

THE EUROPEAN COMMUNITY APPROACH TO CONSUMER PROTECTION

ADDRESS OF COMMISSIONER RICHARD BURKE TO THE SEMINAR OF THE
UNITED STATES COUNCIL OF THE INTERNATIONAL CHAMBER OF COMMERCE

ON

"CONSUMER PROTECTION FOR THE FUTURE : THE CORPORATE RESPONSE"

AT THE PRINCETON CLUB, NEW YORK,

17 SEPTEMBER, 1980.

THE EUROPEAN COMMUNITY APPROACH TO CONSUMER PROTECTION

ADDRESS OF COMMISSIONER RICHARD BURKE TO THE SEMINAR OF THE UNITED STATES COUNCIL OF THE INTERNATIONAL CHAMBER OF COMMERCE ON "CONSUMER PROTECTION FOR THE FUTURE : THE CORPORATE RESPONSE" AT THE PRINCETON CLUB, NEW YORK, 17 SEPTEMBER, 1980.

Ladies and Gentlemen,

It is an honour and a pleasure to be here, but since the time available is short and the field to be covered extremely wide, I shall not linger on the preliminaries but press right ahead with telling you what the European Community has been doing in the area of consumer protection and what it hopes to do. But, in order to establish the context in which our consumer protection effort is taking place, I should first briefly describe some of the main features of the Community and of its legislative processes.

The Rome Treaty, signed in 1957, can be regarded as the Community's constitution. It has the advantages and disadvantages common to written constitutions, with which you here are more than familiar. Many legislators and administrators insist that our Treaty must be adhered to rigidly, to the letter - no more and no less. Others take what might be called a more evolutionary view, saying that it must be interpreted with some regard for how circumstances have changed since the Treaty was signed.

.../... You will readily

You will readily appreciate that there is significant tension between those who insist on finding a specific reference to a given policy area in the Treaty before they will agree to contemplate action, and those who prefer to interpret the intentions set out in the Treaty in the light of economic, social and political circumstances at a given time.

I exaggerate the contrast, of course, but it exists.

The institutional structure of the Community is, I believe, unique. The Commission, of which I am a Member, has a virtually exclusive right to initiate new policy proposals, and is also charged with the execution of decisions made under the Treaty. The Commission has no legislative power : its powers of decision derive solely from the execution of legislative decisions.

The Council of Ministers is the Community's legislative body: it has no executive powers and virtually no powers of initiative. In one important area - the adoption of the Community's budget - it shares its legislative power with the European Parliament, and it is the Parliament which finally adopts - or rejects - the budget.

The European Parliament has the right, under the Treaty, to be consulted by the Council on most proposals for legislation. It has acquired a very considerable degree of influence, especially since the first direct election of its members by universal suffrage was held in June of last year.

The Community's Court of Justice is the final arbiter of disputes as to the interpretation of the Treaty, the constitutionality of Community legislation, the coherence of national legislation with Treaty obligations and the proper application of Community legislation.

In addition to these institutions, the Treaty set up the Economic and Social Committee, which is a consultative body representative of the main economic groups in society. The Treaty provides that the ESC be consulted on most legislative proposals.

I have described the institutional framework within which we work: I shall now seek to outline our approach to consumer protection.

I should say first that in Community terms, consumer protection - as a separate policy - is a relatively recent arrival. It took its place in the repertoire of official objectives of the European Communities on 14 April 1975 when the Council of

Ministers adopted a resolution approving such a policy both in principle and in terms of specific actions proposed in a preliminary programme prepared by the Commission. In doing so, it followed a trend which had been clearly in evidence in the United States over the previous twenty years or so, and covered what US business and consumer interest would readily recognize as familiar terrain.

The concept of consumer protection, of course, was of much earlier origin. The first steps on the road to comprehensive legislation for food safety go back about a century on both sides of the Atlantic. They were a natural outcome of rapid industrialization which had created the need to preserve and condition food for storage and distribution between the centres of production and consumption, since these were increasingly distant from one another. The need for acceptable ethical standards of advertising, in the interests of proper consumer information, also made itself felt in the initial attempts at consumer safeguards, although these lacked the effectiveness of the more refined measures of later times. Initiatives such as the US Pure Food and Drugs Act of 1906, the establishment of your Federal Trade Commission in 1914 with mandates in regard to unfair competition and advertising, or the early Sale of Goods Act of 1893 in Britain, testified to a sensitivity on the part of Governments to the changing needs of citizens in a society where expanding choice,

more complex and sophisticated manufacturing and distribution, and rising incomes began to open new prospects and new problems.

What has been new in the last 25 years or so is the development of an integrated and comprehensive concept of consumer welfare and protection. This includes a recognition of the duality of the free market and the imbalance between the power and influence of seller and buyer. This imbalance was gradually perceived and recognized by public authorities, consumer interest and producer interests. There were mounting pressures from increasingly articulate consumer advocates, and a better understanding of the issues on the part of a more discriminating public. Ordinary citizens enjoyed unprecedented prosperity and purchasing power. Technological advance appeared to offer the potential for unlimited economic growth. Energy was cheap and there was virtually full employment in Europe and in the US. This situation prevailed up to the end of 1973.

The meeting of Heads of State and Government of the Member States of the EEC in Paris in October 1972 declared that economic progress was not an end in itself and that social advance was no less important. From that declaration grew a new package of socially-orientated policies, including the social action programme of 1973 with its emphasis on full employment vocational training and social security, the regional development measures for financial aid to infrastructural and manufacturing investment

.../... in the less-privileged regions

in the less-privileged regions of the Community, the policy for a cleaner, safer and better-preserved environment, and most important for our present purposes, the consumer protection and information programme of 1975.

These policies constituted a further step towards the realization of the objective set out in Article 2 of the Treaty, which is to promote "a harmonious development of economic activities, a continuous and balanced expansion and an accelerated raising of the standard of living". The emergence of these policies coincided with the first enlargement of the EEC to include the UK, Denmark and Ireland, and the establishment of consumer policy was significantly influenced by the accession of these new Member States.

The 15 years from 1957 to 1972 had, as you will recall, brought profound changes on the consumer scene in the US. There was, for example, the successful battle to withhold approval by your Food and Drugs Administration of the tranquilizer called thalidomide which was later seen to cause grave natal deformation on our side of the Atlantic in the early sixties, the Truth-in-Lending and Truth-in-Packaging campaigns of the mid-sixties, the movement for automobile safety by Ralph Nader and his associates in 1965/66, the report of the National Commission on Products Safety in 1970 and many other notable milestones.

It is not surprising that the five consumer rights enunciated in the 1975 EEC programme reflect very closely the four similar rights declared by President John F. Kennedy in his message to Congress of 1962. We enumerate them as:

- the right to protection of health and safety;
- the right to protection of economic interests;
- the right of redress;
- the right to information and education;
- the right of representation (the right to be heard).

President Kennedy in 1962 cited

- the right to choose
- the right to safety
- the right to be informed
- the right to be heard.

Our 1975 programme defined a series of priorities in relation to each of these rights, and an important part of our activity has been devoted to preparing the appropriate legislative and other action.

As far as the protection of consumers' health and safety is concerned, we have enacted and we continue to develop legislation covering a very broad field. This is an area where we have succeeded in forging a link between the consumer interest and one of the Commission's main general objectives, which is to ensure that the Community is in fact a single market.

Legislation exists in relation to seven of the eleven priorities which we defined in this area. An eighth concerns toy safety, in respect of which the Commission put forward a draft directive last June. Proposals already exist in relation to dangerous substances and materials coming into contact with foodstuffs.

You will be familiar with many of our concerns in this area. They cover such matters as food additives, pesticide residues in foodstuffs, and the like. In addition, we have a very substantial body of legislation covering, for instance, such areas as technical specifications for items of equipment in motor cars, which have the double objective of promoting both safety and market unity within the Community.

You may be interested to know that the Council is now discussing our proposal for an accident surveillance system on consumer products on the lines of your own NEISS system.

As far as the economic interests of consumers are concerned, we have put forward a series of proposals, some of which are now at an advanced stage of discussion in the Council. These proposals concern:

- misleading and unfair advertising
- consumer credit
- product liability
- door-to-door sales.

You will be familiar with many of the issues and arguments associated with these topics, and your experience has often been instructive to us.

For example, in our proposal on product liability, we have opted for a system of strict liability irrespective of fault on the producer's part and state-of-the-art considerations. We - by which I mean the Commission - have done so deliberately after very long consideration because we concluded that it is the fairest approach to the problem. But during our examination of this question, I was influenced to some extent by the fact that Community manufacturers who export to the United States already have to take account of US legislation in this area.

As far as consumers' rights of redress are concerned, I have to report that we have so far been unable to make any significant progress. Why the difficulty? Well, to mention again an American analogy, I think there are cases in which you experience problems arising from differences in legislation and regulations between States. Imagine, then, our difficulty which in this area arises not only from differences in legislation throughout our nine Member States, but also because we have two quite separate and distinct legal traditions in the Community : the system based on the Napoleonic Code, and the Common Law system.

.../... Nevertheless, we have not run

Nevertheless, we have not run into a complete impasse. Some of our proposals in the area of the protection of economic interests specify the circumstances in which the Member States must provide the consumer with means of redress.

I come now to the right to information and education. Here, I would say, we have made satisfactory progress.

In December 1978, the Council passed a Directive concerning the labelling, presentation and advertising of food products. This is a very comprehensive piece of legislation which ensures that the consumer is given, in a clearly comprehensible form, the information necessary to know just what is being offered, and what are the key characteristics of the products offered.

Legislation exists on the making-up by weight or volume of prepackage goods and liquids.

The Council in 1979 passed a Directive on Unit Pricing of food products, the aim of which is to facilitate consumer choice between different presentations of competing products.

This year, the Council passed a basic framework directive on the energy labelling of domestic appliances, together with the first application directive, relating to electric ovens. Further directives concerning other appliances are in course of preparation.

As far as consumer education is concerned, we are financing pilot projects at school level and at adult education level, promoting the development of curricula and running an exchange of information on teaching materials between teachers.

In addition to and parallel with all of this activity, we have developed a very useful working relationship with Community-level organizations representative of consumer interests.

In 1973, the Commission set up the Consumers' Consultative Committee (CCC) which is consulted on proposals for EEC legislation, and which may also make reports to the Commission on its own initiative.

Four Community-level organizations propose candidates for membership of the CCC, and we have developed mutually beneficial methods of working with these organizations. They represent the private consumer movement, consumer cooperatives, family organizations and trade unions. We subsidize these organizations so that they can pursue their own studies and investigations and report to the Commission on their findings. Their concern is frequently, of course, to stimulate or reinforce action on our part.

We provide financial assistance to national consumer bodies for initiatives to promote consumer awareness, for the setting up of new services to consumers, or for undertaking certain studies where finance is otherwise unavailable.

In June of last year, the Commission published its proposals for a second action programme on consumer policy.

In drafting this second programme, we had to reckon with the changes which have come about in our economic environment since the original impulse for consumer policy was given late in 1972, and also since the adoption of the first programme in April 1975. There are those who say that neither business nor consumers can afford consumer protection legislation in a recession. But I believe, on the contrary, that the consumer has an even greater need of protection during a recession, since it becomes all the more important for him to get value for money.

Another question which we have had to consider closely is that of the balance to be struck between legislation and other forms of action in favour of consumer interest.

There are three main reasons for re-examining this question.

The first derives from the complexity of our legislative procedure, to which I have already referred.

.../... The second arises

The second arises from the way in which the Rome Treaty is written. For in order to begin the process of harmonization of legislation, we usually have to establish, in accordance with Article 100 of the Treaty, that Commission proposals for the approximation of Member State laws are essential to the establishment and operation of the Common Market. It is when national consumer protection rules are invoked by one or more Member States to justify the prohibition of import of goods or services from other Member States that the Community procedure for law-making swings into action. It may suffice to show the potential effect on the Common Market of such rules, but that is not always easy to prove. So while it is obviously worthwhile to take on this arduous process for the most fundamental and indispensable pieces of EEC legislation, we cannot consider harmonization as the only remedy for consumer ills.

Recent jurisprudence of the European Court of Justice has led the Commission to take the view that instead of allowing divergences of national law, having actual or potential effect on the Common Market, to trigger proposals from us to harmonize consumer law in the area concerned, we should rather examine closely the extent to which the offending national law is justified on consumer protection grounds. Where it is not, then that national rule should fall, eliminating the trade barrier it causes.

.../... Where it is justified

Where it is justified, and is uniquely appropriate and not excessive to achieve the protection intended, then a case exists for considering harmonization at EEC level. That justification can be tested, if Commission and Member State fail to agree, by the European Court of Justice. What all of this seeks to ensure is that goods and services meeting the required standards of any Member State and circulating legitimately therein should also have access to all other Member-State markets on the same terms, even if their standards vary in detail, but achieve the same effect in consumer protection terms. We hope that this will help us to concentrate our efforts on fewer but higher priority issues in consumer terms.

At the same time, we shall obviously be seeking to prevent the proliferation of new Member-State laws of a mutually divergent character so as to prevent the erection of future barriers to trade. We hope to do this by examining their proposals in this area before they pass into law and either requesting that they not be enacted or that their enactment await an equivalent measure harmonized at Community level. This is not to take on powers other than the Treaty affords the Commission, but rather to use them in what we consider to be a more effective way.

The third reason is that there are other ways to promote consumer welfare. One which I hope will have significant value in the future is the promotion of dialogue between producer and consumer interests at Community level, with a view, where appropriate, to having voluntary negotiations and agreement between the two sides.

This could prove a very flexible method of redressing the imbalance between these interests, provided that the consumer representatives have access to the negotiating resources they need in terms of specialist personnel, training for the work involved, research back-up and surveillance of established codes of conduct. The Commission can certainly provide significant support in these matters if required and can perhaps take an initiatory role.

We have incorporated this concept in the proposal for the second consumer programme which is now before Parliament and Council. I hope to see the idea take practical shape in a few significant areas over the next few years. I have in mind particularly the preparation of advertising codes within the broad framework of the general directive now in passage through the EEC Institutions. A good example would be advertising directed at children. I also see scope for a similar approach in regard to after-sales service for consumer durable goods. It might also be of significant value in international tourism, which certainly seems ripe for some action at Community level.

The idea of more producer-consumer dialogue with the Commission in a broad supportive role is part of a larger concept, in which the interests of producers and consumers are seen to be mutually inter-dependent, where each side recognizes the responsibilities of the other and the constraints which limit the freedom of each to respond to the demands of the other. I think that one of the

lessons of the energy crisis, and of the resulting problems concerning balance of payments, persistent inflation, and large-scale unemployment must surely be that we can no longer enjoy the luxury of solving our problems only in terms of their effects on ourselves.

I think that both sides are coming to realize this. In so far as consumers do so, they will continue to be entitled to expect reasonable attention to their reasoned demands. It will not suffice for producers to say that the economic situation is too grave to allow time for consumer issues. After all, fair business is almost always efficient business and is most likely to be the kind of business which makes best use of its resources. A high score on consumer service is also, in my view, a high score on industrial efficiency and will serve the businessmen well.

We must have regard also to the problems of the less developed countries. I note that you have not neglected this interest in your deliberations today, and I congratulate you on that. In the final analysis, consumer problems must be seen against a world background. We are faced with global problems which can only be solved by creating a new and equitable economic order. A fair deal for the consumer wherever he lives, will be part of that order, even if the differences in stage of economic development will imply different preoccupations as between developed and developing nations.

The fact that we are here today to debate consumer policy issues as they affect the 500 million citizens of our States, shows how central these once-neglected questions have become. They are questions to which we have not always found the answers. But we have found a number of them, and I believe your Conference will help us to find more.

Thank you.
