



## PROTECTING THE INTERESTS OF CONSUMERS IN CYBERSPACE

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### Abstract

The consumer movement in India has received an impetus with the enactment of the Consumer Protection Act of 1986. The definition of "unfair trade practice" in the Consumer Protection Act ensures comprehensive disclosures about a number of criteria. One lacuna of the Act is that it does not adequately address the issue of unfair terms in a contract. Sometimes the consumer is also not sure whether he has all the information needed to make an informed choice. This problem is most acute when a consumer purchases financial services over the Net. Keeping this in mind, the EU has come up with a proposal for developing a regulatory framework for the distance selling of financial services

**Keywords:** Consumer, E-Commerce, Purchase, etc

### INTRODUCTION

E-consumer can be defined as - IBM has defined electronic business to be "the transformation of key business processes through the use of Internet technologies".

E-Commerce provides buyers with a wider range of choices than traditional commerce because they can consider many different products and services from a wider variety of sellers. The benefits of e-commerce also extend to the general welfare of society. Electronic payments of tax refunds, public retirement, and welfare support cost less to issue and arrive securely and quickly when transmitted via the Internet. Furthermore, electronic payments can be easier to audit and monitor than payments made by check, which can help protect against

fraud and theft losses.<sup>3</sup>

### RIGHTS OF E-CONSUMERS

E-consumers do have certain rights as consumers. But it is obligatory to note that the Consumers have certain obligations as well. It is expected that e-consumer are aware! Any failure to protect their interests would be considered to be his failure.<sup>4</sup> In the digital medium, it is natural for the consumer to read the privacy policy and terms of service conditions posted on the e-tailer's website. Such policy statements constitute online contracts between the consumer and the service provider (e-tailer).

The general profile of the e-consumer is different from that of the offline consumer in many ways. An e-consumer is urban, young, technology savvy, educated, a convenience shopper and multiple choices oriented. Moreover, he is smart; he knows where to look for a discount on the Net. As compared to the physical world, ease of price comparison and greater choices are the biggest plus points in favour of e-consumers.<sup>5</sup>

It is thus important to compare a physical shopping experience with that of an online shopping experience to understand the psyche of the e-consumer - his wants and needs. E-Commerce can make products and services available in remote areas. For example, distance education is making it possible for people to learn skills and earn degrees no matter where they live or what hours of the day they have available for study.<sup>6</sup> E-Commerce

<sup>3</sup> [http://www.un.org/esa/sustdev/publications/consumption\\_en.pdf](http://www.un.org/esa/sustdev/publications/consumption_en.pdf)

<sup>4</sup> ITU World Telecommunication Regulatory Database.

<sup>5</sup> Subhash Bhatnagar and Robert Schware, "Information and Communication Technology in Development: Cases from India", Sage Publications, 2000

<sup>6</sup> Varshney U, Vetter R J, Kalakota R 2000 Mobile commerce: a new frontier. Computer Oct.: 32-38



security requirements can be studied by examining the overall process, beginning with the consumer and ending with the commerce server. Considering each logical link in the “commerce chain”, the assets that must be protected to ensure secure e-commerce include client computers, the messages travelling on the communication channel, and the web and commerce servers – including any hardware attached to the servers. While telecommunications are certainly one of the major assets to be protected, telecommunications links are not the only concern in computer and e-commerce security. For instance, if the telecommunications links were made secure but no security measures were implemented for either client computers or commerce and web- servers, then no communications security would exist at all.<sup>7</sup>

**LEGAL REMEDIES AVAILABLE-**

It does not imply from the aforesaid discussion that e-consumers rights and obligations are confined to the privacy policy and term of service conditions only. Does he have rights if he gets defective goods or services? Consumer protection in cyberspace can be understood with the help of the following statutes:

- (a) The consumer protection Act, 1986
- (b) The Specific Relief Act, 1963
- (c) The Sale of Goods Act, 1930

Recourse to consumer protection under the consumer protection Act, of 1986 is taken after the dispute has arisen. The Act applies to all goods and services unless specifically exempted by the Central Government. It covers all the sectors of the economy – private, public and cooperative. Further, it provides for an adjudication process, which is simple, speedy and less expensive.

The consumer is defined under section 2(1)(d) of the Act as a person who buys any goods or services for a consideration, which has been paid or promised. Therefore any person buying goods and/or availing services on the Internet

will be a consumer of the Act. It provides a very wide definition of “service” as a service.

of any description which is made available to potential users and includes, but is not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service [section 2(1)(o)]. This definition is capable of including all online service providers since it is an inclusive definition. According to section 2(1)(c) of the Act “complaint” means any allegation in writing made by a complainant that the goods or services hired or availed suffer from a deficiency in any respect. The complainant can be a consumer or his legal representatives, any registered voluntary consumer association, Central or State Government [section 2(1) (b)]. But if a consumer in the digital medium faces any defects in goods or deficiency in services, who are the persons against whom he can lodge a complaint? The term “deficiency” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service [section 2(1)(g)]. A consumer has every right to file a complaint against all such service providers, which may include information providers, website owners, payment gateways etc. in a District Forum. Further, section 2(1)(j) of the Act, further qualifies a manufacturer as a person who makes or manufactures any goods or parts thereof assembles them or puts his own mark on any goods manufactured by any other manufacturer. A trader is a person (including a manufacturer) who sells or distributes any goods for sale. In other words, a complaint can also be made against manufacturers and traders selling goods online.

<sup>7</sup> Burns S 2002 Unique characteristics of e-commerce technologies and their effects upon payments systems. GSEC (GIAC Security Essentials Certification) – Version 1.3



### **MODERN-DAY DEFINITION AND FURTHER ELABORATION-**

E-consumers are consumers who are buying, consuming or selling goods or services using digital mediums (Internet or any other electronic platform). The digital medium helps e- consumers to place buy orders for physical goods using e-commerce business models, like business-to-consumer (B2C), consumer-to-business (C2B) and consumer-to-consumer (C2C); it also helps them to download digital goods in the form of music files, data, databases, content, software etc. A proactive website is one which provides consumer support and service functions in the form of e-mail queries, feedback forms, consumer service information etc. The knowledge of privacy policy and terms of use are also beneficial for e- consumers. From statutory perspective enactments, like the consumer protection Act, of 1986, the Specific Relief Act, of 1963 and the Sale of Goods Act, of 1930 play a critical role in safeguarding the e-consumers interests in cyberspace.

### **The importance of consumers in the telecoms and Internet sectors<sup>8</sup>**

A number of general trends have led to the rise of consumerism over the last thirty years. These changes have been most dramatic in countries that have in some way liberalized their economies and they include:

- A shift from producer to service economies: Developed countries have gone from earning the majority of their export revenues from manufacturing to getting more of this income from services. At a domestic level, with the lowering of the barriers protecting “national industries”, few parts of the private sector could remain complacent about the need to keep their customers. This trend has also been reinforced by the growth of multinationals competing globally, particularly during the

1970s and 1980s.

- Greater levels of choice for consumers in key services: With the appropriate policy and regulatory framework, the privatisation of formerly state-owned enterprises creates greater levels of choice for consumers. The telecoms and Internet sectors have led this process of creating choices in many countries with quite different income levels. Therefore increasingly large numbers of people “shop around” to choose their telephone or Internet suppliers, along with many other services that were formerly in the public sector.

- A shift from producers to consumers: Whereas the state formerly used to favour “the producers” (particularly those working in state-owned industries or Government), it now emphasizes the perspective of “consumers”. Although Government still assumes the mantle of protecting or creating jobs in the economy, this can rarely be done at the expense of the cost of service provision to all of its citizens. The dilemmas posed by these choices are all too-familiar to those Governments grappling with reducing the workforces of incumbent operators in order to deliver cheaper and better phone services to their citizens.

- Increased importance of customer care as a consequence of competition: The availability of customer care has increased with levels of competition. If the consumer has little or no choice, it makes no sense to put significant resources into making sure they are happy with the only choice they can make. Beneath this overall trend towards providing customer care, there is often a very differentiated approach towards how it is provided. Users of cheaper services are often allowed only limited online interactions whereas those buying more are treated better and given more customer service options. The overall quality of customer service - in society and in specific industries - will continue to be determined by the relative balance of power between suppliers and consumers; it will improve as competition becomes more intense, and decline as competition decreases.

<sup>8</sup> Mazumdar C, BarikMS, Das S, Roy J, BarkatMA2003 Final technical report for project development of validated security processes and methodologies for web-based enterprises



- Consumers want more information and use it: The arrival of the web has provided consumers with access to greater information in a wide range of fields. In the telecoms and Internet sectors, things like comparison sites allow consumers both to provide their views and to garner useful information to make informed choices. This information is particularly helpful where pricing and tariff structures are often the subjects of continual tactical marketing offers that have the effect of confusing the consumer. Many companies are now devoting time and resources to participating in consumer websites in the Internet and telecoms sector in order to be able to respond to issues raised first-hand. Obviously where Internet access, education and literacy levels are low, this “power of information” effect is likely to be less effective.

#### **Overall context and issues**

There is a clear relationship between citizens’ rights, the political system in place and the development in parallel of those same citizens having consumer rights within the market. In 1948, in the post-war period, the United Nations sought through its Universal Declaration of Human Rights to identify a number of basic rights that should be common to all.

Not surprisingly given the humanitarian, social and economic circumstances, almost all of these rights relate to the behaviour of the government toward its citizens. Only one clause – stating that everyone has the right to equal access to public services – seems to have any direct bearing on the topic being addressed. It was not until 1985 that the UN adopted the Guidelines for Consumer Protection which was later expanded in 1996. Consumer rights and responsibilities are about the individual’s ability to respond to and influence things that happen in the market. They flow from a world that is defined by economic theory (and its assumptions) rather than political theory. It is assumed that the market operates and therefore there must be countervailing protection for those who buy products or consume services in it. One of the

underpinning assumptions of the operation of a “free market” is that there is “efficient” competition between different players that will ensure downward pressure on prices and the need to offer improved services in order to better compete.

Three concepts are central to understanding how consumer rights have been defined and are particularly relevant to the telecoms and Internet sectors. The first of these concepts is “market failure”, an acknowledgement that for whatever reason the market does not operate freely or efficiently. The most frequent cause of market failure in the telecoms and Internet sectors is the existence of a monopoly or a duopoly, or the result of unfair competition. Where there is market failure, the Government in its role as the “referee” of a market economy, has the right to intervene or to appoint regulators to do so. The second concept is the idea of a “natural monopoly”: in other words, the provision of certain goods and services tends to favour the development of a single supplier. So for example, it is argued that it makes little sense to build two water or electricity supply systems in a country as this would not be economically efficient. Because basic services like these are seen as a “natural monopoly” it is important that Government has the power to regulate their operation. Therefore, irrespective of who delivers the service (the public or private sector), “natural monopoly” infrastructure that delivers basic services (water, power and telephony) to citizens is seen concomitantly as a “public good”. The challenge from those favouring increased competition in the delivery of goods and services has been to extend the areas in which competition can function. Consumers in the UK have a choice of different electricity and gas suppliers whose prices and service quality vary: this is competition at the services level. But telecoms infrastructure poses a more substantial challenge to the idea of natural monopoly. It is possible in parts of the infrastructure – at the local, national and international levels – to introduce some level of competition that will benefit the consumer. The



third concept is “dominant market power” which is where a player in a market has the ability to skew the operation of that market because of its strong commercial position. This is still often the case in many developing countries’ telecoms and Internet markets where the historic position of the incumbent operator still casts a long shadow over how the market operates. But it should be acknowledged that dominant market power can shift over time: it is certainly arguable that in developing countries mobile operators are often becoming the dominant market players. Again, where there is dominant market power, it is widely recognized that there need to be ways for Governments or responsible authorities to control it. In many countries, issues around price and access have gone from being political issues raised by citizens with their political representatives to being consumer issues only when there is some genuine level of competition that allows consumers to make a choice. In a majority of countries worldwide, when markets were open to some form of competition, governments have set up telecoms regulators (which have taken several different forms) to carry out the responsibilities of Government in overseeing (?) the operation of the sector. Almost without exception, these have been set up with a double-headed imperative: To look after the interests of all consumers: providing affordable prices, better service and extending service to more consumers (through universal access mechanisms)<sup>9</sup>. To create an industry-friendly environment for the private sector: getting investment and defining markets that enable them to make a reasonable level of return. When the task of liberalization started, some regulators naturally spent much of the initial years focusing on the issues raised by the second part of their overall mandate. And therefore for some of them, an interest in consumer issues has been a relatively recent development. The regulator’s double-headed

mandate is a balancing act between stakeholders’ two different interests. This is illustrated by the example below. There are wireless standards being used by a number of ISPs worldwide that will give them the ability to offer IP mobile voice services in the not-too-distant future. The service would be both innovative and probably cheaper for consumers.

What should the regulator do? The existing mobile companies (like the incumbent operators before them) will point to their considerable existing network investment and say that it should not be allowed or that they will need to be compensated if it does. Should the regulators favour the consumer or industry?

Also, the ways that regulators defend consumer interests will vary according to their local context. In countries where literacy rates are high and internet access fairly widespread, it makes sense for them to encourage developments like service comparison websites. In countries where literacy rates are low, the challenge is how to raise a voice for consumer interests in ways that do not require potential supporters to be able to read or write. For example, if as everyone seems to agree in a recent research study, African consumers are largely unfamiliar with consumer rights and therefore would need “consumer education programmes”, what form will these take in order to reach those who cannot read or write? It should be emphasized that this is not just a developing country issue. In Canada, for example, a consumer agency noted that 40% of the country’s citizens fall below the minimum desirable threshold of literacy.

#### **Consumer concerns-**

The primary concerns for the consumer include: Consumer’s exposure to unfair marketing practices

- Consumer’s exposure to unfair marketing practices

Insufficient information disclosure, for example, refund policies, cancellation terms, Warranty information Contract terms, for example, their enforceability Merchandise and delivery

<sup>9</sup> SSE-CMM2003 Systems security engineering capability maturity model. SSE-CMM, Model Description Document Version 3.0, June 15, 2003



practices, for example, failure to perform and lateness Payment, for example, recovering fraudulent charges if credit card information falls into criminal hands. Transaction confirmation and cancellation policies, for example, consumers' lack of knowledge on cancellation rights for online transactions, including for mistakenly made purchases Fraud and deception, for example, lack of means to authenticate merchandise purchased online.<sup>10</sup>

- Unsafe products
- Insecure payment methods
- Loss of personal privacy, Risk misuse of personal information
- Other concerns include computer fraud, hacking, virus, interception and alteration of financial data, and misuse of personal information.<sup>11</sup>

These concerns and questions about resolving international disputes become pertinent to the buyer, especially when the sellers can place themselves beyond the reach of national courts. The risks need to be eliminated or minimized.

Digital technologies contribute to an improvement in the quality of people's lives in many ways. They create the preconditions for expanded participation in political, economic, social and cultural life which help sustain democratic institutions. They facilitate the free exchange of ideas – including across borders – and increase access to information. Digital technologies transform the way people use media. They also offer access to new services and enable new business models. As is the case in the analogue world, however, it is important to ensure that there is a fair balance between the interests of consumers and providers of services. Mechanisms are required that enable consumers to effectively assert and protect their rights in the digital world and that provide protection from the damage caused by misuse

and criminal attacks. Consumers should also be fully informed about specific risks and new threats so that they can enter the digital market as equal partners and make well-informed decisions. The increasing significance of digital media for the modern economy requires a comprehensive consumer policy and the protection of consumer rights in the digital world. In our global society, there should also be fair and non-discriminative access to the multifaceted spectrum of forms of cultural expression in the spirit of the UNESCO Convention on the Protection of cultural diversity.<sup>12</sup>

The Charter for Consumer Rights in the Digital World identifies the core rights that the members of TACD regard as indispensable to meeting the challenges presented by the digital world and the utilization of its potential. These core rights are based on a wide range of TACD resolutions that have previously set out the interests of consumers in the digital world. They are the:

1. Right to access neutral networks
2. Right to access digital media and information
3. Right to secure networks and services
4. Right to privacy and data protection
5. Right to software interoperability
6. Right to barrier-free access and equality
7. Right to pluralistic media

### 1. Right to access neutral networks

The Internet is an increasingly important source of information for consumers. It has become a basic means of communication for individuals and the most important means of access to knowledge and general information. The Internet has also become a platform for consumers' access to participate in the public, democratic debate.<sup>13</sup>

There is a danger, however, that Internet service

<sup>10</sup> FAQ on Information Technology Act.

<http://www.tamilnadunri.com/india/itpolicy/faq.html>

<sup>11</sup> Anil Gupta, Brij Kothari and Kirit Patel, "Knowledge Network for Recognizing, respecting and Rewarding Grassroots Innovation", in Subhash Bhatnagar and Robert Schwarc (Eds), "Information and Communication Technology in Development: Cases from India", Sage Publications, 2000

<sup>12</sup> Brij Kothari and Joe Takeda, "Same Language Subtitling for Literacy: Small Change for Colossal Gains", in Subhash Bhatnagar and Robert Schwarc (Eds), "Information and Communication Technology in Development: Cases from India", Sage Publications, 2000

<sup>13</sup> See also: Resolution on Net Neutrality (Infosoc) and DRAFT Resolution on The role of Internet



providers (ISPs) may block or degrade the access of consumers to certain content and applications, or limit the types of equipment that can be attached to networks. Such behaviour can severely limit the usefulness of the Internet and frustrate consumers. the *right to access neutral networks*. That means that consumers have the right to attach devices of their choice, the right to access or provide content, services and applications of their choice, and the right for this access to be free from discrimination according to source, destination, content and type of application.<sup>14</sup>

Governments call upon: Governments to recognise, promote and encourage principles of net neutrality. Regulators to assess the level of competition in broadband Internet access, and take steps to ensure that consumers have continued access to a neutral network. Regulators to prevent ISPs and network providers from engaging in unfair discrimination against content, services, applications, or devices.<sup>15</sup> Telecommunications and competition regulators require that ISPs and network providers provide fair and accurate information regarding Internet service plans, including average estimated speeds, any existing caps on bandwidth, and content, services, applications or devices that may be blocked or degraded on their networks. ISPs and network providers should also detail their compliance with net neutrality principles and regulations. ISPs provide consumers with information about limitations on Internet service plans, as well as any network management occurring on their networks and how that management affects access to particular content, service, application, or device. Such management should fall within the scope of legitimate network management.

## 2. Right to access digital media and information<sup>16</sup>

<sup>14</sup> Research findings from:

<http://www.afri.digital.net/downloads/IDRCconsumerdftV2.doc>

<sup>15</sup> Listing of laws relating to competition policy in North and Latin Americas:

[http://www.ftaa-alca.org/ngroups/NGCP/Publications/DomLaws\\_e.asp](http://www.ftaa-alca.org/ngroups/NGCP/Publications/DomLaws_e.asp)

<sup>16</sup> See also: Resolution and Background Paper on Digital Rights Management,

The Sequel (IP): <http://www.tacd.org/cgibin/>

[db.cgi?page=view&config=admin/docs.cfg&cid=307](http://www.tacd.org/cgibin/db.cgi?page=view&config=admin/docs.cfg&cid=307) and Resolution on

In the digital world, there should be a fair balance between the interests of consumers and providers of digital services. Digital Rights Management (DRM) systems, however, continue to be used to restrict the deployment of digital media to the clear disadvantage of consumers, prevent free competition and slow innovation. Furthermore, information about DRM systems is often hidden from consumers or incomprehensible. Consequently, consumers should have the *right to access digital media and information*.

DRMs should only be used under the following – cumulatively effective – conditions:

The practical use of DRMs on the Internet must not generate unnecessary vulnerabilities with regard to consumers' equipment or personal information. User profiles must not be created. The anonymity of users of digital media must be protected. Copyright owners must not hinder consumers' use of digital media within the framework of prevailing legal prescriptions. This particularly applies to the right to make copies for private use and the right to transform content for private use. Because the relevant legal situation is often complicated, copyright infringements for non-commercial reasons must not be criminalized. The impact of DRMs on functionality should be limited to what is necessary to protect copyright and should not otherwise affect a consumer's use of content. The format of the storage medium must not be used for protectionist barriers that prevent consumers from exercising free choice and their legal rights. Consumers should be allowed to decide for themselves what player or platform they will use and to move any content they have bought to any medium of their choice.

## 3. Right to secure networks and services

Consumer confidence in the security and reliability of the digital world is a decisive precondition for the intensive use of digital services. Ensuring such confidence requires the *right to secure networks and services*.

Digital Rights Management (IP01.05): <http://www.tacd.org/cgibin/db.cgi?page=view&config=admin/docs.cfg&cid=275>



Furthermore, measures for significantly increasing consumer awareness and competence in relation to data and system security should be provided. Businesses to observe the following fundamental principles to provide secure networks and services: When choosing a security system, providers of Internet-based services must ensure that the risks to consumers are minimized as much as possible.

Security must be integrated into the technology. That means that security should be the default setting. Internet access providers must ensure that access to online services and offerings is free of manipulation. This presupposes a high standard for the security and reliability of networks and services. The providers of Internet-based services must provide consumers of particularly sensitive online services such as online banking and online auctions with regular and timely information regarding current security risks and effective protective measures. Providers of digital products and services should be made legally accountable for losses as a result of damage caused by non-observance of appropriate security measures.<sup>17</sup>

#### 4. Right to privacy and data protection

In the digital world, consumers are subject to far more intrusive data gathering by businesses and governments than in the past. Moreover, as their personal information is collected, large organizations have become increasingly secretive. Personal information is also more often used for data mining, behavioural targeting for marketing purposes, compiling personal name records and credit scoring. There is a risk that these developments undermine the basic human rights of individuals to autonomy and control of their personal information. There is also a danger that security breaches and identity theft increase and new threats to trust and confidence in the digital marketplace emerge.

<sup>17</sup> Indian Mobile Operators flunk Customer Satisfaction Test:  
<http://www.mobilefun.org/forum/showthread.php?p=17>

Therefore, consumers should have the *right to privacy and data protection*.<sup>18</sup>

#### 5. Right to Pluralistic Media

The Internet offers a wonderful platform for innovation, growth, and the ability of people to express their views. New forms of media are emerging that challenge old paradigms and enable broader public participation. At the same time, dominant Internet firms are moving to consolidate their control over the Internet, to increase the profiling of Internet users, and to manipulate the information and TACD, therefore, calls on governments to consolidations pose to the open Internet and specifically how dominant Internet firms are able to leverage their position in one market sector to discourage competition other market sectors.

Identity theft is distinct from identity fraud.<sup>19</sup> Identity theft occurs when personal data are accessed without the affected person's permission, whereas identity fraud occurs when that personal information is then misused for financial gain.<sup>20</sup> Equipped with information gained from such items as social security numbers, bank or credit card numbers, passwords, telephone calling card numbers, names, addresses, and other personal identification data, the perpetrator can assume another's identity to take out loans, make credit card purchases, and withdraw funds from accounts.

#### Protecting consumers and resolving complaints

##### **Legislative and self-regulatory frameworks**

There are four elements that safeguard

<sup>18</sup> See also: Resolution on Internet Security (Infosoc3407):  
<http://www.tacd.org/cgibin/db.cgi?page=view&config=admin/docs.cfg&id=310> and Resolution on Identity Theft, Phishing and Consumer Confidence (Infosoc3307):  
<http://www.tacd.org/cgibin/db.cgi?page=view&config=admin/docs.cfg&id=306>

<sup>19</sup> Identity Theft Resource Center, "Facts and Statistics," April 30, 2007. Available at:  
[http://www.idtheftcenter.org/artman2/publish/m\\_facts/Facts\\_and\\_Statistics.shtml](http://www.idtheftcenter.org/artman2/publish/m_facts/Facts_and_Statistics.shtml)

<sup>20</sup> Rachel Kim, Javelin Strategy & Research, "2007 Identity Fraud Survey Report – Consumer Version: How Consumers Can Protect Themselves (Abbreviated Version), February 2007. Available at:  
<http://www.freakonomics.com/pdf/Javelin%20Report%202007.pdf>. See also FierceCIO, "Identity Theft Dropped in 2007," February 14, 2008. Available at: <http://www.fiercecio.com/story/identity-theft-dropped-in-2007/2008-02-14>





consumer rights: consumer rights law, competition law, telecoms and Internet law, and self-regulatory frameworks. Telecoms law usually enables the setting up of separate regulatory authorities and self-regulatory frameworks within the industry. The latter can either be put in place as part of the licence conditions for an operator or are self-imposed. Without these four elements, it is difficult for consumer complaints to be dealt with as there will be no framework for dealing with them and no recourse if operators (or others) fail to do so.<sup>21</sup> By themselves, these four elements do not guarantee consumer protection. Some kind of political will is one major pre-condition for their effectiveness as it allows for differing positions to be expressed. Another pre-condition is the clear application and transparent functioning of the rule of law precluding the ability of the executive of the Government to dictate the results reached in the Courts or for institutions or individuals to corruptly obtain a particular legal result. Throughout the world, there is always some distance between how things ought to work and how they actually do work. The greater the distance between these two positions in a country, the less likely it is that its citizens will benefit from effective consumer rights. Luckily for an increasing number of people – with certain very high profile exceptions – this gap has on balance been getting smaller rather than larger in many countries. <sup>21</sup>Of 132 countries surveyed by the ITU in 2005, 55 (42%) had no specific telecommunication consumer protection regulation/legislation: the majority of those without provision were in transition or developing countries. According to the survey, the Quality of Service (QoS) responsibility was held mainly by regulators (77% of respondents) or the appropriate sector Ministry (17%). There were 142 independent regulators by mid 2006. In its 2004 Annual Report, Consumers

International noted that:” To date, only a few African countries have enacted consumer protection legislation”. By the most optimistic assessment only 21 (40%) out of the 53 independent countries on the continent are likely to have some form of consumer legislation in the next 2-3 years. Again according to the ITU survey, there were 13 countries out of 27 in the Americas that have no legislation and 12 out of 22 countries in the Asia Pacific region with no legislation. Different legal traditions affect the way in which consumer law operates. Put simply, francophone law-making flows from a national constitution in which the State grants its citizens certain rights. Through a process of laws and administrative decrees, the Government then seeks to describe the circumstances in which these rights can be exercised. The Anglophone legal tradition operates in the absence of formal constitution and is built on challenges that assert the rights of citizens within a framework of existing laws and past precedents. Civil law, or Roman law, is the foundation of Latin American legal systems, whereas English common law is the basis of the American legal system. The common law system has the advantage of separating the functions of prosecutor and judge. This separation of powers is useful in adjudicating matters that relate to competition policy, but it can also be provided in a country with a Civil Law system.<sup>22</sup>

#### **Consumer participation and representation**

If regulators are to represent consumers then it is essential that their voices are heard, either directly in the overall board of the regulator or through Committees set up specifically by the regulator to have representatives of their interests. Sometimes both of these conditions are met by regulators but the voice of the consumer interest still often remains muted because those representing the consumer are not always effective: representation by ineffective individuals does not always guarantee that issues will be pursued strongly.

<sup>21</sup> Anil Gupta, Brij Kothari and Kirit Patel, “Knowledge Network for Recognizing, respecting and Rewarding Grassroots Innovation”, in Subhash Bhatnagar and Robert Schware (Eds), “Information and Communication Technology in Development: Cases from India”, Sage Publications, 2000

<sup>22</sup> Independent Committee for the Supervision of Standards of Telephone Information Services



However, it is possible to advertise for consumer representatives and to interview and choose appropriate individuals capable of carrying out the task. The independence of these consumer members is a key issue. As the Consumers International Report for 2004 noted: "Membership on regulatory boards is not inconsistent with independence if there is full access to information and no duty of confidentiality about the matters discussed."<sup>23</sup> Guarantees of full disclosure of key matters (e.g. contract conditions for concessions and leases) are absolutely necessary for consumer organisations to exercise real representation". However, representation should not be limited to regulatory bodies alone but should also encompass other instruments for consumer choice, and competition commissions. The report quoted above found that consumer organisations in Africa do not belong to and are rarely consulted by national competition commissions. Neither is consumers regularly informed of commission decisions. However, consumer organisations' participation in regulatory agencies is increasing. From the author's own survey, only a handful of instances were identified where the telecoms regulator is working actively with consumer bodies in any way. As noted above, few consumer organisations are involved with either the regulator or competition commissions. Therefore few have their voice directly heard in the governing body of a regulator and where it has occurred, their involvement has mainly been sought on the issue of resolving consumer complaints.

### **CONCLUSION**

Rapid developments in ICT have opened up new global business opportunities in the form of E-Commerce, which may be exploited by developing countries as well. It is feared that these developments may widen the digital divide and underdeveloped countries may lag behind and lose in the race. Examples illustrated

in the paper demonstrate that India is well prepared to use ICT for social development and in bridging the digital divide.

Several international agencies, ministries and business groups have addressed the emerging global business opportunities of E-Commerce and developed proposals for discussions in various international forums. It is important for consumer organizations in developing country to reflect on these proposals and evolve mechanisms that are mutually beneficial. However, since the speed of development is alarming, we need to strengthen our human resources, build infrastructure and find more innovative ways of utilizing ICT for the overall development of the economy.

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