



dti

**COMPARATIVE REPORT ON CONSUMER  
POLICY REGIMES**

OCTOBER 2003



The DTI drives our ambition of 'prosperity for all' by working to create the best environment for business success in the UK. We help people and companies become more productive by promoting enterprise, innovation and creativity.

We champion UK business at home and abroad. We invest heavily in world-class science and technology. We protect the rights of working people and consumers. And we stand up for fair and open markets in the UK, Europe and the world.

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by Gerry Sutcliffe MP, Parliamentary Under-Secretary of State for Employment Relations, Competition and Consumers	
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Reports on the consumer regimes in the following countries surveyed in the preparation of this study, together with tables outlining consumer legislation in these countries and their areas of coverage, are available on the internet at: [www.dti.gov.uk/ccp/publications.htm](http://www.dti.gov.uk/ccp/publications.htm)

Australia

Canada

Denmark

France

Germany

Italy

Japan

The Netherlands

United Kingdom, including financial services

United States

European Union: legal framework

# Foreword

I am delighted to be publishing this comparative study of consumer policy regimes. We see this study as a major piece of work, identifying how the UK's consumer policy regime compares with our OECD partner countries. I hope others will see it as a rich source of information that will encourage debate amongst our EU and OECD partners about the importance of consumers and the role of consumer policy.

DTI has a target of putting empowered consumers at the heart of an effective competition regime. Our aim is to be on a par with the best by 2006. An effective consumer policy is a key element in the DTI's efforts to improve productivity and secure prosperity for all. We undertook this study to find out what other countries do for consumers and to help us identify the areas where we need to improve to meet our target.

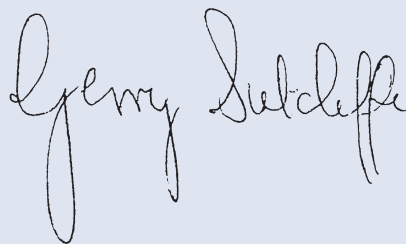
The comparative approach has worked well for us before. A similar review of our competition policy led us to make changes, which have ensured that our competition framework is now first class, as measured by peer review. But by common consent we know we have more to do on consumer policy, which is intrinsically more difficult to measure. We have therefore undertaken this study in order to establish an evidence base for the UK, showing where improvements are needed to match levels of the best by 2006.

A team from the DTI's Consumer and Competition Directorate undertook the study in partnership with the Treasury and the OFT. Through interviews and study visits across nine OECD countries, the study reflects a wide range of views from policy makers, business representatives, consumer groups and

enforcers across the international spectrum about what works and what doesn't. I should like to thank all who contributed and gave up valuable time to help with its compilation.

In terms of consumer policy in the UK, the study has come up with some interesting results, sighting us on what we are doing well, and where we could look to make some improvements. We need to consider these findings carefully, with our stakeholders, to ensure that any policies we decide to put in place are suited to the UK context. We aim to do this by Summer 2004, when I hope to set out our thinking on the future direction of UK consumer policy.

More widely, I hope that stakeholders at home and abroad will find the study interesting. We would welcome opportunities to discuss the findings and build on this piece of work with our European and international partners.



**Gerry Sutcliffe**

**Parliamentary Under-Secretary of State for Employment Relations,  
Competition and Consumers**

## Executive Summary

This is a report on how the UK's regime for protecting and empowering consumers compares with other countries. History, politics, economics, culture and legal traditions have all contributed to the various consumer policies and objectives which exist across the countries studied. It is not easy to make firm distinctions between these national frameworks. The study observed three broad models, which might be described as follows:

- consensual and interventionist; the approach was to avoid detriment through more extensive regulation and resolve problems when things go wrong, through state-led dispute settlement procedures;
- mix of private and public enforcement of a considerable body of law in the criminal and civil courts; and
- non-interventionist; dependent on private action, mostly by individuals.

The policy framework in the UK relies on a combination of private and public enforcement of a considerable body of law. This aligns with the second model described above. The United States, Canada and Australia most closely fit this model. But within each country's framework there are numerous variations in approach to the legal framework, resolving disputes, empowerment and enforcement and a wide range of examples of good practice, some of which may be compatible with any of the models.

The study drew together a vast amount of information about policies and opinion about what worked and what did not.

Where the team felt able to make a judgment, it concluded that the UK policy framework was on a par with the best in terms of consumer rights with regard to sale of goods and services, access to justice through small claims court procedures, maintaining product safety, providing consumer advice, sponsoring consumer advocacy at the policy-making level, and investigating markets that are not working well for consumers.

The UK appears to be behind the best in respect of the legal framework, which is not as wide-reaching as some others', its enforcement arrangements which are fragmented, the use of market intelligence and the provision of advice about suitable traders.

In areas such as consumer education and consumer confidence, the team did not gather sufficient information to form a judgement.

# 1: Introduction and Overview

## Introduction

### Objectives of the Report

The Department of Trade and Industry (DTI) has a Public Service Agreement (PSA) target to “Place empowered consumers at the heart of an effective competition regime, bringing UK levels of competition, consumer empowerment and protection up to the level of the best by 2006, measuring the effectiveness of the regime by peer review and other evidence, to ensure a fair deal for consumers and business working in collaboration with the relevant regulatory authorities”. The rationale for this was set out in the 1999 White Paper “Modern Markets: Confident Consumers”, which explained that well informed and active consumers supported by an effective system of law and enforcement could play a significant part in ensuring healthy competition in which responsive and innovative businesses can succeed.

This comparative study of consumer policy regimes has been undertaken by a team of officials from the DTI, HM Treasury and the Office of Fair Trading (OFT), to collect an evidence base against which UK consumer policy can be compared. A similar review has already been completed in respect of the UK’s competition framework. This led to recommendations on competition policy to ensure that the UK’s legal framework and institutions rank amongst the best in the world. The recommendations from the competition review have been implemented by the Enterprise Act 2002.

The purpose of this study is to compare the UK framework of consumer policy and empowerment with practices adopted by some of the leading EU and OECD partners. This report highlights the study team’s initial findings about areas where UK practice appears to be already amongst the best and where there appear to be lessons for further consideration.

The DTI recognises that further work will be needed to consider whether features of other countries’ regimes could work effectively in the UK context. This work will form part of a project to develop a new consumer strategy in the UK, which is due to be completed by Summer 2004.

## **Methodology**

Information was gathered by desk research, followed by visits to other countries and their institutions, with interviews and discussions with policy makers, experts and business and consumer representatives. The information collected in the interviews reflected the judgements of those working in the area of consumer policy rather than formal evaluations of policies.

The UK regime was compared with that of Australia, Canada, Denmark, France, Germany, Italy, Japan, the Netherlands, and the US. These countries were selected for study on the basis of securing a good balance of size and diversity of approaches.

Detailed descriptions of consumer policies in each of the countries studied are available on the DTI's website at [www.dti.gov.uk/ccp/publications.htm](http://www.dti.gov.uk/ccp/publications.htm). Also available is a listing of these countries' main consumer protection laws, which was prepared by Professor Geoffrey Woodroffe of Brunel University, in conjunction with legal experts from the countries themselves.

The benchmarking exercise did not look specifically at issues of food safety or financial services, although an overview of financial services regulation in the UK is annexed to the United Kingdom report published alongside this document and available at the website above. The report does not cover consumer credit, which is the subject of another DTI review.

## **Overview**

### **The history of consumer policies**

It is clear that each country's political and legal traditions have played a key role in shaping its consumer policy. There is much greater diversity than in the area of competition policy. Consumer rights have evolved over centuries in terms of basic law for example weights and measures which evolved from guild rules and markings (hallmarks) in medieval times in Europe. In the UK, common law principles relating to the sale of goods were first codified in the Sale of Goods Act 1893, and re-enactments of that Act still form a mainstay of consumer protection today. However, most of the key modern consumer laws in the countries studied date back around 30 to 40 years. Germany was exceptional in that legislation from 1909, the Unlauteren Wettbewerb Gesetz (UWG), which is aimed at regulating competition amongst businesses, still plays a major role in their legal regime in the area of consumer protection.

## The Rise of Consumer Activism

President John F Kennedy's speech of 15 March 1962 outlined a "Consumer Bill of Rights" which led to an unprecedented flurry of consumer legislation in the US. He set out four basic consumer rights; the right to safety, the right to be informed, the right to choose and the right to be heard.

At the same time there was a growth in consumer activism, led by Ralph Nader and the publication in 1965 of "Unsafe at Any Speed", which charged the car industry with neglecting consumer safety issues ([www.citizen.org/documents/pctimeline.pdf](http://www.citizen.org/documents/pctimeline.pdf)). Nader and his "Raiders" took a political and adversarial approach to consumer rights. The spread of consumer activism in the US was later followed in Australia, the UK, Canada, the Netherlands and to a lesser extent in Japan. This trend in consumer activism was much less apparent in Germany and Italy. The trend towards consumer activism and new policy lasted for a period of about 10 years around the 1960s and early 1970s and seems to have fallen away thereafter.

In France, which is unique in the sheer numbers of consumer bodies that operate, the background for consumer activism was often in the trade union sector. Trade unions also played a key role in some Canadian provinces such as Quebec. Despite this wave of consumer activism and the legislation which resulted, there appears to be little in terms of current political or business forces that would result in a greater convergence of consumer policy at the global level, excepting developments in the EU. In Denmark, and to some extent in the Netherlands, a culture of co-operation exists. In Denmark in particular, a tradition of consultation, conciliation, and co-operation was reflected in the objectives and working of consumer policy. The Danish Consumer Council acts as the main source of consumer advocacy, providing a strong and influential consumer voice.

The relative profile of consumer activism appears to have lessened somewhat in recent years in most of the countries studied. This is probably a reflection of the gains that were made in the past and the extent to which consumer organisations have become part of the institutional furniture. Even once radical organisations such as Nader's Public Citizen in the US struggle to remain so once they have celebrated their 30th anniversary.

## **European Union**

In the European Union the drive to adopt measures with the aim of progressively establishing a single market for consumers has brought about a degree of harmonisation in Member States' laws intended to protect consumers' interests. These measures aim to increase consumers' confidence to shop cross-border by ensuring a guaranteed minimum level of protection throughout the EU. The key Directives adopted by the EU Member States are described in a separate report published at [www.dti.gov.uk/ccp/publications.htm](http://www.dti.gov.uk/ccp/publications.htm). However the legal drivers have generally been internal market, and despite the introduction of a legal chapter for consumer policy in the Maastricht Treaty, there is little evidence to date of the integration of consumer policy in other areas (for example agriculture).

## **The Business Response**

Business tended to react negatively to the introduction of consumer rights and to lobby against proposals for new or stronger consumer protection legislation. This is despite the fact that consumer regimes either explicitly or implicitly protect companies against unfair trading practices by competitors as well as benefiting consumers, which was the original rationale for the formation of guilds. Business apprehension about new consumer protection measures was part of the story heard in many countries and appeared to reflect uncertainty about change, and the difficulty in quantifying the cost of consumer protection legislation. To some extent once consumer protection legislation was put into force, business concerns tended to ease off in the light of experience. Compared with employment legislation or barriers to market entry, consumer protection was seen as relatively trouble free. This view was expressed in Australia, Japan and Italy.

A factor which may have shaped business perceptions about consumer law is that although general laws might in theory have far reaching impacts, judges – according to academic legal experts – have tended to be fairly conservative in terms of applying potentially difficult legal concepts such as “unconscionability”. The element of legal drift away from legislators' intentions by courts appeared to be relatively small and not generally sufficient to concern business. Even in more regulatory systems, such as the Danish system of Complaints Boards, there were no serious complaints from business about increased burdens over time.

The main issue which did excite some interest amongst big business was the use of publicity in the media as a remedy for infractions of consumer

protection and competition legislation. At the time of the study this was a major issue in Australia, being one of the issues covered by a government enquiry (the Dawson report – see [www.accc.gov.au](http://www.accc.gov.au)). The Australian Competition and Consumer Commission (ACCC) saw this as one of the most effective methods of inducing compliance with the law. They had explicit powers under which they could take such action. Most enforcement agencies saw serious legal obstacles to any kind of proactive naming and shaming program and such activity was often minimal, for example in Japan a handful of companies would be named each year in the regular municipal newsletters delivered to Tokyo residents.

### **Common Problems with a National Twist**

Despite the differing evolutionary paths for consumer policy amongst the countries studied, the types of problems faced by consumers were very similar. The main concerns from a consumer perspective were:

- safety of goods and services;
- purchase of services where asymmetric information existed with the supplier (for example car servicing or plumbing/building work) and the potential problems this could lead to in terms of unnecessary work being carried out or work being paid for and not carried out; and
- competency of service providers

and additionally for vulnerable consumers:

- the ability to understand more complex transactions;
- the difficulty in making rational decisions when subjected to high pressure sales techniques;
- worries about excessive borrowing/lending; and
- susceptibility to scams.

The sectors in which these concerns appeared also had much in common. Asymmetric information about providers was a problem for car servicing in all countries except France, where the authorities felt that the problem had been significantly addressed with targeted regulations. As a consequence car servicing was, unusually amongst the countries surveyed, not one of their most problematic fields. Similarly, high-pressure door-to-door sales were a common problem even if the goods varied – from expensive kimonos in Japan to burglar alarms in the UK. Other examples of specific problem areas include heating and air conditioning servicing in Canada, and white ant pest removers in Japan.

## **Average or Vulnerable Consumers?**

The core of consumer policy regimes was implicitly modelled around the needs of the average consumer. The core, being defined in terms of basic implied contract terms and safety legislation for example in Europe, the Sale of Consumer Goods and Associated Guarantees Directive (1999/44/EC) sets a minimum baseline for consumers' rights across the internal market, and the General Product Safety Directive (2001/95/EC) requires that products intended for consumers or likely to be used by them even if not so originally intended are safe when placed on the market.

Although consumer policies recognised the issue of protecting vulnerable consumers the team found little in the way of explicit definitions of who constituted the vulnerable at a policy level. At one level they have been defined in terms of case law (as in the 1983 Amadio judgement in Australia which concerned a bank exploiting the ignorance of an elderly couple and what was permissible within the law); at another it was possible to find legislation that had been enacted which covered all consumers but the benefit of which was really aimed at the vulnerable, for example laws about cooling off periods for agreements concluded in the home. Concepts such as unconscionability in US and Australian law operated to provide greater protection to the vulnerable. In Denmark the Consumer Ombudsman aims to protect consumers on the basis of an "average norm". This means protecting consumers on the basis of the experience and knowledge of the average consumer.

The concern expressed for vulnerable consumers tended to overlap significantly with the main problems which emerged in terms of consumer scams (see Australia's "Little Black Book of Scams" ([www.scamwatch.gov.au](http://www.scamwatch.gov.au)) for a fairly exhaustive list). False lotteries and money in advance scams were examples of the kind of activity which authorities tried to keep at bay ([www.met.police.uk/fraudalert/index.htm](http://www.met.police.uk/fraudalert/index.htm)). The justification for this effort tended to be that it was the most vulnerable who would be prepared to accept unlikely medical claims such as the beneficial effects of ownership of purple harmony plates (literally purple plates) which amongst other unlikely claims were said to strengthen the immune system and accelerate healing. The ACCC takes such bogus health claims seriously and took the directors to court and forced the company to issue warnings to consumers on its website (see [www.accc.gov.au/media/mediar.htm](http://www.accc.gov.au/media/mediar.htm) and select press release for 2 December 2002 ("Federal Court orders suspended sentence for Internet Traders for Contempt") for further details of the health claims companies such as this make online.)

## **Consumer Policy as a Low Priority**

Consumer policy has tended to be seen as a relatively low-key area in terms of government priorities and somewhat surprisingly has a relatively low ranking in terms of political visibility. This was less so in federal systems where the ability of local politicians to make a name for themselves pushed it up the priority list a little, but such activism was prone to vary over time, although it was a little more constant in the US than elsewhere. Another reflection of this fact was that the degree of knowledge about what happened in other countries tended to be fairly limited and where systems existed for exchange of ideas they were largely restricted to geographical regions such as North America or Europe. The exceptions to this are the arrangements for international enforcers who meet regularly in the International Consumer Protection Enforcement Network (ICPEN) forum and the Organisation for Economic Co-operation and Development (OECD)'s Committee on Consumer Policy, where Government officials also meet regularly.

## **The Importance of Food**

For a number of the countries studied the issues that surround food safety were the main areas of recent public and political concern in the consumer sphere. This was apparent in Japan, Denmark, the UK, France and Germany. The agricultural lobby and the large food processors seem to be facing the kind of scrutiny that was seen in the first wave of consumer activism in the 1960s and 1970s by other sectors.

## 2: Comparing and Contrasting Consumer Regimes

### The Consumer Protection Matrix

We have identified the following themes that are common across regimes. First, each country has both legislation and core institutions which make up the consumer policy **framework**. Second, regimes are differentiated by the nature and extent of **enforcement** within this framework. Third, the degree of consumer protection within a country depends on the knowledge and behaviour of consumers themselves. Together these latter aspects of consumers' characteristics can be thought of as consumer **empowerment**.

These three factors interact in ways which are complex, and little evidence was available about the nature of the interaction and the extent to which weaknesses and strengths in one area can be balanced out by action (or lack of it) in another area. This makes ranking of countries overall impossible to achieve in any robust manner. We have not made any overall judgements about the efficiency and effectiveness of any particular consumer policy regime as a system, although it is possible to draw some inferences on the basis of international experience about what has worked and what has not, and how this relates to the UK.

### Legal Framework

From the information gathered about consumer law, it is possible to see three main characteristics of a national legal regime:

- the extent of reliance on basic contract law;
- the extent to which consumer protection is built around broad duties or prohibitions or alternatively is a collection of piecemeal legislation; and
- the extent to which legislation allows various parties to obtain redress.

All countries had of necessity developed a body of law which underpinned transactions or contracts within the context of a market economy. Often specific provisions were added covering transactions between businesses and consumers. Legislation such as the UK's Sale of Goods Acts provided parties to contracts with basic rights when undertaking transactions, which was of great benefit in circumstances where it was unrealistic or unduly costly to negotiate detailed contracts. Other legislation prohibited unfair contract terms, such as exclusion clauses, and limited the ability of traders to exclude rights granted by other legislation (such as the Sale of Goods Acts).

Australia extended such legal underpinnings to cover small firms in their dealings with large firms as well.

In the UK, the Unfair Contract Terms Act 1977 covers both contracts between businesses and contracts between businesses and consumers. The Unfair Terms in Consumer Contract Regulations 1999, which implements the EC Directive, on the other hand, only covers transactions between businesses and consumers.

### Reliance on Contract Law

Mainly Contract Law	Intermediate	Unified Consumer Law
Germany	UK	Australia
Italy	US	France
Netherlands	Canada	
Japan	Denmark	

A significant difference in terms of consumer protection relating to transactions is the extent to which countries relied on a broad requirement not to trade unfairly or on a prohibition against unfair or deceptive acts. This was seen by policy makers and enforcers as a more flexible way of dealing with emerging and potential future consumer protection issues than the introduction of specifically targeted legislation. In general, international experience suggests that a broad duty to trade fairly is useful and can be interpreted by the courts which are used to determining concepts of reasonableness and fairness. The leading examples came from the United States and Australia. In the US, under the Federal Trade Commission Act “unfair or deceptive practices are declared unlawful” (section 5). In Australia, the Trade Practices Act states that “ a corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive” (section 52).

A general requirement to trade fairly did not entirely replace specific legislation in any of the countries but did appear to significantly reduce the need for it, and where both general and specific provisions could be used to take a case forward there was often a preference to use the general provisions that existed.

Denmark has a form of general duty to trade fairly. The Danish Marketing Practices Act is a key part of the consumer legal framework in Denmark and includes the “general clause”. It is enforced by the Consumer Ombudsman, who is responsible for interpreting acceptable marketing practices. The general clause is very broad and is used quite extensively in Denmark. Industry in Denmark does not seem to have a problem with it.

Legislation aimed at specific sectors tended to create problems both in terms of drafting and understanding – even amongst professionals – and because it often leaves loopholes which can be exploited by the unscrupulous. Unlike tax legislation where loopholes tend to be plugged regularly this did not seem to be the case for most such consumer legislation. One exception was the US where the FTC ability to issue guidance and secondary regulation did appear flexible enough to keep up with those who deliberately looked for loopholes and new ways to evade the law.

### **Redress for the consumer**

Another key part of the legal framework is the provision for obtaining monetary redress on behalf of a consumer or group of consumers. Redress can be a combination of compensation for actual loss and, in some jurisdictions, punitive damages. Weaknesses or difficulties in the processes for obtaining redress diminish the incentive for traders to behave honestly, i.e. a significant proportion of all illegal gains can be kept even if the behaviour which created them has to cease.

The legal issues in relation to redress cover a number of aspects. One is the question of who can take action and on whose behalf can they seek redress.

In all the regimes studied consumers as individuals could in theory take action as individuals. However, the degree to which redress could be sought for a class of consumers (or conceivably businesses) was much more restricted in practice. In this regard the US stood at one end of the spectrum with class actions motivated by triple damages and entrepreneurial lawyers on the look-out for winnable cases (or where a settlement to end the legal action would be likely whatever the merits of the case itself). The incentives for such private court cases in other countries such as Japan and Germany were much less. The costs of losing were potentially higher if one had to pay costs for the other side and the award was limited to the detriment actually suffered.

### **Laws on Consumer Safety**

Ensuring the safety of consumer goods and services was one of the main objectives of consumer policy makers in all the countries studied. Although the approach to consumer safety issues varied somewhat from a legal perspective and the extent to which strict liability was the basic tenet – all the systems studied worked reasonably well with no obviously major problems in terms of inadequate legislation. Most public debate concerned

food safety rather than other goods and services. Safety of motor vehicles was generally subject to its own legislative regime covering items such as lighting, use of seat belts etc.

### **Institutional Framework**

The institutional framework varied widely between countries because of differences in government structure and in particular, the extent to which state and federal powers were divided constitutionally. In theory this could lead to both gaps and overlaps between different layers of government but in practice overlapping powers and bodies were more evident than gaps, for example Australia and the US.

In all the countries studied consumer affairs tended not to be central. It also varied as to whether it was linked to competition policy or not. Consumer policy generally falls to either the Ministry of the Economy (France, Germany and the Netherlands), or the Ministry of Trade and Industry (UK, Denmark). Responsibility falls to the Cabinet Office in Japan, the Treasury in Australia and to an independent agency (the Federal Trade Commission (FTC)) in the US. Another factor present was that in a number of countries several ministries were responsible for different areas of consumer policy with Justice Ministries often having a role via small claim procedures. Typically the Minister responsible for the consumer brief would have a number of other demanding portfolios in addition to any consumer responsibility, for example financial regulation. In some countries there tended to be a degree of delegation from the Ministry to the main enforcement body in terms of policy development which was carried out by the latter either on a formal (for example the FTC) or an informal (for example the ACCC) basis.

### **Resourcing Consumer Policy**

The level of resourcing of consumer institutions was difficult to quantify in most countries as allocated budgets often covered activities indirectly related to consumer policy regimes such as enforcement of competition policy. However, the degree of political importance attached to consumer protection did seem to influence the allocation of resources to the extent that where it had a higher profile, for example Australia and the US, resource constraints were not a big issue for the institutions involved, whereas in countries such as Japan and the UK, some of those working within the enforcement system felt that resource issues unduly constrained them.

Education and enforcement were the biggest potential areas of expenditure in the consumer policy field. Expenditure was dependent on:

- the degree to which consumer education programs involved paid-for publicity materials; and
- the extent of enforcement by public bodies

From a public finance perspective the costs of extra enforcement action could run wider as the extra demands placed on legal institutions, such as courts, were not generally taken into account when setting enforcement budgets.

### **Enforcement Agencies**

The US FTC, which is primarily an enforcement agency, has around 570 staff in the Bureau of Consumer Protection, almost certainly the biggest concentration of such expertise at national level in the world. National enforcement bodies, according to the view of those who worked within them, also tended not to be unduly constrained by a lack of resources. However, in enforcement bodies which also had responsibility for competition law, consumer policy work tended to be seen as less interesting and prestigious. There was evidence of efforts in the US, Australia and the UK to overcome some of the internal staffing and incentive difficulties that this phenomenon had created in the past. More weight was now being given to the importance of consumer affairs. The French system appeared to have achieved a more even balance.

### **Central and Local Government**

Another factor at work in terms of resourcing decisions was the extent to which central government had to work through local government to provide consumer protection services. Where consumer protection was devolved, the centre lacked policy levers to do much to influence priorities or the resourcing of them. This led to variations in local provision, particularly apparent in the UK and Japan. It was much less of an issue at state level in the US and Australia, perhaps reflecting the fact that these are relatively large and powerful organs of government within their respective systems.

Licensing regimes were a source of income but this varied significantly between countries and even within countries. In countries with extensive licensing systems these tended to be administered at a sub-national level. To the extent that licensing regimes generated revenue this tended to be outweighed by the administrative costs. An exception was licensing related to gambling and sale of alcohol which were seen as a source of general revenue in Australia and Canada at state/province level.

## Private Sector Spending

Virtually no information was available about the overall extent of private sector resourcing of consumer protection, principally in relation to enforcement action. Consumer associations tended to have fairly small budgets and often depended on funding from consumer testing magazines. In some countries businesses took an active role in enforcing their right against other businesses, such as in Australia and Germany, but these costs have not been quantified. Estimates of the costs which individuals incurred are also hard to identify.

## Enforcement

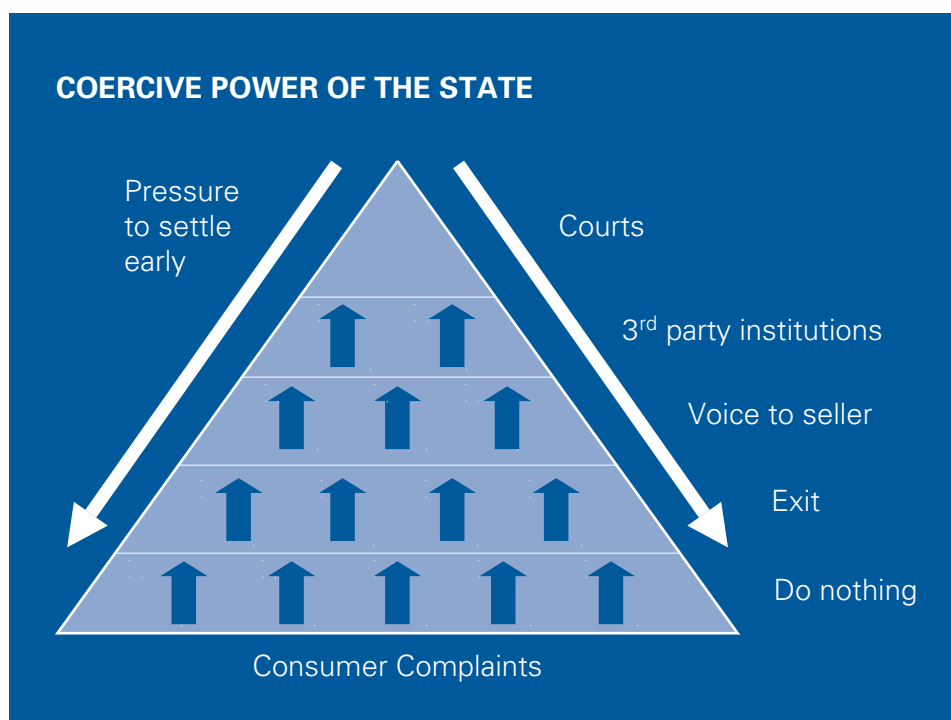
The nature of enforcement within a country depended on action by:

- consumers enforcing their own rights directly;
- businesses taking enforcement action against perceived unfair competition (which indirectly benefits consumers);
- public bodies at central and local level; and/or
- private bodies such as consumer associations and industry associations.

and also on:

- the level of funding for enforcement; and
- court cost rules.

## The Enforcement Triangle in the US, UK and Australia



The Enforcement triangle depicts the link between the coercive power of the state or judicial system (ultimately in the form of imprisonment or fines) and the relative powerlessness of individual consumers, via their ability to escalate legitimate complaints to a level where traders are compelled by the state to deal with a complaint in a fair and just way.

The triangle of enforcement also reflects the fact that the number of consumers taking complaints to higher levels falls off dramatically, with relatively few consumers actually going to court, even if their complaints remain unresolved at lower levels.

However, one key difference between countries was the extent to which consumers bargained with traders in the shadow of the court. The greater the ease with which consumers have access to a coercive third party institution, such as "small claims" courts, the more credible is the bargaining position of the consumer in attempting to resolve complaints. The threat of court action against a trader was much more likely to be taken seriously in the US, UK and Australia than in Germany or Japan.

The nature of enforcement in part depends on the types of complaints consumers have. Enforcement can involve civil and criminal penalties as well as payment of compensation under redress provisions. Most of the countries studied had a variety of institutions which became involved in enforcement in different ways depending on whether consumer problems were:

- one-off / infrequent – where consumer best placed to enforce rights;
- problems affecting large number of consumers of product or service – joint private or public enforcement;
- misleading advertising/practices – business/state enforcement; and/or
- fraud – criminal prosecution by state

Looking at international experience it is clear that there are some possible substitutes in terms of who undertakes enforcement but these tended to be of a limited nature. Provision of funding to consumer groups to take legal action, rather than the state becoming directly involved, generally resulted in only marginal involvement by such bodies as they were wary of the potential costs to themselves of launching litigation. An issue where judgement by public enforcement bodies was called for was the question of when misleading and unfair practices became fraud. The US authorities take a more liberal attitude to discounters advertising low prices even if the adverts are not 100% correct, as they see this as pro-competitive overall compared to the ACCC which takes a stricter line on the need for accuracy in individual advertisements.

## **Resolving Complaints: Enforcement By Consumers**

For most consumer complaints the least costly solution for both parties is direct resolution of a complaint or claim. The two most important ways in which consumers express dissatisfaction with poor quality products are through contact with the retailer or “exit” (not buying the product or using the same retailer again). However, the incentive for resolution of issues to take place directly will be influenced by a number of factors. A common incentive for businesses is the need to keep customers happy and in most markets this will act as a deterrent against behaviour which causes consumers major problems. Most consumer problems are dealt with bilaterally and retailers often compete in terms of the ease with which they are willing to accept returns and correct faults. Building a reputation for high levels of service is seen as a key variable in brand building and growing profitable companies. Practices such as no-quibble guarantees and seven-day exchange policies, which give consumers greater rights than under law, were commonplace in many markets and countries.

This will not always be the case, especially where brand reputation plays little role. In these cases settlement by traders directly may depend on the ease of access by consumers to advice on remedies and use of “small claims” courts and any mechanism for alternative dispute resolution (ADR) which is available to consumers. The extent of redress provisions will also influence these incentives.

In all regimes the consumer is expected to have taken his complaint directly to the trader before involving any advisory or public enforcement bodies. Consumer advisory bodies may act to mediate between the two parties. This was the major element of consumer support in Japan and occurred to a lesser degree in the other regimes studied. The high degree of reliance on mediation in Japan may reflect a culture in which moral persuasion by government about the need to be law abiding, in the absence of real sanctions, is more powerful. Japan’s Consumer Protection Fundamental Act states that “businesses also have responsibility for being co-operative to the state and to local governments in the execution of their policies concerning the protection of consumers”. The German system of VZ’s (Verbraucherzentrale – consumer advisory bodies) also seems to rely on the same kind of moral persuasion to gain compliance by traders.

### **The “Small Claims” Court**

Access to “small claims” courts or alternative dispute resolution (ADR) mechanisms was well developed in some of the jurisdictions studied.

The UK, US, Australia and Canada all have small claims mechanisms which work well in most cases. In some Australian states the consumer is expected to have explored ADR before a court will accept a case. Consumers could gain access to these courts at low cost and they were designed to be friendly to the average lay-person with minimal legal knowledge. However, success in such courts was not always productive as individuals did not have the resources to track down and take to court traders who would default on compensating consumers, even if ordered to do so in a small claims court and who would take steps to evade further action against them such as moving location, or changing their trading name.

It was seen as important for consumers that, if they needed to use the courts to gain redress, complaints would be dealt with speedily. The Danish Consumer Complaints board can take up to a year to deal with complaints compared to Australian Tribunals and small claims courts which take around 35 days. In Italy, only very small claims could be referred through the Justice of the Peace system; the alternative was the civil courts where delays are lengthy. Aside from these examples, we found little to show that small claim courts or ADR systems were clogged with unresolved complaints. This may reflect the fact that vulnerable consumers were less likely to become involved in such processes, even given the simplified procedures involved; or it may reflect the difficulty in tracking down some traders in order to bring a case.

### **Alternative Dispute Resolution (ADR)**

The creation of ADR mechanisms was mainly driven by desire on the part of authorities and business to create a usable procedure for resolving consumer complaints other than going to court. This was particularly apparent in the US. The availability of such processes was also seen as beneficial to consumers. A common experience of ADR mechanisms was that they were often dominated by producer interests when first set up, and this led to claims of ineffectiveness and bias against consumers. Consumer policy makers in the US and Australia who had experienced these problems now recognised that whilst such ADR mechanisms needed expert input from providers they should not form a majority when decisions were made. Similarly, procedures which relied on ombudsmen had to be seen as independent of producer interest. ADR procedures were generally seen as a useful process for helping to resolve consumer problems.

Germany stands out in having a small claims system that provides little incentive for use – a low limit on claims and a comparatively high court cost. As explained above, both Japan and Germany to some extent offset

the difficulty consumers face in seeking redress with administrative help from advice bodies but there was no strong evidence that this was effective in difficult cases. Consumers in these countries are mainly dependent on the goodwill of the traders. An offsetting factor that limited the potential problems this could create may have been the relatively high standards of training which most workers had attained in these countries. It was put to us that a Japanese worker would be ashamed if he could not perform basic technical tasks to a professional standard. It is doubtful that a policy mix which included low levels of technical training and ability **and** a dependence on the goodwill of traders rather than enforcement would be as acceptable to consumers.

### Dealing with Consumer Complaints: Main National Approaches

Country	Usable small claim court (high limit & low cost; easy access for consumer issues)	ADR or Administrative Tribunal	Consumers mainly dependent on goodwill of traders
Australia	Yes	Some products	No
Canada	Yes	Some products	No
Denmark	No	Yes	No
France	No	Yes	No
Germany	No	Yes	Yes
Italy	No	Yes	Yes
Japan	No	Yes	Yes
Netherlands	No	Yes	Yes
UK	Yes	Yes	No
US	Yes	Yes	No

### Enforcement Action by Businesses

Businesses have incentives to try to limit unfair competition but willingness to do so will depend on:

- legal rights, for example can they obtain injunctions to cease certain behaviours;
- legal costs;
- degree of redress (damages) that can be obtained;
- extent of free-riding by others on the back of any enforcement action;
- predictability of legal outcome if case taken to court; and/or
- credible threat of escalation for example a complaint to enforcement bodies

Enforcement agencies in Germany and Australia felt that action by business can play an important role in deterring and stopping unfair competition from businesses which mislead consumers. Enforcement of

consumer legislation by business plays an important role in Germany<sup>1</sup> where it is in practice the main enforcement mechanism – and in Australia where actions against misleading advertisements by competitors are relatively common and the jurisprudence is well tested. The nature of consumer policy enforcement by businesses in Germany and Australia suggests that it is not necessary to have US-style triple damages in order to provide an incentive in order for such actions to play a role in encouraging compliance on behalf of all business.

Whilst the benefits to consumers of business to business (B2B) enforcement are considerable, this cannot be relied on as the main or only enforcement mechanism. Most markets are not so concentrated that any unfair competition can so easily be quantified in terms of its effect on another firm's business. It is also possible that other firms in the industry will copy the practice so that it becomes the norm and all consumers suffer detriment, for example the practice of tying high cost insurance to low cost holidays and advertising the holiday cost without insurance costs included.<sup>2</sup>

Even if legally possible, companies may be reluctant to engage in court battles where this is not part of standard business practice, for example in Japan where even court action by public bodies was seen as a last resort.

## **Public Enforcement**

Public enforcement varied between countries with different bodies playing different roles. In general national enforcement bodies, whether administrative or working through the courts, tended to prioritise cases where there was significant public detriment, a worthwhile deterrent or educative effect could be achieved, significant new market issues arose or where there was a significant effect on disadvantaged consumers. The information on which priorities were based varied in quality but the analysis of complaints databases and sharing of data was most advanced in the US (Sentinel system – see US report) and Japan. The quality of data on which they could draw in terms of multi-agency coverage and commonality of reporting standards was significantly better than that available in the UK.

Local level enforcement tended to pick up more routine breaches of consumer legislation such as breaches of trade description rules or misleading price marking. The UK stood out in terms of the breadth of

<sup>1</sup> For example Lufthansa vs Ryanair where a court case was filed on the basis that Ryanair was misleading consumers by advertising tickets to Frankfurt, when the airport they flew to was Frankfurt Hahn which is 60 km from Frankfurt. The court finally ruled that Ryanair was not guilty of misleading consumers as the airport's official name was Frankfurt Hahn.

<sup>2</sup> "Bundling, Tying and Portfolio Effects" by Professor Barry Nalebuff, DTI Economics Paper No.1 (2003)

responsibilities which were dealt with at local levels, where enforcement of a large number of national statutes including weights and measures and product safety legislation are the responsibility of local trading standards officers. It also appears unusual in delegating responsibilities to a relatively large number of authorities, given country size, including a large number of small local authorities. Weights and measures were dealt with by specialised bodies elsewhere, for example in the US, Canada and Italy. Similarly specialised consumer safety agencies existed in the US, Canada, Netherlands and Germany. Such centralised systems for specialisms appeared to offer economies of scale which did not exist in the UK.

In some countries, notably Japan, there existed pressures to leave business alone which had historically reduced the level of public enforcement to very low levels. Elsewhere, political changes had reduced enforcement activity, for example in the US in the 1980s. The US FTC had powers to obtain redress for consumers so that any benefits a firm derived from unfair treatment of consumers could be clawed back and returned to consumers. Equivalent powers to claw back illegal gains for the benefit of consumers is not as well developed in the UK.

It was clear that interested parties perceived enforcers in terms of degrees of proactivity and volume of enforcement actions. The Australian ACCC stood out in terms of its reputation for "toughness". It saw two distinct benefits from having developed such a reputation. "Tough" enforcers encouraged consumers to complain providing it with more intelligence about what was happening that might be detrimental to large numbers of consumers. More importantly, a reputation for toughness had a lasting effect and a high number of enforcement actions did not have to be undertaken continuously, i.e. a high level of investment in enforcement initially could be retained for a reasonable cost thereafter. To some extent the same was true of the FTC but the level of activity was perceived to be more affected by the political stance of the government.

The extent to which the reputation of local enforcement bodies mattered was less clear. Where there were known to be resourcing problems, local traders would have less incentive to comply with the law. The threat of costly legal expenses was seen by local enforcers such as trading standards officers in the UK as a very real deterrent to taking legal action against large firms. This was more of an issue in the UK and at state level in Australia than in the US (because of cost rules) or France or at federal level in Australia (where centralised budgets meant that cases could be fought through the appeals process). Larger businesses were more likely to worry about enforcement action if there was a probability of either negative publicity at the regional or national level, or if the national

enforcement body was likely to become involved. Unlike Australia, the UK had no mechanism to centralise the budget, thereby spreading the cost.

Countries which have relatively low levels of enforcement at the national level or no national enforcer (the Netherlands, for example) rely on consumers going to institutions for mediation or – principally – to the courts. In Italy there has been a move towards encouraging mediation.

In some countries studied, the interaction of private and public enforcement affected the use of resources. Private enforcement in routine business-to-business cases may reduce the need to spend public money and the public budget can be used to support test cases.

The threat of media exposure was seen as a very effective method of ensuring compliance with the law. In particular business disliked being required to make public apologies and corrective statements; these could also be costly. This type of sanction was very effective in Australia; one national retailer who had claimed in an advertisement to have reduced everything by 10%, later found to be misleading because of the exceptions included in the small print, was required by the court to broadcast a public retraction on national television. Such high profile enforcement actions disturbed businesses who were fearful of the potential effect on their brands if action of this nature was taken against them since it was much more visible to consumers than court action by itself. In the UK an enforcement order issued by a court can require a corrective statement to be published in such form or manner as the court thinks appropriate.

Naming and shaming on the basis of complaints about a trader was another potentially effective enforcement tool. However, enforcers had to be very wary of potential claims for unfairly damaging a firm's reputation. Therefore the use of naming and shaming in the media was difficult for public bodies because of legal concerns about justice, proportionality and claims for defamation, even though prosecutions were pursued in only a relatively small number of cases compared with the number of complaints in enforcers' databases. Examples of naming and shaming such as that undertaken by the Office of Consumer Affairs in Quebec were the subject of nervousness by business. Even putting lists of businesses prosecuted in an easily accessible way online so the trader profiles can be checked against prosecution databases is unpopular with the business representatives consulted. Nevertheless, this topic was attracting growing interest by policy makers in a number of countries.

## Licensing

In principle, licensing could be used as a policy tool to police the behaviour of suppliers towards customers. In practice, countries had varying degrees of reliance on licensing as a policy tool with relatively more licensing in some US and Australian states<sup>3</sup>. Licensing can be used to ensure certain minimum levels of competency and withdrawal of licences used as a sanction for suppliers causing consumer detriment.

Experience in different countries suggests that in practice licensing is problematic because the public often expected more from licensing schemes than the authorities were able or intended them to provide (for example in terms of business behaviour or professional competence). This meant that the licensing body had to tread a difficult line between encouraging consumers to use only licensed traders, whilst not giving the impression that a licence constitutes a more general type of quality mark that consumers could rely on when choosing a contractor.

The general evidence pointed to licences for “problem” trades such as building being relatively easy to acquire in those countries which have licensing regimes. The numbers who are initially refused licences tends not to be high, and automatic refusal tends to be related to either evidence of past prosecutions, evidence of criminal behaviour or possession of a criminal record. Such preliminary checking may be useful in weeding out known criminals from certain professions, but even this appears to cause a degree of consumer confusion in that they thought that licensed tradesmen were essentially guaranteed by the licensing authority to carry out work to a reasonable standard. This was often not the case. Another issue was that authorities often found it difficult to maintain programmes of action against unlicensed traders, which tended to undermine the effectiveness of the licensing system.

The above problem appears to be related to the fact that withdrawal or suspension of licences appeared rare. Often tens of thousands of licences would be issued for a trade but only a handful would be withdrawn in any one year. This rarity with which licences were withdrawn (despite some of the licensed trades topping leagues of consumer complaints) was apparent in Australia and the US. The explanation for this disparity appears to lie in the administrative and legal burden of proof necessary to take licences away.

Administrators of licensing schemes often argued that warning letters were sufficient to deter behaviour which caused consumer detriment.

<sup>3</sup> Early examples of licensing abound – the government of Sydney found it a useful device in 1803 when trying to get boatmen who took passengers to Parramatta “to behave in a more circumspect way” and not to dump them unceremoniously on the riverbank in the early hours of the morning when they felt like it

However, threats of withdrawal of licences could only be used effectively as a policing mechanism to punish those causing run of the mill consumer detriment, such as poor workmanship, when such a withdrawal could be effected in practice. There appeared to be high barriers facing most licensing authorities should they wish to withdraw a licence. These barriers were created by difficulty in proving proportionality – i.e. that an individual should be barred from making a living for less serious breaches of consumer law or poor treatment of customers – and the fact that individuals whose licences were withdrawn tended to use all appeal mechanisms to the full. This made the resource cost of licence removal to the authorities fairly high. Hence, licence withdrawal was generally prompted by significant criminal behaviour on behalf of the licensee such as fraud or violence. Licensing was a marginal source of (local) government revenue in many instances, although it sometimes helped to pay for the policing of licensing. Larger businesses tended to support licensing but this appeared to be mainly because it created another entry barrier to smaller competitors.

Examples of licensing schemes which did appear to achieve some consumer objectives, outside of those areas where safety was a real concern, were relatively scarce. Licensing of travel agents in Australia did appear to work well, since the criteria were mostly financial and the administrators of the bonding scheme, of which membership was compulsory, had an incentive to remove financially weak firms from membership.

### **Industry Codes of Conduct**

In some cases industry codes of conduct played a role in enforcement. Most codes in existence were voluntary, but a number of mandatory codes existed and some countries had developed administrative processes for the formal adoption of codes as part of sectoral regulation. The attraction of codes to both governments and business were that they were seen as a light touch alternative to regulation. This view was commonly shared in many of the countries studied.

However, the general experience of self-regulation involving codes of practice has been mixed in all of the countries visited. Scepticism about voluntary codes was apparent in France, Japan, Australia and the US. In the Netherlands the formal structure for the negotiation of codes and a system of complaint boards to enforce them was seen as working well although the coverage of the codes regime was limited. Examples of successful codes were generally restricted to heavily regulated sectors such as banking and insurance where subscription to the code was effectively mandatory, if not an actual legal obligation.

Outside of these sectors voluntary codes were seen as disappointing in terms of their effect and offered consumers little in the way of extra redress. The key problems were:

- businesses were reluctant to sign up to codes with tough provisions and so agreed codes tended to be vague in terms of consumer rights;
- Trade Associations who sponsored codes were often not keen to hold members to account for breaching any code as they were more concerned about membership income than protecting consumers; and
- coverage tended to be poor and even where firms had agreed to a code they were free to leave rather than follow the code if ever pressed to do so.

Another policy option was the use of mandatory codes which could be enforced by public bodies. In practice, making codes mandatory created difficulties for enforcers who found that the fact they were drafted as codes rather than designed as legislation caused legal problems. The vague language which was sometimes acceptable in general codes of behaviour was a poor basis for enforcement actions. In terms of policy attractiveness a reliance on mandatory codes was generally seen as a poor third best to the use of either general consumer law or sector specific legislation.

For codes to work they must be recognised as a valuable signal of quality and trustworthiness by consumers and business at a level which is high enough to create both brand recognition and brand value. In order for this to happen codes need teeth and there must be significant commercial detriments for traders who cannot meet the requirements of strong codes and commercial value for those who can.

## **Empowerment**

That competition benefits consumers was central to the philosophy of most of the countries studied, although France was somewhat unique in the stress it openly placed on the rights of producers as part of a social compact. Japan had moved from a producer-driven policy orientation towards a more consumer rights-driven approach in recent years.

Given this basic tenet, consumers were thought to have responsibility for looking after their own interests. The countries studied recognised that this requires knowledge and a willingness to act on the part of consumers. Evidence from most countries suggests that proactivity in terms of educating and informing consumers about their rights was a core responsibility of consumer agencies, including enforcement bodies. Prevention was seen as better and more cost effective than enforcement

after the event. A variety of delivery channels was used and the internet is increasingly important.

### **Understanding Rights**

One factor which affected consumer empowerment was the extent to which consumers were aware of their rights. Generally, even for countries with relatively unified consumer law provisions it was unrealistic to expect much in the way of detailed legal knowledge about rights. For countries such as the UK, which had highly dispersed consumer law, it was extremely difficult for consumers to have a detailed knowledge of their rights in different circumstances.

In these circumstances there appeared to be an advantage to general duty type catch-all provision such as a general provision against “misleading and deceptive behaviour” or “misleading and deceptive advertising”. Both US and Australian consumer agencies said that the awareness of these core provisions was high due to the number of cases that were given regular media coverage. Whilst UK legislation as a whole might be characterised as having a basic test of “reasonableness”, this is not codified in a single well-known law applicable in the consumer field.

### **Consumer Education**

A variety of consumer education programmes were being delivered at local level and in particular sectors, for example on money advice where consumer indebtedness was seen to be a problem. There was no evidence of significant consumer education programmes at national level; consumer education in schools was mentioned but there was no evidence of any widespread impact. Consumer authorities such as the National Institute for Consumer Education in Japan produced a variety of materials suitable for children. This type of activity seemed to be seen as a worthwhile thing in itself with no real understanding or measure of its impact and whether the costs incurred were justified.

In the United States there were programmes aimed at teenagers and students. The LifeSmarts programme run by the National Consumers League aimed to cover some clearly defined areas for teenagers in school. In the UK there is limited opportunity to deliver consumer education through the National Curriculum.

### **Internet Advice**

There was some evidence that the availability of the internet as a tool had changed consumer behaviour in that, whilst levels of internet commerce

outside of books and travel remained at relatively low levels, consumers did use the internet to research potential purchases. The lowering of (re)search costs and the spread of PCs with internet access into the home and offices has had an empowering effect on consumers. This use of the internet was particularly apparent in the US where access to the internet was more widespread. The use of Minitel in France was a precursor to this type of internet research.

Government advice to consumers was also now widely available via the internet, as was that from other bodies such as consumer associations. Such advice generally covered basic legal rights and mechanisms for redress or complaint. Also provided was advice about scams which consumers should avoid. The UK's Consumer and Competition Directorate's website, for example, has seen growing numbers of users with around 1.25 million visitors in total and nearly 20,000 unique visitors each day.

Some types of consumer, the elderly being the most often cited group, are less likely to access the internet. Other types of consumer not likely to access the internet would be those with poor (or no) IT or literacy skills and people with debt or money problems. These groups tended to access advice via local advice agencies on a face-to-face basis or via the phone. Recent Danish experience suggests that there is unmet demand for such basic consumer advice. In the UK, the business case for Consumer Direct also showed evidence of the need for consumer support and advice that went beyond the current provision of internet or written material and existing personal advice.

### **Provision of advice**

The availability of advice to consumers depended for the most part on local and municipal arrangements, with advice agencies dependent on funding from a variety of sources including provincial and local government, private subscriptions, public body donations and revenue from publications. Central government funding was available in a few of the countries, and tended to be for an umbrella body to provide support and information to local agencies and advisers and facilitate a more structured approach to the provision of advice. This was the case in France with the funding of the National Consumer Institute, Germany funding the VZBV – an umbrella body – and in the UK where the Government contributed to sponsoring Citizens Advice. Denmark was different in that the Government funded a single national body which provided advice and operated a national hotline.

## **Which Trader?**

The importance of making information about good and bad traders available to consumers was something cited by consumer agencies in most of the countries visited. Whilst consumers could rely on well-known brands in many markets these were largely absent from many personal service and household building and maintenance services. A recent UK National Consumer Council report "Trading Information" (October 2002) outlined the demand for information which could help correct market failures related to asymmetric information about traders' performance.

Only the private sector in the US had really developed an institution that dealt well with this in the form of the private sector Better Business Bureau (BBB), which also operates in Canada. One of the useful attributes of the service provided by the BBB is that they also provide information about non-BBB members. One of the reasons it is successful is that it is supported by business. The brand is well recognised by business and consumers. But its success is limited because it has low penetration of the market (around 8% in Canada, even less in the US).

Other countries recognised the information problem but thought they faced tricky legal issues if the public sector adopted either naming and shaming type policies at trader level or were seen to unfairly support some businesses over others. But some incentives are in place, for example in Denmark under the new consumer policy proposals, where the intention is to list the companies that are not following the settlements from the Complaints Board.

## **When Information is Not Enough**

Although empowering the consumer by providing them with information was seen as a core role of consumer protection agencies, this was not seen as sufficient in itself. Attitudes to protecting the vulnerable varied and looking after them historically accounted for a large proportion of consumer policy actions. Scams provided a good test bed with consumers given clear warnings of what to avoid yet some would continue to ignore such warnings. The question of how far you go to protect those who were susceptible to believing really outlandish claims was seen as one every enforcer grappled with. Empowerment via information provision was useful but no jurisdiction was willing to rely on it wholly to deal with scams. They were afraid the problem would become unmanageable if a laissez faire approach was adopted.

High pressure selling was apparent in most countries and was often related to doorstep selling. Remedies adopted by countries tended to move the problems on to new sectors and products. The most common response was the introduction of a cooling off period. In the EU, the Council Directive on contracts negotiated away from business premises 85/577/EC (doorstep selling) includes a requirement that the consumer can cancel the contract in writing within a period which may not be less than seven days from receipt by the consumer of written notice of this right. In Germany strong privacy laws tend to act to inhibit unsolicited selling techniques including doorstep selling.

# 3: Conclusions

## Overview: Models of Consumer Policy

A variety of consumer policies and objectives was found across the countries studied. These reflected differences in history, politics, economics, culture and legal traditions. For most consumers the markets in which they traded frequently worked well most of the time. Problems tended to be concentrated in certain service sectors where asymmetric information generated some problems as it created an environment in which unscrupulous traders could take advantage of some consumers, particularly those who might be termed vulnerable. Pressure selling was viewed as another common problem, but with international differences in the products to which those engaged in pressure selling clustered.

We found it impractical to identify an ideal system. National systems may be grouped into three general models:

- **Model 1:** consensual and interventionist; the approach was to avoid detriment through more extensive regulation and resolve problems when things go wrong through state led dispute settlement procedures; most cases would be settled without a need for going to court which would be seen as an unusual outcome. Such systems relied on bureaucracy with high costs to the state and potentially more barriers to traders entering the market.
- **Model 2:** mix of private and public enforcement of a considerable body of law in the criminal and civil courts; contractual arrangements for alternative forms of dispute resolution; ultimately adversarial, but with small claims court ensuring easier access to justice for private individuals; the real possibility of court action improves the bargaining position of the consumer.
- **Model 3:** Non-interventionist, dependent on private action, mostly by individuals, where consumer protection is weak because of the framework of law and institutions; dispute resolution procedures not comprehensive; consumers mostly left to resolve problems themselves.

## Consumer Policy: Model Type

Model 1	Model 2	Model 3
Denmark	Australia	Germany
France	Canada	Italy
	UK	Japan
	US	Netherlands

No two countries had identical systems and the models described above are only indicative. Examples of good practice could be found across all the different systems. Currently, UK policy seems to fit most closely with model 2, along with that of Australia, Canada and the US. However, the research we have carried out in looking at regimes across the globe provides us with a wide range of examples of good practice, some of which may be compatible with any of the models.

## Findings of Report

There were some policies that appeared problematic in all countries. Licensing and voluntary codes of conduct were rarely effective because of the difficulty of creating schemes that were robust enough to stop malpractice, whilst being fair to traders, manageable and affordable, and at the same time reaching a sufficiently large coverage of the market to ensure a significant impact.

The team found that the UK was amongst the best in terms of:

- consumer rights in regard to sale of goods and services;
- small claims court procedures;
- maintaining Product Safety;
- provision of consumer advice;
- strength of consumer advocacy at policy making level and sponsoring advocacy;
- investigating markets that are not working well for consumers.

The UK appears to be behind the best in the following areas:

### Legal Framework

- wide reaching legislation: The UK does not have the equivalent of a general duty to trade fairly. This can act successfully as a backstop given the inflexibility of piecemeal legislation and ease of public comprehension of a simply worded basic right as in Australia and the US.

### Enforcement

- the enforcement framework is more fragmented in the UK, especially in England, Wales and Scotland, despite the fact that the body of law generally has universal effect. Resources are fragmented and the UK appears to benefit least from economies of scale. The UK approach to resourcing appears to be at the opposite end of the scale to centralised systems such as France and Denmark;
- consistency in terms of enforcement at local levels. Bigger enforcement constituencies had a more joined up approach. But other countries were

exposed where there were different state laws which could allow traders to shop around for the least onerous base;

- information systems about consumer complaints and safety issues which provide timely intelligence to policy makers and enforcers. These are better in Japan and US;
- smarter use of media to inform consumers and as incentive for businesses to comply with consumer law and penalty for those breaking it. Better systems were seen in the US and Australia; and
- more effective mechanisms for obtaining redress for consumers where there is individual or collective harm. It was easier for some consumers to gain redress in the US.

### **Empowerment**

- consumer information about good and bad traders, which was better in the US.







