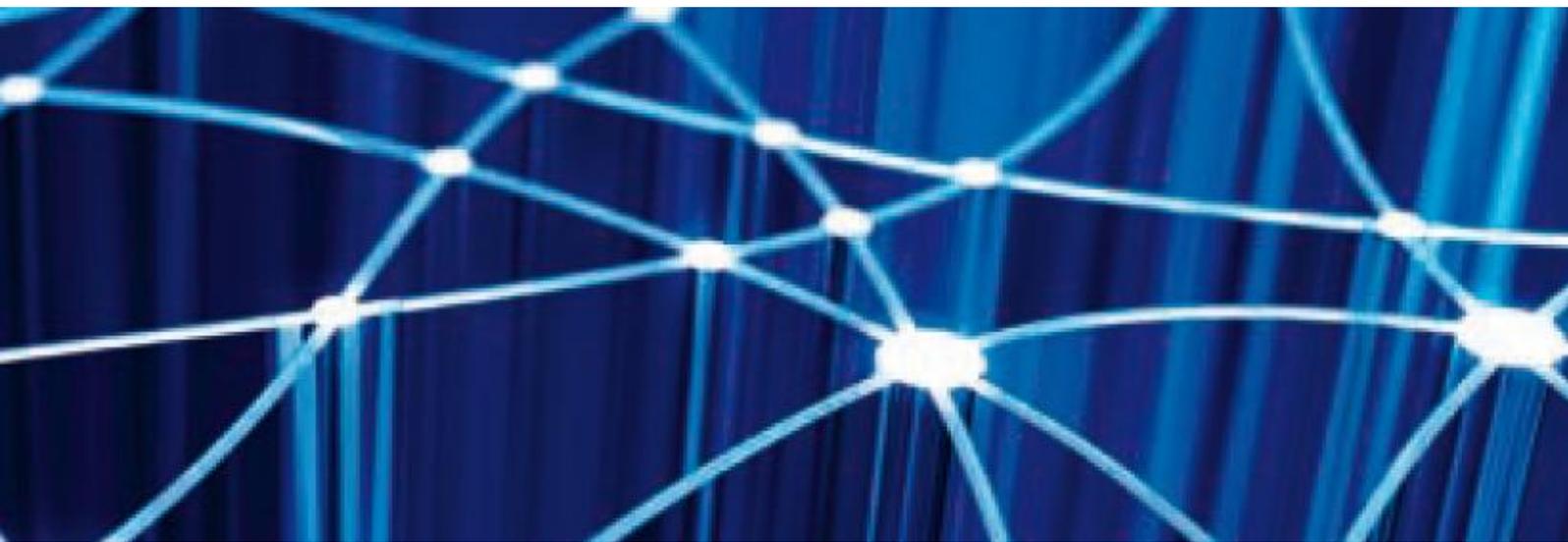




OECD RECOMMENDATION ON CONSUMER POLICY DECISION MAKING

March 2014



FOREWORD

This Recommendation was developed by the OECD's Committee on Consumer Policy. It was adopted by the OECD's Council on 12 March 2014.

PREFACE

The methods used to analyse and address consumer issues are evolving, as are the complexities of the problems that consumer agencies are being asked to address. The OECD, through its Committee on Consumer Policy, has been providing a multi-stakeholder, multilateral platform for addressing emerging issues and for exploring ways to improve policy responses. It carried out a fundamental review of the policy making process; conventional approaches to policy making were challenged and the Committee explored how lessons from the study of information and behavioural economics could be integrated more effectively into policy making. The Committee published its findings and recommendations in the *Consumer Policy Toolkit*, in July 2010.¹

The *Toolkit* provides a robust framework for examining consumer problems and determining what policy measures, if any, could or should be taken to improve consumer outcomes. It is a practical guide that is relevant to all government authorities that have responsibility for supporting consumer interests, including those involved with enforcement of laws and regulations concerning consumers.

The framework is based on the assumption that vigorous competition is key to maximising consumer welfare, but that complementary policies are often needed to make markets work better for consumers. It recognises, for example, that information is often asymmetric, far from complete and that it can be flawed (i.e. misleading or fraudulent), and that much can be done to address these deficiencies. It draws on progress in information and behavioural economics research to better understand the factors underlying consumer decisions. Consumers can, for instance, be influenced by the way choices are presented to them and by behavioural biases that may result in poor decisions being made.

The *Toolkit* also addresses the challenges faced by consumers who may be vulnerable to detriment, due, for example, to their psychological or financial circumstances, the nature of a transaction, or the place or context of a purchase. While all consumers may at times be vulnerable, disadvantaged consumers may face challenges on a persistent basis; this may be due, for example, to low education, language limitations, or cognitive or physical impairments.

The Committee has noted the positive experiences that governments and other stakeholders have had in using the *Toolkit* to determine how to assess and address problems (in, for example, e-commerce, communication services and sustainable consumption) and how to design more effective laws and regulations. It concluded that it would be beneficial to draw on the *Toolkit* framework to develop this Recommendation.

¹ OECD (2010), *Consumer Policy Toolkit*, OECD Publishing, doi: <http://dx.doi.org/10.1787/9789264079663-en>.

OECD RECOMMENDATION OF THE COUNCIL ON CONSUMER POLICY DECISION MAKING

THE COUNCIL,

HAVING REGARD to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

HAVING REGARD to the Recommendation of the Council concerning Guidelines for Consumer Protection in the Context of Electronic Commerce [[C\(99\)184/FINAL](#)], the Recommendation of the Council concerning Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices across Borders [[C\(2003\)116](#)] and the Recommendation of the Council on Consumer Dispute Resolution and Redress [[C\(2007\)74](#)];

RECOGNISING the vital role that empowered consumers can play in improving economic performance and driving innovation, productivity and competition, and the important role that consumer policy plays in empowering consumers;

RECOGNISING that consumer markets for goods and services have changed profoundly over the past 20 years as a result of advances in information and communication technologies, regulatory reform, trade liberalisation, globalisation, and the growing role of services in the economy;

RECOGNISING that such changes mean new challenges for consumers and consumer policy decision makers, who must deal with rapidly changing, increasingly complex and information-intensive markets for goods, and services;

RECOGNISING that all consumers, regardless of education or experience, may at times be vulnerable to detriment, and that disadvantaged consumers may be vulnerable on a persistent basis;

RECOGNISING the important insights that have been gained into the nature of consumer problems through advances in information and behavioural economics, and the benefits of drawing on these insights in developing, implementing and reviewing consumer policies;

NOTING that the OECD has developed a Consumer Policy Toolkit that provides context and support for developing and implementing consumer policies;

On the proposal of the Committee on Consumer Policy:

I. AGREES, for the purposes of this Recommendation, to the following definitions:

1. “Consumer authority” means any governmental authority, public consumer agency or other public body which has responsibility for i) formulating consumer policies or laws and/or ii) implementing or enforcing those policies or laws.

2. “Consumer detriment” means the harm or loss that consumers experience, when, for example, i) they are misled by unfair market practices into making purchases of goods or services that they would not have otherwise made; ii) they pay more than what they would have, had they been better informed, iii) they suffer from unfair contract terms or iv) the goods and services that they purchase do not conform to their expectations with respect to delivery or performance. This may occur, for example, when the goods or

services that they have purchased do not conform to their reasonable expectations with respect to quality, performance or conditions of delivery. This also may occur if the goods or services are not provided in a timely fashion, are defective or dangerous, do not meet operational expectations or are inconsistent with information provided to the consumer prior to the transaction. Consumer detriment can take many forms: it can be structural in nature (i.e. affecting all consumers) or personal; apparent to consumers or hidden; and financial or non-financial. Consumer detriment may be apparent to consumers immediately, may take time to emerge, or remain hidden.

3. “Consumer policy instrument” is a measure taken or promoted by governments to address a consumer problem. Such instruments include: i) consumer education and awareness programmes; ii) information provision and other disclosure measures; iii) contract terms regulation; iv) cooling-off periods; v) moral suasion; vi) codes of conduct and trustmarks; vii) standards; viii) licensing and accreditation of firms and providers; ix) monetary incentives, fines and other financial instruments; x) prohibitions; xi) dispute resolution and redress mechanisms; and xii) enforcement strategies.

4. “Disadvantaged consumers” are consumers whose attributes or circumstances are such that they are susceptible to detriment on a persistent basis.

5. “Vulnerable consumers” are consumers who are susceptible to detriment at a particular point in time, owing to the characteristics of the market for a particular product, the product’s qualities, the nature of a transaction or the consumer’s attributes or circumstances.

II. RECOMMENDS that Members:

6. Develop and implement a process for making policy decisions that includes the following steps:

- i) Defining the nature and source of a problem; determining which consumer authority or authorities would be best placed to examine and address the problem; and considering the extent to which potential solutions might conflict with other public policy objectives.
- ii) Assessing the nature and magnitude of consumer detriment. This should consider the number and types of consumers that may be affected by the problem and the ways in which they may be harmed.
- iii) Determining whether an action is warranted. Such a determination should consider the level of consumer detriment, any disproportionate impacts on certain types of consumers (including those who are vulnerable or disadvantaged); the anticipated duration of the consumer detriment; and the likely consequences of no action being taken.
- iv) Setting the desired policy objectives, consistent with the general goals of consumer policy, that will reduce, or eliminate, the consumer detriment that has been identified, and identifying the range of options for using one or more consumer policy instruments to achieve these objectives. Measures that other stakeholders could take to achieve objectives should also be considered in this context.
- v) Evaluating the options to determine which one would be the most appropriate and cost-effective. In most instances, a cost-benefit analysis should be carried out, in which both the quantifiable and qualitative aspects are taken into account. The resources devoted to such an analysis should be proportionate to the likely impact of the options under consideration. Thus, larger policy changes might require more personnel and

resources than smaller ones. The effects that the options being evaluated could have on competition should be considered, as should their effects on other policy areas, such as the environment, health and safety.

- vi) Developing a review process to evaluate periodically how well the consumer policy instrument or instruments selected are achieving the policy objectives and whether modifications may be needed.

7. Promote the use of the policy decision making process across all levels and branches of government, to address local, national and international consumer problems. This should include problems associated with misleading, fraudulent or unfair trading practices in general, as well as consumer problems in specific sectors.

8. Apply the process to help determine which violations of consumer law should be pursued, and which types of enforcement actions should be taken.

9. Engage stakeholders from consumer organisations, affected firms and/or industry associations and subject matter experts in the process, so as to obtain information, technical expertise and advice on the issues being addressed. Such consultation should be considered at each step of the decision making process, with particular attention to the steps when policy options are being formulated and evaluated.

III. INVITES non-Members to adhere to this Recommendation and to implement it;

IV. INSTRUCTS the Committee on Consumer Policy to:

- i) Promote this Recommendation with Members and non-Members;
- ii) Serve as a forum to share experience on the implementation of this Recommendation;
- iii) Monitor the implementation of this Recommendation and its effects on policy making and report to Council within five years of its adoption and as appropriate thereafter.