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**Consumers and Competition:
Unlocking Europe's Drivers of Productivity**

By William W. Lewis and Ann Mettler

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William W. Lewis is author of *The Power of Productivity: Wealth, Poverty and the Threat to Global Stability* and director emeritus of the McKinsey Global Institute.

Ann Mettler is executive director of the Lisbon Council.

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A new agenda for Europe: from protecting producers to empowering consumers

May 2006 saw a profound, deep-seated policy shift in Brussels, and indeed in Europe at large. Following the failed constitutional referenda in France and the Netherlands, and against the backdrop of a prolonged economic slump with low growth and high unemployment, European Commission President José Manuel Barroso announced a “Citizens’ Agenda” aimed at providing “tangible benefits” to European consumers.¹ The change was little noticed at first, but now the political classes, as well as businesses across the EU, are starting to wake up to the fact that an economic citizens’ agenda is political dynamite. It marks a profound U-turn from the politics of economic patriotism and protection of economic incumbents, to empowering consumers, new market entrants, entrepreneurs and innovators. And it stands a chance of giving the Barroso Commission something it has long sought: a policy capable of making the European Commission genuinely popular again and an economic programme that can deliver growth and jobs.

For sure, the changes we are seeing are gradual and there will undoubtedly be setbacks with political leaders playing the populist card of protecting domestic industry. But overall, it seems fair to say that President Barroso’s Citizens’ Agenda heralds a new economic era – one based on meritocracy, competition, creative destruction and dynamism. Above all, that is good news for Europe’s 480 million consumers, who stand to benefit from lower prices, better choice and improved products

and services. Perhaps more importantly, consumer-oriented policies – and the productivity-enhancing effects they have through stimulating competition and innovation – are among the most important indicators of a country’s economic wealth and long-term prosperity. Indeed, research has shown that, over time, a political and regulatory focus on consumers, rather than producers, appears to be the key determinant of a country’s economic success, and accounts for much of the difference in wealth and prosperity as measured by gross domestic product (GDP) per capita between developed parts of the world, such as Europe, Japan and the United States.²

Looking at specific examples, these are some of the policy initiatives that have been undertaken by the European Commission since May 2006:

- **Roaming charges**

In July 2006, the European Commission’s Information Society and Media Directorate introduced a regulation to rein in excessive roaming charges within the EU with the help of price caps. In a prior step, the European Commission created a website which listed the various roaming tariffs in an effort to increase transparency, offer consumer choice and increase competition in the telecommunications sector. After the EU roaming regulation entered into force across the EU on 30 June 2007, consumers can look forward to saving up to 70% on using their mobile phones while abroad. A month later,

¹ For more information on this European Commission initiative, visit http://ec.europa.eu/citizens_agenda/index_en.htm.

² William W. Lewis, *The Power of Productivity: Wealth, Poverty, and the Threat to Global Stability* (Chicago: University of Chicago Press, 2004).

'As long as a company keeps its eye on the consumer and follows market trends, it has little to fear from competition.'

a comparison conducted by the European Commission found that the vast majority of operators have complied with the roaming regulation by offering customers the new, cheaper "Eurotariff" rate.

- **Energy**

In February 2007, the European Commission adopted a report from a comprehensive, two-year long inquiry into competition in electricity and gas markets. The report documented that the European energy market is inefficient and expensive, with particularly high levels of market concentration and vertical integration of supply, generation

and infrastructure, leading to a lack of equal access to and insufficient investment in infrastructure, as well as possible collusion between incumbent operators to share markets. The European Commission subsequently recommended full ownership unbundling between network and supplier/producer interests. This recommendation was endorsed in the conclusions of the spring 2007 European Council.

- **Consumer credit**

In May 2007, the Competitiveness Council of the European Union agreed a Consumer Credit Directive for Europe's

Liberalisation à la française

In June 2007, the French competition authority, le Conseil de la concurrence, ordered EDF, the state-controlled monopoly energy company, to cut its wholesale prices in an effort to provide a level playing field for new market entrants. The ruling, which was widely seen as a boost to enforce competition in the highly protected French energy market, followed a complaint by Direct Energie, a small independent supplier with plans to enter the lucrative residential energy market. Direct Energie charged EDF with selling nuclear power to rival companies, including Direct Energie, at prices higher than EDF was offering to its own customers. Consumer groups had hitherto advised consumers contemplating a switch of energy suppliers to stay with EDF because customers who opt out of the regulated system are unable to go back. But in light of the new ruling, these same groups may now re-think their strategy and begin urging consumers to take advantage of alternative suppliers. Above all, the move documents that national governments and competition authorities – no matter how critical they are of Brussels' powers to enforce more competition – are starting to understand that there is no future for energy monopolies or oligopolies. While national governments may not be prepared to take cues from Brussels, or at least feel compelled to put up a verbal barricade, many have accepted that there is no long-term alternative to introducing more competition in energy markets in times which call for more productivity and greater energy security.

'In an open, networked and global economy, it is now often the consumer who drives innovation and technological advances.'

hitherto fragmented 800 billion consumer lending market. In an effort to help consumers make genuine comparisons and to stimulate competition among the providers, the directive mandates uniform transparency rules across Europe, as well as uniform standards for calculating annual percentage rates of charges.

These legislative initiatives benefit consumers and small- and medium-sized companies because they facilitate market openings and commercial opportunities for non-incumbent economic actors. They have, not surprisingly, been less well received by vested industrial interests, i.e. large (often previously state-owned) telecommunication providers or energy conglomerates which prefer to operate under market conditions of a quasi-oligopoly in countries such as France and Germany. But the reality is that as long as a company keeps its eye on the consumer and follows market trends, it has little to fear from competition. One might even conclude that consumer-oriented policies at times help industries to protect themselves from their own short-sightedness and institutional complacency. A case in point is the large part of the European car industry which has missed the very strong consumer trend towards more fuel-efficient cars – a trend which has helped Toyota of Japan become the largest car company in the world and lead the way in devising “hybrid” technologies, which mix fuel and electricity in an effort to reduce CO₂ emissions. Indeed, “Car Innovation 2015,” a recent

study by the consulting firm Oliver Wyman, concluded that car companies will waste as much as 40% of the 800 billion they plan to invest in research and development by 2015 because there is no consumer demand for many of the innovations the industry wants to produce.³ Not surprisingly, the study concludes that consumers should be extensively consulted before R&D money is spent in an effort to determine if there is a real demand for the innovations in the pipeline.

Consumer-oriented companies perform better

Experience shows that companies that are relentless in their focus on serving consumer needs and interests are successful over time and need not fear competition. To the contrary, it is in intensely competitive environments that better companies deliver innovations, productivity increases and higher value-added products and services. Indeed, in an open, networked and global economy, it is now often the consumer who drives innovation and technological advances.⁴ This so-called “user-centred innovation” is an indispensable tool that smart companies use to upgrade and improve their goods and services. It is a win-win situation: the consumer receives a better product and the company breeds consumer loyalty while increasing sales and market share. The European Union in general and its single market in particular are a boon to successful, consumer-oriented enterprises: companies

³ Oliver Wyman, *Car Innovation 2015* (New York: Oliver Wyman, 2007). See also *Autoindustrie forscht am Markt vorbei*, Spiegel Online (23 June 2007).

⁴ Eric von Hippel, *Democratizing Innovation* (Cambridge: MIT Press, 2005).

that have mastered their home turf have the potential to tap into a single market comprised of 27 countries, and gain access to almost half a billion customers. Stifling competition in the name of “protecting” national interests means denying consumers the choice they deserve. Even worse, nothing is as powerful a barometer for companies as consumer trends. Their purchasing decisions show the way forward to companies, help them allocate their research budgets more efficiently and put the business emphasis on where there is

the greatest demand and consumer benefit. If past experience has taught us anything, it is that to cut consumers out of the economic equation not only harms the economy at large but also the companies and sectors it seeks to protect.

The role of consumers in modern economies

Going forward, Europe still has many reforms to tackle. Despite the recent economic recovery, there are formidable

Prodi government as consumer champion

After taking office in May 2006, the centre-left government of Romano Prodi initiated a number of far-reaching reforms which sought to break up protected sectors of the economy, such as transport, telecommunications and the so-called protected professions and service providers, such as pharmacists, petrol station operators and notaries. Dubbed the “Bersani decrees” after Pier Luigi Bersani, industry minister in the Prodi government, their primary aim was to break down barriers in competition, raise workforce participation and increase productivity – all three persistent weak spots of Italy’s economy. The government observed correctly, in the words of Francesco Rutelli, the deputy prime minister, that “there should be a pro-consumer, pro-citizen choice in terms of liberalisation.” In addition, the new Italian government also champions consumers’ rights to be broadened, allowing consumers to bring class action lawsuits in cases involving national and EU antitrust rules. The reforms are starting to yield fruit: for the first time in years, the economy was truly shaken up, made more dynamic and recorded a nascent recovery. And the reforms were warmly embraced by many, not only consumers but also large parts of private sector. Mario Resca, head of Confindustria, a business lobby group of domestic and international companies, says “the government has broken a taboo by putting the consumer at the centre of interests. Someone had to do it.” He adds, “bureaucracy and rules... protect the marginal entrepreneur, the one who is not servicing the client.” Many observers hope the Bersani decrees have laid the foundation for further reform in other economic sectors plagued by bureaucracy and over-regulation, such as public transport, gas, electricity and postal services.

challenges ahead if Europe wants to be competitive in the 21st century knowledge- and service-based economy, not to mention the need to tackle its still exceedingly high unemployment and adverse demographic outlook. For starters, large parts of Europe's single market continue to underperform and suffer from a lack of integration.

As history has shown, regulation and government decrees alone are not always sufficient to ensure good economic outcomes. Against this backdrop, consumers should be seen as powerful catalysts for desirable change. Without them, there would be no eco-labelling, fair trade or energy-efficient consumer products.

Best practice: Meet the Danish Consumer Ombudsman

Since 1975, Denmark has a consumer ombudsman (the Danish Consumer Ombudsman Institution, or DCO), charged with supervising compliance with the Marketing Practices Act. Currently run by Henrik Saugmandsgaard Øe, a lawyer and EU expert, the Danish Consumer Ombudsman is a one-stop shop for consumer questions and queries. At the heart is an attractive, informative bilingual website in Danish and English, www.forbrug.dk/english/dco/, which allows consumers to get easy access to information, and to lodge complaints online. Queries are free-of-charge and the agency, according to its online information, is “happy to receive questions or proposals for investigation activities.” The initial transaction cost of a consumer launching an inquiry or complaint is therefore extremely low, which is an important empowerment tool that encourages citizens to be active and vigilant consumers and exert their rights vis-à-vis product and service providers. Backed by a team of 18 lawyers, along with a head of legal division and two support staff, the Danish Consumer Ombudsman has the organisational prowess and legal expertise to be responsive to consumer inquiries and at the same time be an influential player in commerce. Its most powerful enforcement tool is perhaps its legal clout and ability to punish offenders. The DCO may bring civil cases before the Maritime and Commercial Court in Copenhagen. It also has the authority to issue an interim injunction in situations where it is crucial to sustain a case against a trader while awaiting a court order. Most importantly, however, violation of the provisions of the Danish Marketing Practices Act is punishable by fine, although a more severe penalty may be imposed for the same act under other laws. Aware of the increasingly international aspects of consumption – for instance through e-commerce – the DCO is one of the founding members of the ICPEN, the International Consumer Protection Enforcement Network. The relative ease with which Danish consumers can seek redress, as well as the fact that there is one dedicated person associated with enforcing consumer rights, has served the interests of Danish consumers very well, and is an excellent model for other countries to follow.

'The single market is a boon, not a threat to the consumer, and should be communicated and defended as such.'

But above all, citizens need to feel that market reforms are aimed at their benefit and that their voice is heard as part of the democratic process. As politicians experienced first-hand in past years, it is very difficult to pursue reforms that make markets function better and more efficiently without the buy-in of citizens. And there is no better way to include the citizens in policy making than through their status as consumer, not only in terms of consumption of consumer goods but also of public services, such as education, health and transport.

At the end of the day, every EU member state will have an innate interest in ensuring that goods and services meet consumer demands, and in building the framework conditions which allow for the smoothest, most productive use of resources. And consumer interests are best served through fair and intense competition among producers. This is true because fair, intense competition forces firms to increase productivity in order to generate profits and stay in business. The increases in productivity come from increasing the value to the consumer of the goods and services produced and from decreasing the resources needed to produce the goods and services, thereby lowering their prices. In an age of limited natural resources and profound demographic changes, productivity will be vital to meeting the challenges of the future.⁵ In this respect, ensuring productivity in the public and private sectors is a matter of long-term sustainability – and a sign of fairness towards the citizens who pay for it all and who deserve choice and quality.

The European Commission has a particularly important role to play, not only by highlighting best practices but also by using its supranational competencies to benefit consumer interests.

Europe's competencies are key

Europe's single market brings many benefits to consumers and innovative companies alike. At the same time, competition policy, which is a policy area with supranational competencies delegated to the European Commission, is key in fostering and furthering the single market as well as in defending consumer rights. Specifically this means for the following dossiers:

- **Single market**
If Europe is to reap the economic benefits of consumer-oriented policies, the further development of the single market is of instrumental importance, particularly in the area of services. Accounting for more than 70% of Europe's GDP, the service sector continues to be heavily fragmented, to the detriment of small companies, which face discriminatory treatment in other countries, as well as consumers who are limited in their choice and are often forced to pay higher-than-necessary prices. Going forward – and as a strategy to withstand some of the political controversy surrounding the completion of the internal market – it is very important to link the single market and consumer policy much closer than has currently been the case.

'To cut consumers out of the economic equation not only harms the economy at large, but also the companies and sectors it seeks to protect. '

The single market is a boon, not a threat to the consumer, and should be communicated and defended as such.

- **Competition policy**

Competition and consumer policy go hand in hand. Companies that thrive on protectionism, that are dependent on government subsidies and state aid

or are engaged in price rigging, by definition do not have the interest of the consumer in mind. It is not without reason that some of Europe's "national champions" are among the least competitive enterprises, operating in highly distorted markets, to the detriment of consumers, who not only pay the bill in terms of poor products and services at high prices, but also

The power of transparency

The German Competition Authority started the New Year with a bang: on 03 January 2007, it published a list on its Internet site comparing prices of 739 gas providers across the country (<http://www.bundeskartellamt.de>). The interest from consumers was so overwhelming that the server could not cope with the web traffic and the site had to be shut down for several hours. The price survey, a first of its kind in Germany, brought much-needed transparency to a market that is heavily regulated and difficult to manoeuvre in. Even after revealing drastic differences in prices of as much as 59%, many German consumers still cannot switch to cheaper providers because providers enjoy monopolies in most regions. In all of Germany, only consumers in four cities have the choice of actually changing providers: Hamburg, Berlin, Frankfurt-am-Main and Leipzig. Against this backdrop, the German government took an unprecedented step in April of this year, when it introduced a new law which bestows the Competition Authority with more control over energy prices. In a further step to increase transparency, the government has called on providers of electricity and gas to make their actual production costs public. Compared to the past, when the Competition Authority or consumers had to prove that electricity or gas companies charged disproportionate prices compared to actual costs, companies will now have to justify their price structure. In an accompanying measure, the government has increased the power of the Competition Authority to improve market access of new providers. As in the case of the French EDF ruling, the German government is moving forward with consumer-oriented liberalisation, despite the sometimes protectionist rhetoric it displays to Brussels. One of the real reasons behind this seemingly contradictory behaviour is that national governments want to take the credit for policies which prove very popular with consumers (and voters), instead of allowing Brussels to reap the benefits of popular support.

through the taxes that go into subsidizing and sustaining these companies. At the same time, market concentration discourages entrepreneurs and innovators and hampers the development of new, more efficient technologies. To shield companies, let alone entire sectors, from the healthy creative destruction that is needed to meet consumer needs and respond to fast-paced changes in the global economy, is a true disservice, not only to the citizens at large but also to the workers these companies employ, for there is no long-term job security in uncompetitive, under-performing companies.

- **Consumer policy**

While traditionally consumer policy at the European level has focused only on consumer protection, it is now time to expand the dossier to include an emphasis on market transparency, consumer empowerment through information and the provision of choice, as well as a concerted campaign to raise awareness among European citizens of their important status as consumers. Consumer groups will have to play an important role in this endeavour. They are to date the only “voice” of consumers, and should be strongly encouraged to expand their briefs to include economic issues, i.e. monitor antitrust policies to fight monopolies and market concentration and support the creation of innovative and entrepreneurial companies that work hard to meet consumer needs. Against this backdrop,

consumer groups should be encouraged to emerge as an important stakeholder in many policy debates – debates in which they can enhance the quality and inform the content of the traditional dialogue between capital and labour. While by definition consumers are less organised and vocal than the social partners, their voice and political stake in so many policy decisions is no less important, and indeed will be critical in building a successful, prosperous future for all.

Clearly, the European Commission in general and its units with supranational powers in particular – competition and single-market policy – will be decisive in charting Europe’s future economic course. In order to solicit the necessary buy-in, and generate the adequate political momentum to move forward in both policy areas, the citizen/consumer must be at the centre of attention. But to build on recent successes will require further actions and shifts in policy priorities from the European Commission, as outlined below.

Conclusions and policy recommendations

- **Make consumer policy part of the Lisbon Agenda**

To date, consumer policy is not part of the Lisbon Process, despite its obvious importance in driving forward Europe’s Growth and Jobs Agenda. Given the unequivocal success of the Citizens’ Agenda, and its impressive track record

of touching the lives of ordinary citizens, the European Commission should consider making consumer policy part of the Lisbon Process. Seven years into the Lisbon Agenda, the process continues to suffer from a lack of popular buy-in with its heavy emphasis on high-tech, R&D and researchers that represent only a relatively small part of the overall economy.

While we recognize that these areas are undoubtedly important, we believe that they do not lend themselves to high levels of public support and enthusiasm of the kind that was seen for instance in the recent decision on roaming charges which had a staggering support of 70% of the population,⁶ or the 85% of Europeans who say that it is essential to have a real choice of supplier for electricity and gas and that environmental concerns play a role in their preference for free competition.⁷ Public support gives political leaders an important tool to pursue reforms with legitimacy and popular understanding. That in turn is key to bringing Europe closer to the citizens and explaining how decisions taken at the European level can benefit and enhance the lives of ordinary people. Incorporating the Citizens' Agenda in the Lisbon Process might be the last opportunity to finally gain some much needed public buy-in and generate widespread interest and support.

- **Consumer policy is not the domain of one department**
In order to successfully pursue the interests of citizens, it is imperative that consumer policy be treated as a horizontal policy that spans several relevant departments, such as trade, energy, internal market, enterprise and information society. While the Consumer Policy Commissioner and Directorate-General should take the lead on consumer policy and be its public voice, it also has an important coordinating role with respect to other departments. Plans for “Consumer Liaison Officers” who will facilitate interaction between the Consumer Policy Directorate and other departments are promising and will help promote a sound and coherent consumer policy at the European level.
- **Recognise the inherent link between consumer policy and competition policy**
Consumer policy and competition policy go hand in hand. Against this backdrop, it is very troubling that some political leaders have tried to play the citizen card by stifling competition. Such moves are not only inherently contradictory, they should also not be possible in countries where economic literacy is high, consumer awareness well-developed and consumer interests well-organised. The fact is that anyone who unilaterally sabotages competition policy in the name of protecting citizens' interest is in reality a supporter of big business, i.e. incumbent companies and industries that fear

⁶European Commission, *Roaming, Special Eurobarometer 269 / Wave 66.1 – TNS Opinion & Social* (March 2007).

⁷European Commission, *Attitudes on Issues Related to EU Energy Policy, Flash Eurobarometer 206a – The Gallup Organisation* (April 2007).

'Consumer-oriented policies at times help industries to protect themselves from their own short-sightedness and institutional complacency.'

competition from new market entrants and more successful, consumer-oriented competitors. In the future, responsible authorities should try to educate the public at large, as well as the media, that consumer interests are not served by closed markets and protected economic incumbents. There are several ways of doing this. Plans for a Competition Day with a special focus on consumer policy, which will be organised by the Portuguese EU Presidency during the second half of 2007, are a good start. Further steps could include the appointment of a "Consumer Envoy" at European level (comparable to the SME Envoy), as well as the creation of the position of "Consumer Ombudsman" at member state level, copied for instance from the successful experience of Denmark (for more, see the box on the Danish Consumer Ombudsman on page 6).

- **Trust consumers and give them tools to defend their interests**
Europe has a very strong legacy in consumer protection, but to date other, equally important areas, such as consumer empowerment, consumer education and consumer rights, have taken a back seat, to the detriment of the citizen and the economy at large. In the future, policy makers should more often curtail their nationalistic and paternalistic instincts, and trust consumers to make the right decision. Consumers are powerful agents of change, an expression of democratically expressed choices, which in most instances are made by mature and literate adults. They deserve

the right to make choices regarding their consumption and expenditure. Against this backdrop, the wording of the dossier is very important and should be encouraged to change from "consumer protection" to "consumer policy," as happened at the European level in recent months. Consumer protection is undoubtedly a vital part of consumer policy, but it is too narrow given the important role that consumers play in the modern economy, in which they are also trendsetters, innovators and change agents. And at the end of the day, they are the only political force that can stand up to market distortions that benefit small pockets of special interests.

- **Punish collusion and providers of faulty goods and services**

In a last instance – and if the more appealing alternatives such as consumer protection and empowerment have failed – policy makers must be able to punish collusion and providers of faulty goods and services. In the area of market concentration for instance, cartels and price-rigging should be punished in a way that inflicts tangible disadvantages, which in turn can act as a deterrent to others. In the United States, for instance, the Sherman Act of 1890 made price-fixing a criminal felony offence, meaning company executives can – and do – go to jail for violating antitrust policies. It is not without reason that company executives from the same industry in the United States will not meet without a competition lawyer in the room.

As for providers of faulty goods and services, they are a major impediment to furthering the EU's internal market. In the absence of effective measures to protect their rights and interests, many European consumers are understandably reluctant to engage in cross-border purchases, a move which is particularly harmful to e-commerce, a part of the economy that holds the potential for exponentially increasing consumer choice, as well as contributing significantly to economic growth and job creation. Against this backdrop, consumers need effective and easy mechanisms for getting their money back if provided with a faulty good or service. Recent moves by the European Commission's Consumer Policy Directorate go in the right direction, by exploring the means of collective redress to increase consumer confidence and holding firms accountable for selling faulty goods or services. It is hard to see how the internal market will make considerable progress – progress which will be crucial to stimulate Europe's Growth and Jobs Agenda – in the absence of tools that increase consumer confidence and that punish irresponsible companies. While no one wants a regime like the one in the United States, in which many class-action lawsuits primarily benefit lawyers and not the consumer, we in Europe must be careful not to close the door to effective policy mechanisms only because we observe a non-desirable model on the other side of the Atlantic.

To tackle many of Europe's future challenges, such as global warming or the changing needs of an ageing, declining and increasingly diverse population, it will be indispensable to leverage consumers in an effort to speed up the process of change, drive down the cost of doing business through greater competition and reward companies that are responding to consumer demands. It is difficult to imagine how Europe will make a quantum leap into the 21st century without giving its citizens a greater say in market conditions and letting them be the potent driver of change that they want and deserve to be.

Europe has extensive experience with protectionism of certain sectors, picking winners and nurturing national champions, as well as making entire industries of key importance, such as energy, dependent on a few providers that control both supply and distribution. On balance, one cannot conclude that these policies have benefited the citizens of Europe, who are too often forced to pay excessive prices to under-performing, slow-moving and protected providers. The time has come to take policy choices directly to the citizens, who in their role as consumers are personally affected by the decisions policy makers take. As such, the future of the internal market is not as much a matter of legislation as it is an exercise in bringing the citizens of Europe along, explaining how they stand to benefit from market liberalisation and how productivity is a modern means of sustainability in an age of limited natural and human resources.

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www.lisboncouncil.net

The Lisbon Council asbl

IPC – Résidence Palace
155 rue de la Loi
1040 Brussels, Belgium

T +32 2 647 95 75
F +32 2 640 98 28
info@lisboncouncil.net

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