

e-brief

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A Blueprint for Consumer Policy in Europe

Making Markets Work with and for People



By Meglena Kuneva

Meglena Kuneva is European commissioner for consumer affairs.

1.
José Manuel Barroso, *Political Guidelines for the Next European Commission*, 03 September 2009.

Europe is facing a number of serious challenges. Technological change and globalisation are reorganising economic activity around the world with a perceptible effect on European citizens. In addition, the onset of a severe financial and economic crisis is generating insecurity and anxiety among Europeans. In these difficult times, it is crucial to regain the trust of people and to demonstrate that the European Commission is capable of shaping a future that will bring ordinary citizens a better life.

Europe must respond to the challenges by harnessing the positive forces in the economy. It must fight protectionist instincts and deepen the single market with a particular focus on developing the full potential of retail markets. President Barroso's political guidelines for the next Commission sets as a priority the need to work for a single market fit for the 21st century that works for people.¹ He specifically mentioned the need for an active consumer policy that gives people confidence to participate fully in the single market. Europe benefits from a generally educated population that represents a largely untapped potential. European consumers should be encouraged to further inject dynamism into commerce by promoting or even implementing innovation as well as by fostering trade in new goods and services. Information and communication technologies and the improvement in transports and payment systems are unlocking a potential for trade and innovation that is still largely unexploited. The European Commission must strive to develop a vibrant and innovative market in which citizens are keen to participate. This market must be grounded on a regulatory system that promotes trust and it must build on new technologies and geographical integration.

I) Policy Challenges in Retail Markets

Market liberalisation, globalisation and technological innovation have dramatically increased the opportunities for consumers. But in many cases, bottlenecks prevent these opportunities from materialising. Geographical segmentation of retail markets, payment services or logistics are impediments to markets providing the best value and opportunities to citizens. The creation of a trustworthy environment that will provide consumers with the confidence to shop around is also essential for the development of an internal market. The European Union has satisfactory legislation to protect the rights of consumers, promote geographical market integration and preserve the existence of competition. This legal framework is broadly delivering in the markets of goods, even though there is still need to further harmonise rules and to clamp down on businesses'

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artificial geographical market segmentation. There is also an opportunity to provide an EU regime of applicable law that would provide some degree of legal certainty and legal harmonisation to traders and consumers extensively trading cross border within the EU. But there are two markets where the right conditions for generating maximum consumer participation at European level are far from present yet: the online economy and in particular the market for digital content, and the market for services.

A Healthy and Integrated Market for Services

The deregulation of some service markets has generated positive competition. On the other hand, some trends have developed that have not been positive for consumers and have damaged opportunities and trust. On the supply side, geographical segmentation of markets is still very common in services, with regulatory and non-regulatory barriers to entry still important for cross-border competitors.

On the demand side, consumers are facing a new more complex environment in which they have to take increasing responsibility notably with regards to their finance, energy, transport or healthcare choices. This evolution has been happening alongside an increased complexity and sophistication in the way in which services are marketed, offered and priced. Complexity and lack of transparency, the artificial restriction of choice and in extreme cases the inadequate management of risk are hurting consumer confidence in some of the deregulated markets. This stifles the ability and incentives of consumers to look for favourable deals or switch operators. Complex prices in the Information and Communication Technologies (ICT) retail sector, opacity in the fees of financial sector, lack of contract flexibility in energy, hidden fees, "shock" charges, unfair terms, all such practices hurt the ability of consumers to make ex-ante optimal decisions and ultimately result in less efficient – if more profitable – markets that do not work optimally for consumers. Education is only partly a solution due to the functional illiteracy of even educated people in dealing with some of the complexities involved and information overload. Consumers may need additional guidance in the form of "choice editing." We need for example to consider whether it is possible to encourage the marketing of "safe financial products," without stifling product innovation.

A Trustworthy and Efficient Market Online

The challenge of applying fair marketing practices in online platforms has not yet been taken up. Some pervasive problems online, such as bait offers and undisclosed contract terms, replicate the offline world. But some issues are specific to online markets. The increased blurring of commercial and non-commercial communications and the growing confusion between marketing and advice represent a regulatory challenge in the online world. This is further complicated by the massive collection of personal and behavioural data that increase the possibility of commercial targeting of individuals based on their personal circumstances or behaviour. This creates unprecedented opportunities to target users which are commercially vulnerable such as children or people with health or financial problems. For the Internet to pick up as a platform of economic activity it needs to be made safe. The concerns about privacy need to be addressed in a way that allows Internet services to grow without hurting citizens' fundamental rights.

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The market of digital content is massively underdeveloped in the EU. This is to a non-negligible extent due to a very fragmented system of copyright management. A licensing regime that is workable at a pan-European level must be a political priority.

Licensing activities to end-users online is expanding and raise issues in terms of the fairness and clarity of the licensing contracts. Restrictions of access and restrictions of usage generated by licensing business practices and the structure of copyright management within the EU seem to be generating problems for the healthy development of a digital economy.

A Safe Internal Market in a Globalised Economy

The scattering of the different stages of the supply chain around the globe has increased the flow of goods coming into the European Union and is adding a lot of complexity to the traceability of producers along the value chain. This poses challenges for the maintenance of product safety standards as different producers are involved in the different stages of production with unclear levels of accountability and responsibility. The product safety surveillance system needs to be improved at the global level to deal with this issue.

Green Markets

Finally, it is clear that individual consumption is playing a role in the environmental sustainability challenges that our economies face. The decision-making process of consumers can be better understood in order to find ways to promote "green" choices and recycling. Retailers and manufacturers also have a role to play in promoting a greener economy. The sustainability of a model of economic growth strongly based on consumption remains one of the great policy challenges.

The impact of globalisation, the digital revolution and mass communication media is providing immense opportunities for consumers. But as these are required to undertake more individual decisions and responsibility in an increasingly complex environment, the regulatory framework must ensure that markets can perform at their full potential in the benefit of consumers. Left unaddressed, the challenges above may result in consumers turning away from some of the markets and seeking the protection of heavy-handed national state interventionism to protect them from unfair contracts and individual uncertainty.

II) Governance of the Internal Market

To maintain trust in a market, the rights and responsibilities of consumers should be clearly defined and enforced. The risk of consumers for participating in the market should also never be excessively high.

With the deregulation of markets and the repudiation of a "nanny state" concept in favour of a market driven for and by consumers, citizens must be given appropriate means of simple and affordable redress. Consumers must be able to impose effective discipline on traders that infringe upon their rights. This is a particularly pressing issue for transactions carried online that are much more likely to involve cross-border counterparties. Appropriate means of redress must exist for such transactions. Public enforcement must be developed to tackle systemic problems of consumer rights



'Consumer interests and concerns need to be appropriately articulated in the regulatory process.'

2. William W. Lewis and Ann Mettler, *Consumers and Competition: Unlocking Europe's Drivers of Productivity*, Policy Brief Vol. 2, No. 2 (Brussels: The Lisbon Council, 2007).

violations in certain industries. The European Commission should work to develop further the instruments available to elicit such enforcement.

Consumer interests and concerns need to be appropriately articulated in the regulatory process: the establishment of the Citizens Energy Forum and the stakeholder advisory boards proposed in the context of supervisory agencies for financial markets testify to progress but also highlight the urgent need to build capacity and strengthen expertise. Consumers need to be represented by persons of high standing and proven competence in the field. We should work towards identifying experts who can speak credibly and authoritatively in such fora.

In a retail market that is increasingly driven by services, risk management must be expanded from risks in products to the potential risks in service contracts. We have learnt that some consumer contracts in the financial services had built-in catastrophic risk probabilities which were not well understood by consumers and to which consumers should have never been exposed. As the private health sector develops, issues of risk management in retail health related markets will also have to be addressed. We cannot expect consumers to have to handle potentially catastrophic risks in services in a way that we would never accept in food or sun screens.

The existing regulatory approach of regulating by sector means that there will always be a perceived conflict of interest at the heart of retail-market regulation. A more progressive approach would place the governance of the retail internal market in the hands of a dedicated service with two basic tasks – completing the retail internal market and empowering consumers to take advantage of this market. Confidence can be rebuilt by delivering a retail internal market which provides practical benefits to people and businesses alike and by setting and enforcing a decent set of modern consumer rights.

Institutional innovation and policy reforms go hand in hand with rebuilding public trust. The Barroso Commission's decision to establish consumer policy as the missing link between citizens and markets was insightful. But a lot remains to be done in order to create a single market at retail level that works at its full potential for citizens. From the barriers to cross-border trade, notably in services, to the supervision of rapidly evolving commercial practices and including the regulatory challenges of online commerce, many issues need to be addressed so that European citizens can fully embrace and participate in an EU market. Adequate laws and adequate means of redress must be put into place. A single market of 500 million participative consumers is the best key for economic growth, innovation, jobs, and opportunities.² There is now a case for taking institutional responsibility, both at the EU level and at Member State level, for the creation of a retail single market that delivers for citizens on all these fronts in the next Commission.

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