329/2003 Trade Practices Proclamation (TP Proclamation) provides recognition that consumer are the ultimate beneficiaries of the competition process when it states: ‘Whereas it is desirable to establish a system that is conducive for the promotion of [a] competitive environment ... to maximize economic efficiency and *social welfare*.’

What are Unfair Trade Practices?

Search the net and you will not find a standard definition of ‘unfair trade practices’. However, if you look at legislation across the world (for example from the national laws of India and Australia to the multinational grouping of COMESA) there is a remarkable degree of similarity in what is captured by the term ‘unfair trade practices’. Generally the term is used to describe businesses misrepresenting the products or services they are selling. Misrepresentations can be about almost any characteristics of a good or service, real or imagined. Consequently laws prohibiting unfair trade practices often include a general provision and more specific provisions addressing some of the more common types of misrepresentations.

Indeed that is the formulation of the unfair trade practices legislation I work with on a daily basis: the Australian *Trade Practices Act 1974* (TPA). Without reproducing the TPA in its entirety the relevant provisions are:

Part V Consumer Protection

Division 1--Unfair practices

- [52](#) Misleading or deceptive conduct (similar to TP Proclamation Article 10 (2)(c))
- [53](#) False or misleading representations
- [53A](#) False representations and other misleading conduct in relation to land. This might include telling a prospective purchaser that the land can be used for particular purposes when this is not the case, or misrepresenting to a prospective buyer what developments are taking place on adjoining parcels of land.

- [53B](#) Misleading conduct in relation to employment; for example inducing people to pay for vocational training on the understanding that at the completion of the course they will be given a job, when no such job exists
- [53C](#) Cash price to be stated in certain circumstances. A typical example would be advertising a car for sale for a certain price when in fact the consumer must pay registration fees, dealer delivery charges and government stamp duties before he/she can take delivery. I note from the formulation of the price display requirements in Article 20 (1) & (2) that adequate accurate price information has been recognised as a critical to Ethiopian consumers and effective competition.
- [54](#) Offering gifts and prizes that don't really exist or which are impossible to win. For example offering a prize in a quiz competition where everyone is eliminated because the questions keep coming until everyone is out of the 'competition'. Another example is the offer of a prize to the first 100 people to buy, but no prizes are actually awarded.
- [55](#) Misleading conduct to which Industrial Property Convention applies
- [56](#) Bait advertising. An example a store that usually sells 50 TVs per week advertising a TV that normally sells for \$1,000 for \$100 when there are only 2 or 3 in stock. Almost everyone who responds to the ad must miss out on the bargain but once they have entered the shop the sales staff try to convince them to buy another TV at full price.
- [57](#) Referral selling where consumers are persuaded to buy something because they are told that they will earn rebates for introducing the purchasers.
- [58](#) Accepting payment without intending or being able to supply as ordered
- [60](#) Harassment and coercion
- [63A](#) Unsolicited credit and debit cards
- [64](#) Assertion of right to payment for unsolicited goods or services or for making entry in directory
- [65](#) Liability of recipient of unsolicited goods

Division IAAA--Pyramid selling

Pyramid selling is a scheme where consumers are tricked into participating because they believe they will benefit from selling the right to participate in the scheme to other consumers who in turn will be rewarded for getting still additional consumers to enter and so on. The evil of the scheme is that it cannot be self sustaining and must collapse, so that most consumers will inevitably lose their money.

[65AAA](#) - [65AAE](#), [65AA](#)- [65AF](#), [65AG](#) - [65AM](#)

Division IAA--Country of origin representations

One can guess from the above that in Australia the ACCC has had many problems over the years with pyramid selling and misrepresentations about country of origin that have necessitated a series of legislative amendments. The specification of Article 21 (2)(a) representation as to country of origin is also an issue here in Ethiopia.

In Australia the TPA is enforced by the Australian Competition and Consumer Commission (ACCC). State and Territory *fair trading laws* also reproduce these same

provisions. In addition to these provisions there are many other consumer protection laws at the both the Federal and State/Territory level. These are mostly industry or conduct specific, for example the regulation of used car sales, insurance, door to door sales etc.

The TPA also includes competition provisions.

UTPs and the TP Proclamation

One would reasonably expect that legislative prohibitions on specific UTPs should reflect the experience in each country. The similarity of UTP tends to suggest that the principle conducts addressed are reasonably universal even if the specific products and their dollar values differ.

As noted above it seems that Article 10 (2)(c) TP Proclamation fulfils a similar role to s52 of the TPA. There is a saying in Australian consumer protection circles that, in respect of businesses making misrepresentations, 'if you can't get them under s52 you can't get them at all'. A good general prohibition such as Article 10 (2)(c) is the legislative cornerstone to curbing UTPs.

Part Four Miscellaneous Articles 20 and 21 and of the TP Proclamation also address important consumer protection issues relating to information disclosure relating to prices and labelling. While not normally regarded as UTPs because they are prescriptive information disclosures rather than conduct prohibitions, they do address universally common concerns of consumers and product/service characteristics where experience has shown that consumers can easily be misled in the absence of mandatory disclosure.

In Article 20 of the TP Proclamations, I see a significant opportunity for the Investigation Committee to earn the respect and admiration of the general public. In Australia a few years back the government of the day introduced a new 'Goods and Services tax' (GST). Not surprisingly the introduction of the GST was controversial. In addition to the natural concern about having to pay more tax, a major concern of the general public was that post GST, businesses would advertise and label ex GST prices with the result that consumers would find a 10% difference between the labelled or advertised price and the price at the checkout. The ACCC was very vigorous in ensuring truth in price advertising and labelling with the result that consumers generally saw the ACCC as being their champion.

I note that there are no TP Proclamation equivalents to the other UTP provisions that I have identified above.

Interestingly UTP relevant inclusions in the TP Proclamation that don't have direct TPA equivalents are:

- Article 10 (2)(a)
- Article 10 (2)(b)
- Article 10 (2)(e)

In respect of Article 10 (2)(a) I focus on the use of the word 'confusion'. This contrasts with how UTPs are interpreted in Australia and many other countries where causing consumers to be uncertain or 'caused to wonder' would not be caught by the

prohibitions on misleading and deceptive conduct. Of course this apparent difference could be simply an issue of translation.

A related issue is that of readily apparent exaggeration or ‘puffery’. Generally UTPs regulation would not prohibit puffery as it is part and parcel of selling since the beginning of time. Some examples of puffery might be:

- ‘this model is 2 ¼ times better than last year’s model’
- ‘you will have the ring of confidence if you use this product’
- ‘our restaurant is famous for serving the best food in town’ or
- ‘freshest taste ever’.

These types of representations are either vague or nonsensical, or an obviously an exaggeration.

Having worked, albeit briefly, in most member countries of COMESA over the past 8 years, I am now more aware than previously of just how destructive false rumours can be to consumer confidence and to individual businesses. I remain concerned though, that there is potential for regulations such as Article 10 (2)(b) and (e) to be hijacked for the purpose of deterring or preventing vigorous competition and aggressive advertising. For example accurate comparative advertising can be a very effective tool for informing consumers of new and better purchasing opportunities. As long as the words ‘falsely’ in (2)(b) or ‘false and unjustifiable’ in (2)(e) are given due emphasis the potential for unintended effects should be managed.

Means, motive and opportunity

Means, motive and opportunity

The means by which unfair trade practices are perpetrated are as varied as the number of products and services in a market place but of course the favourites have stood the test of time:

- packaging and labelling
- in-store advertising
- sales talks
- testimonials by trusted or influential people, for example celebrities, experts, ‘satisfied consumers’
- advertising in print, on radio and TV

The motive is obvious – to influence the consumer to buy something he/she won’t otherwise buy, to pay more for the product/service than otherwise or to switch the consumer from one shop or product/service to another.

The opportunity most often occurs at point of sale or in the lead up to the sale, for example in adverting. As a generalisation misrepresentations at the point of sale are more likely to be about characteristics of the goods or services that the consumer cannot readily determine for him/herself. Because advertising is often seen away from the goods and series in can touch on almost any characteristic of a good or service.

Where do UTPs fit in to consumer regulation?

Prohibitions on UTPs are just one form of regulatory response to consumer problems in the market place. Regulatory responses include (but not limited to):

- mandatory performance standards including product safety, technical performance (for example efficiency), packaging (for example specified units of weight, size or other important characteristics)
- mandatory information provision requirements, for example pricing, quantity, quality, origin or ingredients
- mandatory minimum qualifications for the provision of certain goods or services (often founding in licensing regulations)
- prohibition on very specific conduct, for example not selling food past its 'used by date'.
- Competition law (Yes I've included it here because we should remind ourselves that the market based consumer solutions flowing from competition often produces the fastest and most comprehensive consumer outcomes.)

Invariably the form and coverage of the regulation can be explained by how the problem was perceived and available regulatory options at the time. Just as 'one size fits all' is not really true in respect of clothing, it is my view that it does not apply to consumer protection. The wider the range of regulatory options the more likely it is that a better fit can be found between the cost of the problem to consumers and the cost of the managing it (compliance and enforcement costs), both of which are ultimately borne by both consumers and business (as market participants or as tax payers), although the relative burdens will vary depending upon the problem and the regulatory response.

The great advantage of UTP regulation as described here is that it built on the basic principle of '*don't lie*', a universal value. In this form the prohibitions are technology, industry and developmentally neutral. When regulation is industry or technology specific (whether by design or otherwise) extra care must be taken to ensure that the regulations remain relevant to contemporary market issues. Regulation introduced to address a consumer problem some years ago may not be as effective now, or worse, it may have anticompetitive effects that actually reduce consumer outcomes. Markets are increasingly dynamic as technologies change, trade barriers come down and consumers' tastes evolve. All regulation needs to be reviewed periodically to check for continued relevance, efficiency and effectiveness.

Because prohibitions on UTPs are principle based they are just as relevant in the context of provincial centre in Addis Ababa as they are in New York.

An example to back up this last assertion: For the last 12 months I have had one member of my investigatory team in Australia allocating 30% of his time to mail order lottery scam victims contacting the ACCC from Pakistan, India, Bangladesh and Sri Lanka. Many of these victims appear to have limited literacy in their own language and have borrowed money from fellow villagers to claim lottery prizes promised by the scam operators.

Competition law as consumer protection regulation

If competition is the market based mechanism that maximises consumer welfare why is there a need for consumer protection regulation? In preparing this paper I reread a number of papers that examine the interaction of competition law and consumer protection law in terms of both economic and regulatory theory. I've listed some of these at the end of this paper.

In my view the pragmatic answer to the question is that markets are dynamic with opportunities and blocks to competition emerging and fading all of the time. Introductions to competition law often refer to the concept of the 'level playing field'. The analogy might be more useful if it acknowledges that unlike in most games in the so called free market the sidelines, the goal posts and the players are constantly changing.

Some businesses will choose to differentiate themselves by producing better cheaper products. Others take a short cut and simply claim that they do. If markets adjusted more quickly than they do in practice only a few consumers would be misled before the wayward businesses engaging in UTPs found they were unable to compete as consumers quickly shifted their purchases to reflect the real relative values between competing goods and services.

Of course real markets are not frictionless. There are costs to exploring purchase opportunities (search costs) and sometimes for moving between sellers or products (switching costs). Consumers are particularly vulnerable to UTPs where purchases are infrequent or low value or where the personal characteristics of consumers (i.e. vulnerable and disadvantage consumers) reduce their ability to seek out or understand available information.

However, in the real world there are various reasons why even if this did occur, at least some consumers would be taken in by misrepresentations until word began to spread and alternative suppliers or products were identified. How much consumer loss during such transition periods is acceptable to society?

This is where UFT regulation comes in. Certain conduct which by its formulation will distort the process of competition is prohibited. But, and this is an important aspect of UFT regulation of the type I describe here, the ability of business to choose whether or not they make particular representations and the detail and circumstances of their representations remains within their power. Also there are no regulatory time lags to adjust to new market developments.

Should prohibitions on UTPs be included in competition laws?

I have had this debate many times over the last decade, and each discussion has firmed my views that:

- Competition authorities benefit from having a dual responsibility (competition and consumer protection). It humanises competition law enforcement and reminds investigators that the whole point of competition is consumer welfare.
- Consumer protection generates good public relations. Everyone can understand that UTPs are undesirable and successes will be more likely and more frequent than they will be in respect of competitor investigations.

Particularly in the early days of a competition law, not everyone will be convinced of its merits.

- In my experience the dual role is complementary in terms of staff management. The investigatory skills are essentially the same; consumer investigations occur most frequently are quicker and less resource intensive. This means staff are constantly using their full range of skills.
- Consumers benefit from having a competition authority that also has consumer protection responsibilities. Is it likely that government will assign priority to funding an effective authority dedicated to consumer protection? Or is it a better bet to hitch a ride with a competition authority that is much more likely to be appropriately funded, staffed and motivated?
- Understanding and accepting that many consumer protection problems can be resolved by market based solutions is unlikely to happen immediately. Exposure to the administration of competition law can open the eyes of consumer groups to new options for achieving consumer outcomes.

Some other issues

UTPs are not restricted to positive and prominent representations. Sometimes consumer can be misled by the way things are said (for example fine print) or what is not said (i.e. misleading by silence).

Businesses may use disclaimers in their advertising (such as ‘conditions apply’ or asterisks) as long as they are specific, clear, and highly visible.

To prevent a statement being misleading asterisks and fine print should be prominent enough to form part of the audience’s overall impression of the advertisement.

It is not acceptable for the important facts—the real terms and conditions of the offer—are hidden in fine print. The advertiser should clearly direct the audience’s attention to significant terms and conditions.

Some examples of unacceptable use of disclaimers and fine print include:

- conditions in obscure locations of the advertisement
- text that is too small
- text flashed on screen for only a moment
- voice-overs that are too quick or too quiet.

Generally UTPs do not impose on businesses a positive duty of disclosure. However there can be circumstances where the seller has put the buyer in a position where he/she knows that the consumer has been misled but does nothing to dispel that misunderstanding. An example might occur where a business trades under the name of ‘Ethiopian Village Crafted Souvenirs’ and prominently displays pictures of village people sitting in traditional huts carving decorations from wood but sells factory made bowls without any indication as to how they were made.

So called ‘manufacture confusion’ is increasing becoming an issue. This is best illustrated in the rapid expansion of mobile telephone contact options. In many countries the number of options and their complexity is such that many consumers become confused and respond to information overload by ignoring cost information that should be central to their purchasing decisions. My own observations lead me to

conclude that this is an area not yet adequately addressed by the administration of UTPs regulation.

Are unfair trade practices only relevant to consumers?

Most certainly not. Businesses are also big losers when it comes to unfair trade practices. Firstly responsible businesses will lose sales to disreputable businesses that engage in UTPs because the disreputable firms:

- unfairly increase their sales to the detriment of responsible businesses; and
- reduce their costs of purchase or manufacture.

Secondly UTPs can damage consumer confidence to the extent that overall growth in the market is affected. This can happen when consumers get overly wary about trying new products/services or new businesses.

The internationalisation of unfair trade practices

Most of us have no problem in envisaging international cartels. Picture if you will a small group of senior executives representing well know multinationals, all huddled together in a 20th floor suit of a 5 star hotel salivating over coordinated of price hikes for basic commodities makes most of us mere mortals feel powerless. What a world a way from humble UTPs which must surely be local and inconsequential in the grand scheme of things? Think again.

Increasingly the bad guys are taking advantage of two developments:

- Most consumer protection authorities are locally (nationally) focused and ignore cross border conduct. Sometimes the local focus is the result of legislation that limits the jurisdiction of authorities. Other times it is the result of a misguided paternalism by regulators supported by a view that:
 - This is a problem for developed nations and not one for developing economies.
 - People in our country wouldn't be interested or fooled by such conduct.
- Even where jurisdictional issues are not the problem, effective international cooperation between consumer protection authorities is still in its infancy. Often by the time national authorities have coordinated with their international sister authorities the bird has flown; the bad guys have shut up shop and moved on to other counties or the evidence has gone stale.
- Changes in technology are making international transactions cheaper, quicker and more accessible, even for low income communities. Mail (yes, ordinary post), phone, SMS, email and websites can make it easier to do business across the world than around the corner, even in developing economies. Sometimes the fact that the enticing offer is being made (or appears to come from) a developed economy make the offer more credible and attractive.

Ethiopia is a member of the Common Market for Eastern and Southern Africa (COMESA) and the COMESA Competition Law includes UTP prohibitions. Looking ahead it seems a reason expectation that trade between Ethiopia and its COMESA

partners will increase to the benefit of consumers and business in all countries. Harmonisation of commercial laws generally and competition/UFT laws specifically will facilitate this trade and its benefits by providing greater regulatory certainty for business trading across borders and increased trust by consumers which will translate into expanded trading opportunities.

Pro active non enforcement activities to combat UTPs

As long as we have human nature and the profit motive we will have UTPs. So eliminating them totally is a utopian dream. However we can:

- reduce the incidence of UTPs
- reduce the harm caused to consumers and responsible businesses cause by UTPs
- shift some of the cost of defensive measures and victim harm back on to those engaging in UTPs

Our non enforcement measures can be pre, during and post UTPs. For example:

- education can inform consumers of their rights, alert them to current or emerging problems and dangers, explain options for enforcing those rights
- education can assist reputable businesses in identifying their compliance risks and strategies for managing those risks, for example by implementing processes to check that the claims made in their advertising are consistent with the actual products and services they sell. A comprehensive UTP compliance program will also include a strategy for responding to consumer complaints and agency investigations.
- Educational initiatives are likely to have greater effect when their message is reinforced by enforcement conduct. A problem facing all educational initiatives is how to make the message relevant to the target audience. A successful UTP investigation, with all the gory details of the deception and consumer harm virtually guarantees publicity. Most people will be able to identify with victims. Together these characteristics spell relevance.

Future events

Representations about future events can present real problems for both consumers and consumer protection agencies. How can we prove that the promised performance will not occur when it may be arguable that it is at least a possibility? For example that a *special* food will help children grow up healthy and strong or that a motor oil with a *special* ingredient will prolong the life of a car engine.

Responsible businesses would not make promises to consumers unless they at least had a reasonable basis for believing that their promise will come true. For example, medical or engineering studies from recognised authorities.

Disreputable business on the other hand may see promises about future performance as an absolute gold mine – they can sell the dream but are safe from current criticism because of consumer and enforcers don't have time machines. One way of handling this practical problem is for the law to stipulate that a representation about the future

is deemed to be misleading unless the maker of the representation has a reasonable basis for making the claim. If the business does have a reasonable basis then the usual onus of proof is applicable; it is for the consumer of consumer protection agency to prove that the representation is misleading.

Representations of a technical nature

Representations of a technical nature can be difficult and costly to investigate because to prove that a misrepresentation is misleading may require special testing facilities and/or experts. One case that I recently investigated involved testing of air conditioners. The case was delayed for some time because I had to arrange testing at the only facility in Australia at the University of New South Wales School of Mechanical Engineering. My case had to take its turn as it was competing for testing time against various university experiments and teaching commitments. In another case involving pharmaceuticals, it was necessary to engage an accredited testing laboratory and to import reference samples of various chemicals from the United States.

The lessons that I learned from these experiences and some other investigations I've led were:

1. Take time in selecting your expert or test facility; make sure that they understand why you want the evidence (for example to put before a judge) and discuss with them the details of their testing procedures. Nothing is more frustrating and embarrassing than to find that after spending funds on testing or obtaining expert evidence that the wrong test has been used or that the proper test procedures were not followed. It happens.
2. overseas national consumer protection agencies can sometimes assist. For example they may have secured similar evidence during their own investigations and can advise you on any traps for the unwary. In some circumstances foreign test results may be directly useful. A foreign agency may also be able to provide useful comment on the arguments raised by a business in defence of its advertising or labelling because they have already had to examine similar arguments.
3. sometimes it is not necessary to go through the complete testing procedure to tie down every last end. Many times once a business can see that an authority has spoken to experts and is willing to conduct the necessary testing, it will be possible to negotiate a satisfactory resolution to the problem. For example a business may initially deny that their representations are misleading but later agree to change their advertising or labelling, or withdraw the product from the market, when faced with a determined consumer protection agency methodically securing the evidence.

Securing evidence

In proving UTPs it is often necessary to secure evidence relation to:

1. The content of misrepresentation; i.e. what was said or written
2. The meaning of the representation in the minds of consumers

3. The relevant facts; to show that they are different from the representations
4. Who was responsible for the making of the misrepresentation; to prove the link between the misrepresentation and the person or business being investigated?

The content of misrepresentation

When misleading representations have been made over a sustained period of time, particularly in print advertising, evidence of the misrepresentation can be relatively easy to secure. But this is not always the case, for example point of sale advertising material can quickly disappear. Word of mouth (oral representations) can be very difficult to prove after the event. Representations made electronically can usually be secured later but often at considerable cost and time.

Generally it is best to move quickly securing the evidence as soon after the event as possible. Delay simply increases the risk that evidence won't be secured or that its value may be questioned or diminished.

When I conduct investigations I generally prefer to secure the evidence myself even if the complainant (a consumer of a consumer organisation) has already supplied examples. That way, I can eliminate the risk that the complainant supplied examples were incorrectly identified or looked after prior to be handed over to me. Generally it will be better to obtain the evidence of the misrepresentations in the same way a consumer would, for example by buying samples directly from the trader. As a rule I always send two officers out to secure evidence. That way each can corroborate the others testimony about how the evidence was obtained and what happened to it after purchase. I also generally direct officer to obtain at least two, or preferably three, examples of each product. This allows for the product to be tested (by the agency and potentially by the trader or a retest) and for an original to remain for presentation in court should that be necessary.

Chain of evidence

It is essential to follow procedures that will protect the evidence from claims that it is not the same as that supplied by the trader or has been tampered with. If evidence handling procedures are strictly followed in every investigation then such allocations can be successfully responded to. The objective of evidence handling procedure is to guarantee that the security of the evidence can be accounted for at all times. This can be as simple as taking the evidence directly from the market place where it was obtained and placing it in a secure storage at the consumer protection agency's offices. There must be workable procedures for taking the evidence in and out of secure storage for examination by agency officers and experts and the court.

Sanctions and Remedies

Strong sanctions are vital if consumer protection is to be taken seriously by business. A wide range of remedies will facilitate better immediate outcomes for aggrieved consumers as well as enhance compliance in the long run. Sanctions and remedies for unfair trade practices should aim to do more than just punish if they are expected to contribute to the suite of objects referred to above:

- reduce the incidence of UTPs

- reduce the harm caused to consumers and responsible businesses cause by UTPs
- shift some of the cost of defensive measures and victim harm back on to those engaging in UTPs

Cessation of the offending conduct, prevention and deterrence of future offending conduct, undoing the harm caused and punishment are all possible with a wide suite of sanctions and remedies. These might include:

- Fines and/or imprisonment
- Injunctions (positive and negative)
- Corrective advertising
- Community service orders
- Compensation
- Corporate probation
- Adverse publicity
- Compulsory implementation of a comprehensive compliance program

I note that the sanctions currently available under the TP Proclamation (Article 26) are limited to fines. A wider range of sanctions and remedies would give the Investigation Commission more flexibility to match sanction/remedies to the particular circumstance of each case and contribute more effectively to the goals identified above.

Institutional arrangements

An appropriately structured and funded, and well managed institution is essential for the administration of any consumer protection law. This topic is not addressed here as it will be the subject of discussion later in the workshop.

Empowering consumers

No consumer protection agency, no matter how well resourced, can be everywhere all of the time. Consumers are everywhere and it is they (along with responsible businesses) who are being harmed by UTPs. When resources are tight, the need to empower consumer is even more critical.

What is consumer empowerment? To me it is the ability of consumer to influence events that affect them. In a general context I would think that:

- having real choice between various products/services and between various sellers (this where the standard competition law provisions come in); and
- the ability to exercise choice is consumer empowerment (this where the standard UPS law provisions come in).

In the context of UTPs I would include consumer knowledge of their rights under consumer regulation, the means of exercising those rights, a degree of confidence in the public enforcement of consumer regulation, and knowledge of current and emerging problems and dangers.

Of course practical empowerment of all consumers within a society is another one of those ideals that is unlikely to be ever fully achieved. Partly this is a resource issue. However, we have to acknowledge that some consumers are more vulnerable to UTPs than others and need additional protection. Also many consumers are simply not responsive to information about their rights, dangers etc until it affects them directly. And often that is too late. To use a well know cliché these should not be thought of as problems but rather as challenges to be addressed.

Perhaps this is where the strengths of the non government consumer organisations come into play? I suspect the intended readership of this paper needs no introduction to the value of consumer organisations. I am constantly amazed at the significant impact even the most under resourced consumer groups have. Now, if we could only combine the grass roots connections, independence and motivation of consumer organisations with the status, power and relative resourcing of consumer agencies? But we can, at least to a degree.

I recall quite some years ago when the CEO of the ACCC directed me to establish the ACCC's Consumer Consultative Committee there were many sceptics among ACCC staff and the consumer movement. Don't quote me, but some of my colleagues were genuinely concerned that a consumer consultative committee would result in our efforts (and resources) being diverted from (our) high priority matters to the latest whim of some uninformed consumerist fanatic. I gather that some in the consumer movement saw the whole exercise as little more than a public relations exercise. How wrong the sceptics on both sides were.

The Consumer Consultative Committee contributes to consumer empowerment because now consumer groups have a vehicle for directly contributing to ACCC priorities, market place intelligence and motivation. The ACCC has benefited because it can feed off the consumer groups' ability to identify emerging problem areas and direct educational initiatives more effectively and efficiently. I may not be able to give you empirical evidence but I am firmly convinced that the consumer protection agency/consumer protection group alliance has resulted in better outcomes for consumers, particularly in respect of UTPs.

It is the analysis that addresses not the question of 'what does competition do for consumers?' but the equally crucial question of 'what do consumers do for competition?' I call this area of inquiry 'economics for the demand side'. Competition policy is concerned with the supply side structure of markets and the behaviours of firms. Consumer policy starts from the position that the structural soundness of markets should be being properly attended to, and focuses on a well-informed understanding of what's happening on the demand side.

Some reference workshop participants may find interesting

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Ms Louise Sylvan

Competition & Consumer Law Journal

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Joined-up consumer protection and competition policy: some comments

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