

UNCTAD Mandate and Work on Competition and Consumer Policies

Short Course for Geneva Based Delegates (P166)

13 November 2020

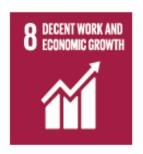
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Course Outline

- UNCTAD's mandate on competition and consumer protection policies
- II. Competition law and policy, economic development
- III. Consumer protection law and policy and UNGCP
- IV. Take away points

AGENDA 2030 - Relevant Sustainable Development Goals for Competition and Consumer Policies











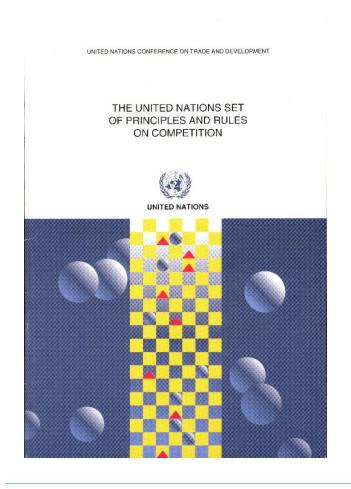
- Goal 8: Decent Work and Economic Growth Building productive capacity creates decent jobs and fosters sustainable growth.
- Goal 9: Industry, Innovation and Infrastructure Transforming economies, tackling vulnerability and building resilience call for an integrated approach to industry, innovation and infrastructure.
- Goal 10: Reduced inequalities Shared prosperity for all will require reduced inequalities and improved international economic governance.
- Goal 12: Responsible Consumption and Production Ensure sustainable consumption and production patterns
- Goal 17: Partnerships for the Goals A strengthened and revitalized global partnership.

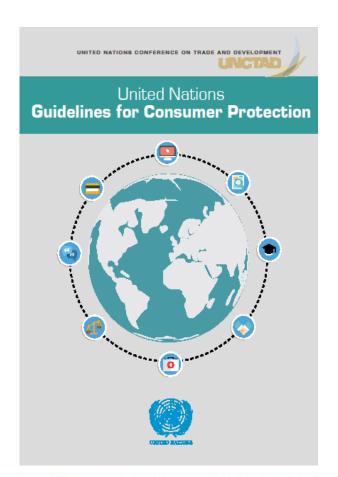
UNCTAD's mandate and pillars of work

- UN body responsible for dealing with economic and sustainable development issues with a focus on trade, finance, investment and technology - Prosperity for All;
- 194 member States;
- Think, Debate, Deliver to assist developing countries in better participating in the global economy
- Focal point for Competition and Consumer Policies within the UN system;
- 3 pillars
- Consensus building -Intergovernmental deliberations
- > Research and analysis
- Technical Cooperation:
 Assistance/Capacity building



UNCTAD is the focal point within the UN system for Competition law and policy since 1980 and for Consumer protection law and policy since 2015





UNCTAD's Mandate and Work on Competition Law and Policy

- Intergovernmental Group of Experts (IGE) on Competition Law and Policy
- UN Conference to Review the UN Set on Competition
- Research and analysis Research Partnership Platform
- Technical cooperation: National, regional

UNCTAD's Mandate and Work on Consumer Protection Law and Policy

- Intergovernmental Group of Experts (IGE) on Consumer Protection Law and Policy
- 8th UN Conference on Competition and Consumer Protection
- Research and analysis Research Partnership Platform
- Technical cooperation: National, regional

Future sessions of the IGEs on Competition and on Consumer Protection Law and Policy should include four clusters of issues for informal consultations:

- (a) Competition and consumer protection policies' contribution to the achievement of inclusive and sustainable development;
- (b) The role for competition and consumer protection policies with regard to e-commerce and digital markets;
- (c) Competition and consumer protection laws and policies and Government interventions in the economic recovery of markets in the post COVID-19 period;
- (d) International cooperation between competition authorities against cross-border anticompetitive practices (including cross border cartels), and between consumer protection authorities against fraudulent and deceptive commercial practices and unsafe consumer products.

Requested the UNCTAD secretariat to prepare reports on:

- a. Competition law and policy and regulation in the digital era.
- b. Competition advocacy during and in the aftermath of the COVID-19 crisis.
- Consumer protection needs of vulnerable and disadvantaged consumers in connection with public utilities;
- d. Consumer laws, policies, and regulatory actions in response to and in the aftermath of the COVID-19 pandemic;

Adopted the Guiding Policies and Procedures under Section F of the Set on Competition (TD/B/C.I/CLP/55/Add.1), which was agreed upon in the 18th session of the IGE on Competition Law and Policy.

Established a working group on cross-border cartels to highlight best practices, to facilitate information exchange and consultations, and to report to the 19th session of the IGE on Competition law and policy;

Established a working group on modalities of UNCTAD voluntary peer review exercises to discuss and improve existing procedures and methodology.

Renewed the mandate of the Working Group on Consumer Protection in E-commerce to work on

- misleading and unfair practices,
- consumer education and business guidance
- cross-border enforcement cooperation,

to facilitate exchange of information and best practices among consumer protection authorities.

Renewed the mandate of the Working Group on Consumer Product Safety to strengthen national, regional and international consumer product safety frameworks to protect consumers and recommend policy options.

UNCTAD Voluntary Peer Reviews of Competition and Consumer Protection Law and Policy

- Phase I: Peer Review Report including findings and recommendations on how to improve the competition regime.
- Phase II: UNCTAD facilitates the peer review session during the IGE meeting. Consultations and exchange of experiences between the reviewed country and the reviewers and other countries.
- PHASE III: Based on the PR Report's recommendations, UNCTAD prepares a follow-up technical assistance project proposal for consideration by the reviewed country and development partners.

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25 Voluntary Peer Reviews of Competition Law and Policy



- Jamaica; Kenya (2005)
- Tunisia (2006)
- West African Economic and Monetary Union (WAEMU), Benin and Senegal (2007)
- Costa Rica (2008)
- Indonesia (2009)
- Armenia (2010)
- Serbia (2011)
- Mongolia; Tripartite: United Republic of Tanzania-Zambia-Zimbabwe (2012)
- Ukraine; Pakistan; Nicaragua (2013)
- Namibia; Philippines; Seychelles (2014)
- Albania; Fiji and Papua New Guinea (2015)
- Argentina (2016)
- Uruguay (2017)
- Botswana (2018)
- WAEMU (2020)

UNCTAD Voluntary Peer Reviews of Consumer Protection Law and Policy



Morocco (2018) Indonesia (2019) Peru (2020)



UNCTAD Research Partnership Platform

- · Created in 2010.
- Brings together universities, research institutions and civil society representatives.
- Agenda of the eleventh meeting in December 2020:
 - Panel I on the role of competition policy in a fair and inclusive economic recovery
 - Panel II on the protection of online consumers

Why competition?

Competition is a means, not an end.

Competition constrains market power. But why worry about market power?

- The power of consumers versus the power of producers
- Producers maximize profits.
- Consumers are many but scattered, power imbalance.
- Asymmetric information.

Efficient organization of production across the economy requires matching the value placed on goods with the costs of producing them

Dynamic gains from rivalry – new ideas and new business models

In the absence of market power (and lots of other assumptions holding) the free market system achieves this.

Why competition law and policy?

- Inefficiencies due to market power
 - Allocative
 - Productive
 - Dynamic
- Imperfect competition
- Market failures
- Understanding market power and market outcomes

Inefficiencies

- Inefficiencies associated with market power which result in higher prices and other effects:
 - Allocative inefficiency (too little produced)
 - Productive inefficiency (higher costs of production)
 - Dynamic inefficiency (less innovation)

What is at stake with imperfect competition?

- The cost of monopoly:
 - Monopoly pricing, above costs, means underconsumption and transfers from consumers to producers
 - Lack of competition also reduces incentives to effort
 - Rent-seeking: Firms spend money lobbying to acquire or extend monopoly position
 - Potential entrants are undermined
- Oligopoly (few firms) and likely collusion where firms optimize profits by behaving like a monopoly.

What is at stake with imperfect competition?

- Barriers to entry that are exogenous (due to the nature of the industry)
 - o Fixed & sunk investments include capital expenditure, advertising
 - Need to establish brand awareness, distribution networks, reputation etc.
- Barriers to entry can be raised by incumbent firm(s)
- In practice, competition policy and regulation are closely intertwined.
- Regulation may be justified to address entrenched dominance, and required for competition (to enable improved entry prospects)

Barriers to Entry

- If markets are contestable (low barriers to entry), then high price margins over costs (positive profits) will attract new entry
 - New entrants see opportunity to make profits and would enter the market
 - Prices would be competed down.
- But with high BTE, entry is difficult, costly, risky or time consuming
 - Incumbents have market power and can maintain high prices without profits being eroded by entrants
 - Consumer behaviour
 - Information asymmetry

Barriers to Entry (cont'd)

- Structural barriers, intrinsic features of production & supply
 - Natural barriers (physical location, obstacles etc.)
 - Sunk costs (advertising, marketing, R&D expenditure), make entry risky
 - Absolute costs advantages (e.g. preferential access to inputs)
 - Legal or regulatory barriers (e.g. tariffs, licensing requirements)
 - Market failures in financial markets
- Strategic Barriers
 - Incumbent engages aggressive behaviour to deter entry, raise rivals costs or reduce rivals revenue
- Advantages which can be utilised by incumbents and first movers
 - Switching costs (e.g. contract cancellation costs, brand loyalty)
 - Economies of scale (lower costs for incumbent with bigger scale)
 - Network effects (e.g. cell phone networks)

Market failures

- Market failures refer to where the private valuations by agents (individual firms and consumers) differ from the appropriate economic values
 - Information asymmetries
 - Externality effects
 - Public goods
 - Difference between social and private valuations, especially relating to investments in utilities
- Market outcomes are thus sub-optimal.
- Market failures are pervasive.

Market power

- Ability to raise price over cost sustainably in the long run.
 - Firms are price setters not price takers. Meaning?
 - Prices reflect the willingness to pay of consumers (this is exploited by sellers), and not costs of production.
- Ability to act independently of competitive discipline of current rivals, potential entrants and customers.
- If firms are not constrained by consumers switching to competing firms and/or substitute products,
 - they charge higher prices; consumers reduce purchases and there is 'under-consumption' of the product.
- To prevent firms from being able to command prices consumers must have alternatives (substitutes) to which they can switch easily. Markets need to be CONTESTABLE.

Market Power and Competition Policy

Competition policy is concerned with conduct that creates, enhances or preserves market power.

Especially a concern in already very concentrated industries – Ex: Digital economy; agrobusiness.

Benefits of competition

- Empirical results confirm that competition improves productivity and reduces costs.
- Ensuring effective competition generates dynamic benefits in increased effort, productivity, creativity, while allowing for scale economies.
- Competition eliminates rent-seeking (Firms spend money lobbying to acquire or extend monopoly position).
- Links of export success with local rivalry (e.g. Japan, Korea).

Exceptions?

- R&D: monopoly position is the reward for winning a race to develop new products or innovations to reduce costs. Should not ask firms to race and then punish the winner?
- But scale economies mean there are benefits from not duplicating fixed productive assets (Ex: Utilities)

Objectives of Competition Law

- Promote, maintain, encourage and enhance economic efficiency in production, trade and commerce by prohibiting anti-competitive business conduct;
- Promote the welfare and interests of consumers as they relate to anti-competitive business conduct;
- Prohibit business conduct which has had, is having or is likely to have the effect of substantially lessening competition in a market;
- Ensure fair opportunity for small businesses to participate in the economy.

Key Principles of Competition Law

- Protecting competition 'on the merits', not individual competitors
 - In the interests of consumers and economic efficiency
- Incentives to invest & innovate, which competitive markets and process of rivalry stimulate
- Merger review: rationale to prevent unwarranted concentrations
 - o Balancing efficiencies with likely harm to competition
- Prohibit horizontal restrictive practices: agreements between firms instead of competition
 - o Collusion is most harmful anti-competitive conduct
- Vertical arrangements: firms are not competitors, and there are efficiencies from coordination along supply chains
 - Presumptions and balance differ across countries
- Abuse of a dominant position: unilateral conduct to undermine competitive pressure and earn supra-competitive returns

Competition Law

- Competition law lays down rules that firms must abide by when engaging in business activities, both in their own conduct, and in relation to other firms.
- The breach of such rules, when uncovered, is punished by fines.
- Criminal offense: In some countries, imprisonment of high-ranking officials of the firms involved.
- Penalties based on deterrence the money being made from anti-competitive conduct is high.
 - If fines do not outweigh this, then firms will just re-offend

Benefits of Competition Law Enforcement



Importance of competition policy

- Competition policy being vigorously promoted but in practice great diversity in competition regimes
 - Competition law is often a product of historical and political factors i.e. differences in EU and US approaches
- Competition policy may be more important in developing countries, however:
 - Needs to be viewed in context of policies to address orientation and conduct of big business
 - Needs to be aligned with broader policy goals and context
- Industrial policy and competition policy conflict or complement?
 - Competition requires effective rivalry, which might require industrial policy to support entrants and smaller firms.

Competition, Markets and Inequality

'Competition is the basic rule of the game in the economy. Nevertheless, if the outcome of competition is to be accepted by the society at large, the process of competition itself must not only be free but also conform to a social norm, explicit or implicit. In other words, it must also be fair. Otherwise, the freedom to compete loses its intrinsic value.' (Kyuck-Lee, 1997, reflecting on competition policy in South Korea).

South Korea's policies for '4th Industrial Revolution' emphasize fair competition and the role of small and medium enterprises.

Competition, Markets and Inequality

- Colonial legacy of African countries.
 - Legacy of concentrated structure and entrenched market power
 - Failure to recognize and address barriers to entry and growth of 'outsiders'
 - No recognition that capabilities are result of cumulative investments, embedded in firms, depend on local, national and regional actions
 - Inequality has been reproduced and entrenched
- Low levels of competition reinforce inequality through returns from inherited wealth and incumbency.
- Role for competition policy in addressing inequality openingup market, reducing entry barriers.

Competition Policy and Inclusive Economic Development

- Large firms are important for making large investments to realize economies of scale and scope, make long-term commitments to build capabilities.
- Nature of competitive rivalry, and power and interests of large firms is at heart of how countries develop.
- Is there:
 - Performance based competition associated with development of capabilities
 - Or handicap competition? Winner takes all (and keeps it for some time). Does winner's position stem from past lobbying?
- Competition is a dynamic process, related to participation.
- Political economy: Opening markets is part of opening the economy, while dominant incumbents tend to lobby to erect and maintain barriers to entrants (Ex: telecom post-privatization in Europe).
- Competition law sets the rules of the game, the 'economic constitution' of a country or region.

Competition Policy and Industrial Development - 1

- Orientation of big business is central to countries' industrial development
 - Investments to adopt and adapt new technologies, realise economies of scale and scope, build production capabilities, skills
 - Nature of relations with smaller firms is important for their development also
- Rapid industrialisation to 'catch-up'?
 - 'Unbalanced' growth through interventionist industrial & trade policy means large companies with market power
 - Discipline needed to ensure firms build new capabilities rather than entrench positions to extract rents
 - Emphasis on export performance can be seen as a means of using competitive discipline – in export markets
 - Dynamic rivalry, and 'optimal' competition, rather than static conception of perfect competition.

Competition Policy and Industrial Development - 2

Alternative schools of thought:

- Incentives to invest in R&D are the profits which can be made from monopoly position (Schumpeter)
 - This attracts innovative efforts by others looking for next big step forwards in product development and/or new business model
 - o Punishing dominant firms risks undermining R&D and productivity
- Dominant firms lock-in advantages, raise barriers to entry, and undermine innovation of actual and potential rivals (Arrow)
 - Pharmaceutical cases of 'pay-for-delay' to generic entrants
 - Network effects and multi-sided platforms in tech sector
 - Once innovative does not mean continue to be so
- Emerging consensus on importance of rivalry to spur innovation and productivity

Competition Policy & Industrial Policy Revisited

- Often portrayed as in opposition to each other, but in many regards are, or should be, complementary
- Entrenched positions of large firms 'dominance' and its abuse → networks of practices to protect this
- Barriers to entry and growth of new firms
- Capabilities are result of cumulative investments, embedded in firms, depend on local, national and regional actions
- Industrial and trade policy levers can support rivals and be used as a discipline on large firms – with regulatory measures (in e.g. energy, transport)
- Influencing corporate behaviour requires: information & analysis, credible tools/levers, degree of autonomy from narrow interests
- In context of skewed income distribution and industrial structure inn many developing economies

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Competition, industrial and trade policies for industrial development

- Invest in capabilities and efficiency
- Address abuse of market power / bargaining power
- Create and redistribute opportunity
- Support meaningful participation in markets, especially by SMEs
- •Take a regional approach, especially where regional economic cooperation / regional trade agreements exist (ex: AfCFTA).
- Larger market
- Addressing entry barriers regionally

Public Interest Considerations in Competition Law – The case of South Africa

- Address past economic and social imbalances; support previously disadvantaged; recognition that competition policy needed to be aligned to the broader government policies and development objectives.
- Anticompetitive merger can be justified on public interest ground.
- Pro-competitive merger can be against public interest
- Provision covers:
 - o effect on a particular industrial sector or region
 - o employment
 - ability of small businesses or firms controlled or owned by historically disadvantaged persons to become competitive
 - o and the ability of national industries to compete in international markets
- Must be merger-specific

Some take away points

- Developing countries with naturally protected local markets, entrenched dominant firms
- Positions may often be due to state ownership and/or support
- Harm to economy:
 - Conduct skews structure of economy undermines competitiveness of downstream and more labour-intensive industries
 - Economic and political history means industries with inherited advantages, and tend to have strong political links
- Over- or under-enforcement? where should the balance be?
 - Small economy; history of state ownership; various regulations scope for strategic behaviour to stifle competition is broad
- Note: Solutions may not be capping prices but advocating for greater rivalry through openness at regional level, changes to regulations, supporting entry.
- Competition assessments important to demonstrate harm
- → Competition policy potentially complements industrial policy and regulation, and industrial policy tools and levers can work for more competitive outcomes.

Competition and regional integration - The case of Africa -

- African countries trade little with each other
- Intra-Africa trade around 17%, way below other regions of the world – largely due to weak intra-industry trade
- Regional integration vehicle for growth, diversification and addressing debilitating un- and under-employment
- 8 key RECs form the foundation of an integrated Africa;
 Moving to African CFTA

Competition and regional integration - The case of Africa -

- African countries and regions have developed regional industrialization strategies
- Static gains from trade low between countries with similar endowments, production structure, but, gains taking into account scale economies, learning, productivity and competition are substantial
- Wider regional markets mean investment to reach largerscale production, and more competitive markets

Competition and regional integration challenges

Mergers

- Cross-border effects require regional analysis
- o Regional authority to interact with national authorities?

Cartels

- National cartels identified which may in fact be regional, with very large mark-ups, as companies allocate geographic markets
- o Companies operating across countries
- International (export cartels) e.g. fertilizer

Abuse of dominance

- Regional trade undermines unilateral market power
- Firms lobbying for tariffs and NTBs to protect position
- Entry, through cross-border investment
- Harm to economies and different groups (consumers, downstream firms) not well assessed and understood.

Competition and Consumer policies

Common goal - Consumer welfare Complimentary nature but different scope of action/approach/instruments

COMPETITION POLICY

- Supply side approach;
- To protect and promote competition in the market;
- Ex-post intervention: significant anti-competitive practices;
- Strong investigative and sanctioning law enforcement powers;
- Economic analysis is crucial for markets competition assessment;
- Institutional design: exclusive, independent and specialized authorities.

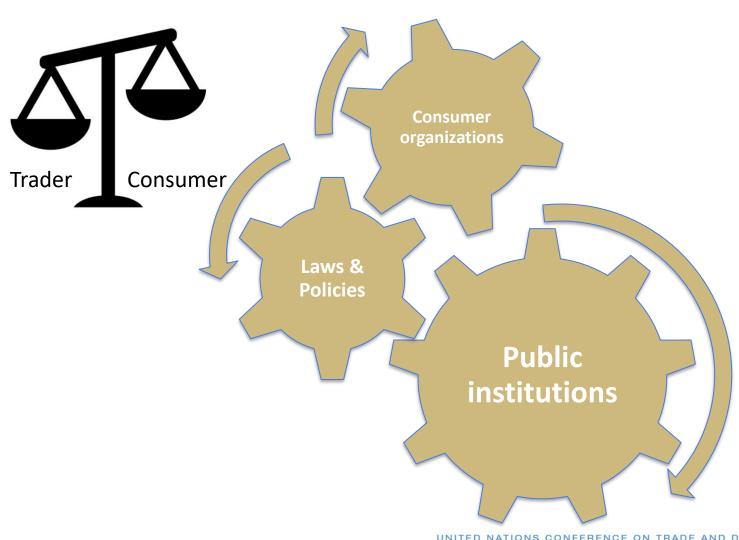
CONSUMER POLICY

- **Demand-side focus:** "Consumers" individuals acquiring goods and services for personal/household consumption;
- Goal: rebalance information asymmetry between consumers and traders *Ex ante* protective approach combined with empowerment initiatives (info/education);
- Law enforcement: multiple, small value infringements not harshly sanctioned:
- Diverse areas of expertise sociology, anthropology, social sciences & law and economics;
- Wide range of tools: information/education campaigns; business self-regulation;
- Institutional design: fragmented, several agencies/sectoral regulators at national/local level.

Consumer Protection - Why it matters?

- Ensures access to non-hazardous products, enables informed consumers' choice,
- Prevents unfair commercial practices, provides dispute resolution and redress.
- Empowered consumers play an active role in the market and contribute for sustainable economic development.

Consumer Protection



UNCTAD's mandate on Consumer Protection

- Providing a forum for intergovernmental deliberations consultations, exchanges Consensus Building
- Undertaking Research, policy Analysis and data collection to inform these deliberations
- UNGCP implementation collecting and disseminating information
- Providing Technical Assistance and Capacity Building to developing countries
- Conducting Voluntary Peer Reviews on Consumer Protection law and policy

The UN Guidelines for Consumer Protection and the SDGs

General Assembly resolution 70/186 of 22 December

2015:

- Approved the revised UN Guidelines for Consumer Protection (1985, amended in 1999), that were expanded and modernized to respond to current challenges;
- Created the IGE on Consumer Protection law and policy, providing a unique international forum for intergovernmental deliberations in this field;
- Conferred UNCTAD a new mandate that is closely linked to the achievement of the Sustainable Development Goals (SDGs 12/16/17).

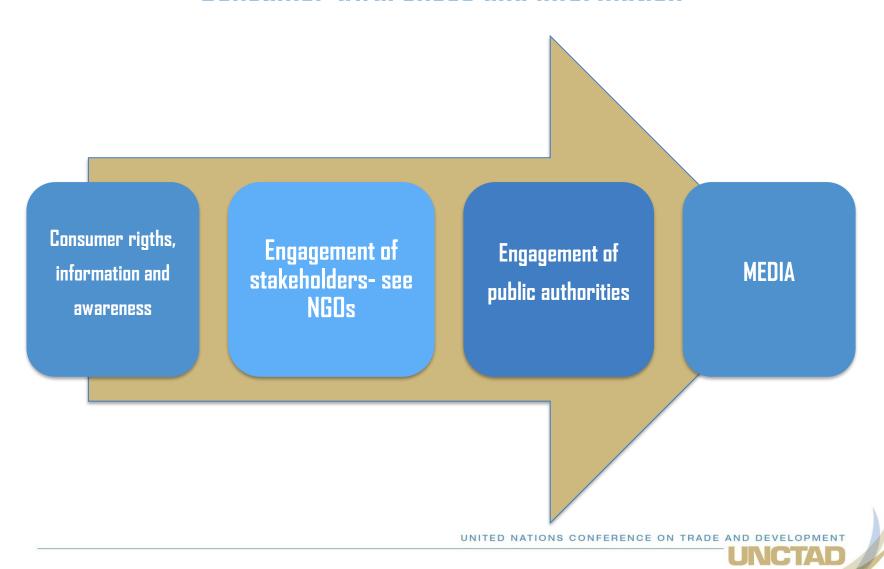


UNGCP



- ✓ **Definition**: 1st. international instrument definition:
- ✓ Good business practices (NEW): recommendations aim at the private sector recognizing shared responsibility;
- ✓ National policies for Consumer Protection: checklist of adequate legal/institutional landscape;
- ✓ **Dispute resolution and redress**: inclusion of ADR (alternative dispute resolution), collective redress, and compensation for consumers;
- ✓ E-commerce: new guidelines;
- ✓ **Financial Services**: inspired in OECD/G20 High Level Principles;
- ✓ Energy, Public services, Tourism: new issues;
- ✓ International cooperation: especially important for cross border cases.

Consumer awareness and information



Consumer awareness and information

Consumers have the right to access safe products and services.

- G. 28 Member States should encourage all concerned to participate in the free flow of accurate information on all aspects of consumer products;
- G. 29 Consumer access to accurate information about the environmental impact of products and services should be encouraged through such means as product profiles, environmental reports by industry, information centres for consumers, voluntary and transparent eco-labeling programmes and product information hotlines.

Consumers shall be protected from misleading environmental claims and international double standard practices.

Consumer awareness and information

- G.44. Consumer education shall cover, for instance, health, product hazards, product labelling and environmental protection
- G.50 Informed consumers have an essential role in promoting consumption that is environmentally, economically and socially sustainable, including through the effects of their choices on producers.
- G.51 Member States together with businesses and the civil society should develop and implement strategies to promote sustainable consumption through policies that include regulations, economic and social instruments to raise awareness of the impact of consumption patterns.

Consumers have the right and the interest to be informed about products and services, its risks, quality, quantity, technical details and, of course, its sustainability patterns. Duly informed consumers trust businesses, which has a positive impact in the market.

Business Engagement, Sustainability and the UNGCP

- Key issue: Consumers health and safety is also related to sustainability. Businesses
 play a major role in adapting production, marketing and sales to new times and
 needs.
- G. 11 Business are encouraged to "provide complete, accurate and not misleading information" (...) "develop programmes and mechanisms to assist consumers to develop knowledge (...) to take informed decisions".
- G. 29 Consumer access to accurate information about the environmental impact of products and services should be encouraged through such means as product profiles, environmental reports by industry, information centres for consumers, vluntary and transparent labelling programmes and priduct information hotlines.

Business engagement, sustainability and the UNGCP

- G. 46 Business should, where appropriate, undertake or participate in factual and relevant consumer education and information programmes.
- G. 50 Responsibility for sustainable consumption is shared by all members and organizations of society, with informed consumers, Member States, businesses, labour organizations and consumer and environmental organizations playing particularly important roles.
- G. 92 To promote sustainable consumption, Member States, international bodies and businesses should work together to develop, transfer and disseminate environmentally sound technologies.

Sustainable products and Consumer Health and Safety

H. Promotion of sustainable consumption (G. 49 – 62)

Member States are encouraged to safely manage environmentally harmful uses of substances and encourage the development of environmentally sound alternatives. Potentially hazardous substances should be evaluated on a scientific basis

It is important to promote awareness of the health-related benefits of sustainable comsumption, considering direct effects on individual and collective health

In order to achieve sustainable patterns the partnership of the public and the private sectors is crucial.

Regulation and economic instruments (fiscal) are relevant tools to achieve the SDGs

Sustainable Consumption: What is at stake?

- Food loss and related waste
 - 1.6 Billion Tons per year
- Revenue loss
 - 1.2 Trillion \$ per year
- Greenhouse gas emission, ozone layer?
- 8% Hunger in the world
 - 870 Million People





Sustainable Consumption: What is at stake?

The food loss is a big deal

Rich countries:

222

million tons

wasted per year

sub-Saharan Africa:230million tons netfood production

Europe and North America: 95-115 Kg per year per capita Sub-Saharan Africa: 6-11Kgs per year per capita

- Per year, consumers in rich countries waste almost as much food (222 million t) as the entire net food production of sub-Saharan Africa (230 million tons).
- Per capita waste per year by consumer:
 95-115 kg Europe/ North America,
 6-11 kg Sub-Saharan Africa,
 South and South-East Asia.

Some take away points

- Consumer information, awareness and transparency ensure access to non-hazardous products, enabling informed consumers' choices: the promotion and access to sustainable products can be therefore encouraged.
- Empowered consumers play an active role in the market and contribute for sustainable economic development.
- Business also play a major role, having the responsibility for promoting sustainable consumption through the design, production and distribution of goods and services (UNGCP Gd. n. 50).
- Standards and Self-regulation initiatives are an important avenue to reinforce Consumer Protection and promote Sustainable Consumption
- International Cooperation can disseminate environmentally sound technologies, provide developing countries assistance, facilitate capacity building and foster joint work towards the achievement of SDGs.



THANK YOU!

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