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# Forum

## Global links, competition and consumer protection



*Following is a summary of an address by former Deputy Chairman Allan Asher to Commission staff on 19 October 2001. For most of the past year Mr Asher has worked at Consumers International (CI) in London. He recently returned to Australia to a position with the Australian Consumers*

*Association but continues to work closely with CI on many of their global campaigns.*

It is great to be back at the ACCC. My experience away has provided me with further proof of the strong global links within the competition and consumer protection fraternity. These link not only government agencies but also non-government ones.

### Consumers International

Australia was one of the five founding members of CI just over 41 years ago. It now has 260 members from 110 countries and with offices in North Africa, Zimbabwe, Chile for Latin-America, Kuala Lumpur for Asia-Pacific, Eastern Europe, and a small head office in London that coordinates its operation. Head office has 100 staff there — and a daunting agenda. Its purpose is to give voice to consumers in the global decision-making process. It is inexorably linked with processes of globalisation and issues that relate to the multilateral trading system, to food rules and to telecommunication rules — all of those things that are increasingly global. There is a need for campaigning, a need for advocacy, and a need for representation at the global level.

CI has a wide constituency with groups and countries at different stages of development. Probably for the first 20 years of CI's existence most

of its members were from developed countries when it was largely a trade or product-testing association. But during the past 20 years or so it has changed a lot as member groups from developing and least-developed countries have joined. Now two-thirds of all the members are from such countries.

Many assume that consumer protection and consumer policy is relevant only to middle-class societies; when economic development is assured you can then 'ramp up' standards. That could not be further from the truth. The need for basic consumer policy in developing and least-developed countries is of profound importance.

### Key aims of the international consumer movement

Key aims of the consumer movement internationally are essentially the same as nationally. Over many years the guiding principle of the consumer movement has been to achieve consumer rights. They apply in every stage of economic development but more profoundly for least-developed countries.

#### *Right to basic needs*

The consumer movement asserts that every consumer should be entitled to basic goods, such as food, shelter, clothing, sanitation, fresh water and services. There are so many consumers in the world who simply do not have access to those. It becomes a fairly driving principle, especially when it comes to concepts of building markets that work.

#### *Right to information*

Consumers need to be protected from misleading and deceptive conduct. They need information so they can use their own buying power to shape markets, in partnership with enforcement agencies and policy groups. It has been easy for us in Australia to take for granted that those links are going to be there. But in many countries the relationship between the consumer movement and government is quite hostile. In many countries governments see consumer activists as enemies and in Africa, particularly, they are treated with suspicion. It is a rather tragic failure of partnerships

when you have governments terribly under resourced and consumer movements kept out of the decision-making. It all means substantial welfare losses.

#### *Right to choose*

Consumers should be able to choose from a range of competitively priced goods and services.

#### *Right to representation*

The consumer movement argues that consumers have a right to contribute to all decision-making processes that might affect their welfare.

#### *Right to redress*

The right to redress or to access justice is yet another strong principle. There should be compensation for loss or damage, and remedies for wrongful conduct.

#### *Right to a healthy environment*

The consumer movement has long accepted that consumers should have skills to make them critically aware. One aspect of this is understanding the responsibilities of consumption. This leads to the final consumer right, a healthy environment. It is about sustainability and sustainable development. Many in the consumer movement would say that increasingly one of the appropriate consumer responses is to abstain from consumption and to recognise the consequences of our consumption on the environment. This affects those who produce the goods, going all the way back to the original extractive industries. Quite a few testing organisations will now also talk about some of the so-called 'fair trade' aspects of that. How does the company treat its labour? What effect does the production of these goods have on the environment? And how disposable or recyclable are the products?

You can see it is a broad agenda, made more so by applying it across different states of development and trying to find those various global points of pressure at which to take action. It is a daunting but exciting task.

### **International consumer movement and globalisation**

The contextual themes guiding the Commission and the international consumer movement are similar. But the voluntary consumer movement operates in a somewhat different way. For example, we have seen lots of protests against globalisation, the collapse of the WTO Round in Seattle, and threats to future ones. But it has always been my view and one shared strongly by many others — although not

universally across the consumer movement — that globalisation is not a bad thing. It is not an enemy of consumers' interests. The very existence of CI is a globalising response to changes in the world. In many ways it was the consumer movement itself that was a leading globalisation force, such as in cooperating and sharing information. Business was first off the mark in the post-war years with, for example, the growth of transnational businesses and the growth in trade. Consumers have followed closely but it has largely been governments lagging behind. It is only during the past 10 years that we have begun to see genuine cooperation and moves to transboundary jurisdiction on issues like competition policy and enforcement — even of international property rules.

While it is at one level a controversial issue, there are far more positives and strengths through the globalising processes for the welfare of consumers than there are dangers. The multilateral trading system is, again, a highly controversial issue within the consumer movement. But, on the whole, consumer welfare in developing and developed countries has been improved by liberalising the multilateral trading system.

Does that mean that everything is fine? Well of course not. We know that there are market imperfections, wide-scale cartel issues, distortions and market-power issues. But the best way of tackling that is to engage in the debate and push to continue multilateral trade discussions, and ensure that the consumers' interest is asserted more strongly. Too often global discussions are taken over by producer or political interests that ignore the interests of consumers.

### **Global rule making**

Global rule making as a phenomenon is a good way to summarise CI's work. It is a process that is not static; rather it is accelerating as more and more of the things that influence consumers shift to global rule making. Even the colour of the paint for the stripes down the middle of the road is now determined by an international forum. There are almost no Australian standards for goods or services that do not derive from global standards, such as the telecommunications protocol.

It is pointless for consumer groups to be spending all of their time campaigning nationally and lobbying their parliaments and departments while not realising that the locus for decision-making has often shifted to such forums as the OECD, various UN

agencies or Codex. This leads to the dilemma of those forums losing touch with individual consumers. Global rules may be insensitive to the particular stage of economic development or aspirations of consumers in different countries. In all the least-developed countries the average income is less than one US dollar a day. One-third of the world's population exists on less than five US dollars a day. So the interests that they have will differ markedly from those in developed or in near-developed countries.

### **Retreat of governments from the marketplace**

Does the retreat of governments from the marketplace mean there is less government take of the gross national product? No it does not. Governments still have their hands on the money but they have a much lighter touch on regulatory systems and there are two sources for that. There is a positive and a negative one. The positive one is that governments are seeing more and more that the best form of consumer protection is vigorous competition and a fair and informed market. Where that exists, the need for government intervention is less.

The negative is that governments are not prepared to put the money into regulation with a few exceptions. One regulatory agency, a competition authority in Africa, was set up at the beginning of the year. They had staff appointed and premises selected but a zero budget. It is tragic thing that keen people are wanting to make a difference, to build markets but can do nothing.

An issue the consumer movement is facing with scepticism but interest is a whole new engagement with business. As government is withdrawing from many of these areas the consumer movement has new opportunities to deal directly with industry groups.

At CI I have been negotiating directly with the International Chamber of Commerce about the development of some international guidelines for dispute resolution systems in e-commerce. I have also been working with a group from the World Economic Forum, the Davos group. This is on agricultural policies and ways to limit government agricultural subsidies and prevent export subsidies, which damage markets, particularly those of developing countries. And there are prospects increasingly of governments being bypassed entirely on some of these policy issues. I think that is quite a profound and rapidly developing change.

### **Interests of consumers in developed versus under-developed countries**

The interests of consumers in developed OECD countries continue to diverge from those of consumers in developing countries. Consumers in developed ones are more concerned about environmental issues and food safety. But what is the right global standard for food? By arguing for standards that are increasingly higher there may come a point where the standards are no longer legitimately about health and welfare of consumers. They may become barriers to prevent imports from developing economies. The extent to which that is a consumer issue is debatable. We have fairly clear distinctions in countries like Australia between producers and consumers. But they tend to disappear the further you go down the development track. The idea of distinguishing production from consumption would not occur to those in China or Cambodia or many other countries.

### **International consumer movement, competition law and politics**

Over the past 10 years or so there has been an explosion in the implementation of competition policy. Just 10 years ago there were no more than about 40 countries that had one. And far fewer with competition laws and enforcement agencies and, of those, very few that did much at all.

There are now about 100 countries that have a competition policy and about 90 with competition laws.

And why is that? It is now universally accepted that the market mechanism is the key driver of enhancing the welfare of consumers. The consumer movement and most governments accept that. So people are having to confront the issue of how to build markets, how to make them work and how to make them work for consumers. The consumer movement has generally taken on this agenda wholeheartedly.

#### *Dealing with large corporations*

The size of global capital and some corporations means that the top 10 corporations in the world have combined budgets greater than the gross national product of the bottom 50 countries. How can a small country ever have the critical mass to do anything about this.

I often use the example of small and medium economies like Australia and litigation of the type the Commission has been engaged in with the record industry over parallel imports. Even an

agency as well resourced and as determined as the Commission has struggled to deal with such companies.

Can you imagine countries that do not have those resources? They are just going to get rolled over. And each country having its own enforcement agency will not solve this. But much closer cooperation between enforcement agencies will. I have argued that developed countries should have twinning arrangements with poorer ones. The Commission has been doing this for a decade. But others need to understand the value of officials from a developing country sitting in on training seminars. As they learn and appreciate the culture of competition it will pay vast dividends in the developing economies when they return.

Global competition rules, or at least a much greater convergence between them, have been proposed for some time; and there should be an expert committee appointed by the WTO to work on this. This would be a positive move and would help countries to understand the value of competition policy and how to introduce it.

#### *Cartels*

A report published by Harvard research group last year showed that more than 40 billion dollars worth of global trade had been adversely effected by global price fixing cartels. It is estimated that in developed countries cartels increase prices by an average of about 10 per cent. In developing economies those figures could be vastly higher. The lack of competition means the risks of detection and action are almost zero. So it seems that disproportionately higher penalties are paid by consumers whose welfare is stolen through those price fixing agreements.

#### *Merger policy*

Allan Fels has stated repeatedly that, 'most global mergers are not anti-competitive'. I readily agree with that and indeed many can be pro-competitive but there are some that are anti-competitive. There are some that might not be anti-competitive in countries like Australia or US or throughout the European Union but in smaller economies could combine the only two suppliers of critical goods and services. The international community must consider the welfare of consumers in smaller economies. It is hard to see how that might work out but it is an important issue.

#### *Intellectual property rules*

An agreement signed by all governments, when the Uruguay round of multilateral trade talks finished, was the agreement on intellectual property, the Trips

agreement. I think that was by far the worst part of the Uruguay round. While it aims to liberalise international trade it does exactly the opposite. It extends the lives of many patents and every signatory government must now, to establish an enforceable right for intellectual property awareness, use the coercive power of the state to enforce it. It seemed to be done with no cost-benefit studies or any understanding of how it would work.

Small and medium economies, and I would argue that Australia is included among these, will suffer hugely over the coming years because access to the product of the intellectual property is going to come at a price. Intellectual property is becoming registered in fewer, mainly larger, countries so that much of the money currently being spent on development assistance is more or less wasted. If you look 10 years ahead much of the world's output will be high-value-added products developed from biotechnological or other high-tech advances. These products will all be protected by international property rights that small or medium economies will have to pay for.

#### *Pharmaceutical industry*

CI also pays attention to many other issues that I do not have time to cover here. These include tobacco and the pharmaceutical industry. CI was one of the key players that forced the global multi-national pharmaceutical companies to stop their litigation against the government of South Africa. South Africa was desperate to get some cheaper anti-retroviral drugs to control their out-of-control HIV/AIDS epidemic. Close to 20 per cent of the population of South Africa is affected and the figure is higher for some other African states.

### **A new code of behaviour**

For the time being we must work with a global economy operating under few global rules. Its regulation is more self- or co-regulation than what we have nationally. But there are examples of successful cross-border dispute resolution and what can be done cooperatively between industry and consumer groups such as in e-commerce. Nevertheless, governments through the OECD committees or other groupings such as the IMSN need to keep the pressure on to maintain momentum. Recently the OECD established an agreement for a new code of behaviour for multinational enterprises. I think it is a great standard with, for the first time, a chapter on consumer protection.