



FREE MARKET FOUNDATION

“Consumers, by definition, include us all. They are the largest economic group in the economy, affecting and affected by almost every public economic decision ... they are the only important group ... whose views are often not heard.”

President JF Kennedy

Consumer rights slip sliding away

Consumer rights have never been under greater assault in South Africa and the world than they are today.

Consumer rights have never been in greater need of explanation and defence in South Africa and the world than they are today.

In the past, there was a tendency toward increasing and protecting consumer rights; today, the trend is to destroy the rights of consumers, particularly in the guise of protecting consumers from themselves.

Far-reaching health controls with severe implications for consumers have been implemented or are under consideration. What is targeted? Products of greatest significance include tobacco, liquor, salt, sugar, traditional and faith healing, alternative medicines, baby food and junk food.

The right to information. Consumers have the right to be informed by suppliers through advertisements and other legitimate means about products and services they have a right to buy, including ingredients, product options, prices, and availability. Restrictions and bans on advertising, marketing and disseminating information mean that consumers will be denied the information necessary to make informed choices.

The right to health and safety warnings. Paradoxically, they will also be denied information and education about risks and responsible consumer behaviour conveyed through warnings that accompany liquor advertisements (“Not for persons under 18”) or gambling advertisements (“Know when to stop”) etc. Warnings on tobacco products are the best-known examples of health and safety advertising. The prohibition of tobacco marketing means that only consumers who buy tobacco products will be exposed to tobacco health warnings.

The right to appealing products. The threat of graphic health warnings on risky products means that consumers are forced to buy products concealed behind unbranded packaging. If the threat is implemented, it will force consumers of tobacco products to purchase technical pictures of diseased body parts. The same threat is under or scheduled for consideration for wine, fast-food, salt packets, sugar, sweets, cold drinks, fatty food, dairy products and, ultimately, vehicles. The ideas being considered, taken to their logical conclusion, will force consumers to live in a rather horrid world.

The right to competition. Limitations on advertising and marketing curtail competition. Suppliers with market dominance will be protected from being challenged by suppliers offering consumers alternative products. This has disproportionately adverse implications for small and emerging enterprises, especially black business, and the consumers they would serve. It also keeps big players out, such as foreign investors and local corporations that would enter the market and challenge existing “monopolies”. Conspiracy theorists even suggest that “big business” surreptitiously supports or promotes marketing restrictions and bans.

The consumer right to funding. Advertising, marketing and sponsorship by targeted suppliers are major sources of funding for many activities. The list is more substantial than generally realised. It includes magazines, newspapers, websites, arts and culture, heritage, sport, community services, civil society, research and publications, and much more. Cuts in spending on such products and services drive out everything at the margin and result in everything that survives being under-funded. The extent to which consumers become victim is seldom recognised because the link back to the actual cause is not obvious. No one would suspect, for instance, that lack of funding for a cultural event, sports tour or critical research is due to the health-motivated prohibition of some or other advertising.

The consumer right to dignity. Human dignity is the very first value and right in our Constitution (§1(a)). Consumers have a constitutional right to make their own lifestyle and health care choices. Whatever they choose to buy and do in the exercise of their Constitutional rights, their freedom and liberty is to be respected and regarded as legitimate. Condemnation of the way consumers exercise their rights, if done without harming others, violates their right to freedom and dignity.

The consumer right to trade-offs. All consumer rights, freedom and choices entail trade-offs and risk. Choice implies the right to be wrong; freedom implies the right to make mistakes. A world without risks is a world without choices. So long as consumers are not misled or misinformed, they accept the implications of their choices. Consumers have the right, for instance, to choose high quality at high prices or low quality at low prices. They may likewise make informed choices regarding their health and safety. They have the right to engage in dangerous activities such as adventure tourism, mountaineering or sky diving, and the right to consume unhealthy food, alcohol or tobacco. They have the right to win or lose money in lawful casinos or on horse racing. Consumer freedom implies the right personally and subjectively to determine trade-offs between costs and benefits.

The consumer right to choose. The consumer movement is aware of debates and legitimate differences of opinion regarding health and safety. These include levels of real or suspected risk, on the one hand, and benefits including subjective motivations for risky behaviour, on the other. All consumer choices involve such trade-offs; they are an inherent part of being a consumer. Something as basic as eating, for instance, confronts consumers with extreme health risks from anorexia to obesity. As risky as these trade-offs might be, they are legitimate aspects of consumer freedom. The consumer movement notes that firmly held opinions are not only debated in good faith but the established view often changes. Consumers were assured for decades that fatty food and coffee are harmful, yet that view is now hotly contested by highly respected experts such as Prof Tim Noakes. Policy should allow for such differences and shifts. Dogmatic certainty and blind faith at the expense of consumer freedom are seldom justified.

The rights of adult consumers. Age restrictions regarding high-risk and morally contentious products, services and activities are not in contention here, subject to concerns below regarding proposals to introduce age restrictions on “junk food” sales.

Other consumer rights. There are, of course, other consumer rights, such as the right not to be cheated or defrauded, the right to redress for faulty products and services, the right to affordable and expeditious justice, the right to processes and procedures that are not unduly costly or encumbered by red tape, and the right to effective protection against abusive practices. The above rights are, however, of specific relevance to policies and laws regarding consumer health and safety. The eight main consumer rights recognised by the United Nations and its members, including South Africa, are:

- I. Safety;
- II. Information;
- III. Choice;
- IV. Representation;
- V. Redress;
- VI. Consumer education;
- VII. Satisfaction of basic needs;
- VIII. A healthy environment.

Application of the above principles and rights to proposed and potential health measures

Tobacco products

- a. **The consumer right to smoke.** Consumers have the right to smoke. Exercising that right should be regarded as legitimate consumer choice. Denying the legitimacy of that choice is demeaning and abusive.
- b. **The consumer right to protection from second-hand smoke.** That consumers have the right to smoke does not conflict with the consumer right to a clean and safe environment which is a Constitutional right (§24), just as the right to drive does not conflict with the right to safe roads, or the right to a knife does not conflict with the right not to be stabbed. Reasonable and effective measures, such as ventilated smoking areas in buildings reconcile these two consumer rights.
- c. **The consumer right to consent.** Non-smoking consumers have the right to consent to being in the presence of smokers. Property owners have the same right to prohibit smoking on their premises as they have to prohibit anything else on their premises, such as indecent, noisy or boisterous behaviour. And consumers have the ultimate right to choose who they individually support or boycott.
- d. **Point of sale displays and information.** Adult consumers have the right to tobacco and other products available for sale to be properly, visibly and accessibly displayed, which includes the right to have prices displayed. Proposed restrictions on point of sale displays would violate this consumer right.
- e. **Product range.** The consumer right to choice implies the right to have the full range of products and brands suppliers are willing to stock available and displayed.
- f. **Health warnings.** Consumers have the right to be fully informed of health risks regarding tobacco and other products. This is currently addressed by way of compulsory health warnings and public education. In the circumstances there is no need to restrict consumer access to lawful products.
- g. **Graphic health warnings.** Consumers have the right to the products they buy being branded, and to the enjoyment of what they consume. Consumers should not be forced to buy and carry around products with disgusting and demeaning images of diseased body parts.
- h. **Plain packaging.** Consumers have the right to properly branded products. Branding conveys crucial information to consumers, performs important social functions and guarantees product quality. Compulsory plain packaging would violate this consumer right.

- i. **Public Place Smoking.** Bans and restrictions on public place smoking entail a fraudulent use of language. It is actually private places such as private buildings and restaurants from which people are forced into public places such as parks and sidewalks. These are ironically becoming the only places in which smoking is allowed. The only remaining private place in which people may smoke is in their home. In other words consumers are increasingly forced to smoke in places where innocent victims such as pedestrians and children are subjected to second-hand smoke. Consumers are no longer free to gather in indoor, ventilated smoking facilities or in other private places under conditions of voluntary association with other consenting adults.
- j. **Advertising and marketing.** Tobacco product advertising and marketing is already banned. Whilst not addressing the matter here – this analysis is confined to future policy and law – consumers are impacted by the anti-competitive and monopoly effects of prohibition. The right to freedom of commercial expression is a crucial aspect of pro-consumer competition and therefore arguably of greater importance for consumers than suppliers.

Liquor products

- a. **General.** The preceding observations regarding tobacco products apply equally to liquor products.
- b. **Alcohol abuse.** Consumers are well aware of social and occupational problems associated with alcohol abuse. Victims of abuse are, after all, consumers. Consumers oppose all abuse whether or not it is alcohol-related.
- c. **The right to alcohol.** Despite concerns about alcohol abuse, alcohol consumption by consumers is overwhelmingly normal and harmless. Most consumption is by people seeking relaxation. Alcohol consumption is so normal that such terms as “under-age drinking”, “drink and drive”, “drinking hours”, “having a drink” and the like imply alcoholic drinks rather than water, tea or fruit juice.
- d. **Hours of sale.** The pre-democracy custom of severe restrictions on hours of sale, premises from which alcohol may be sold and conditions under which it may be sold was an integral part of apartheid racism. The original purpose was shamelessly explained as necessary to prevent blacks drinking alcohol. That was considered necessary because black consumers were presumed incapable of drinking responsibly. It is anomalous that those policies survived in the new South Africa and that stricter restrictions are under consideration. There is apparently no credible evidence that such restrictions reduce alcohol abuse. Emancipated and empowered adult consumers should have the right to purchase and consume alcohol freely subject to strict enforcement of laws to protect innocent third parties and effective education regarding responsible consumption. Prohibition of sale on Sundays would serve little purpose since most alcohol consumption is not on Sundays. Furthermore consumption does not necessarily occur when alcohol is sold. Such prohibition will inconvenience consumers who will have to purchase alcohol at other times and will be unable to enjoy a drink when having a meal outside of home on Sundays.
- e. **Prohibition of advertising and marketing.** The prohibition under consideration would, as explained above, violate the consumer right to information and the right to substantial benefits of advertising and marketing. It would also prohibit the positive and educational aspect of warnings in advertising. Prohibition would also violate the consumer right to the contribution of advertising to making places where food and alcohol are sold attractive and congenial, and to the “atmosphere” of such places.
- f. **Increasing consumer rights through relaxation of existing measures.** Instead of intensifying existing measures consideration should be given to relaxation. The strict and complex nature of licensing premises, for instance, is outmoded.
- g. **Five key aspects of the DTI’s proposed National Liquor Policy need to be reconsidered:**

a. **The 500m rule**

Liquor premises must not be located within 500m of schools, places of worship, recreational facilities, residential areas and more. Current licenses will be terminated within two years.

b. **Vicarious liability**

Manufacturers and suppliers will be held liable for third party intake and behavior, especially alcohol-related accidents and crime.

c. **Raising the drinking age from 18 to 21**

Evidence shows that the legal age does not impact youth alcohol abuse but drives it underground away from responsible drinking behaviour. The current drinking age of 18 has logic. Eighteen-year-olds can drive, vote, marry, pursue a career and enter into contracts. It would be anomalous if they are allowed to make all of those big decisions in life but cannot have a drink with a meal or a mate or to celebrate their wedding until they reach 21 years of age.

d. **Trading hours and zoned areas**

This takes township taverns and related business back to the apartheid years, ignores international evidence and continues mistakes of the past.

The proposed policy...

- discriminates against and harms the poorest in society, predominantly black
- makes more activities illegal, leading to more illegal activities taking place
- multiplies existing capacity and enforcement constraints
- transfers law-making functions to the executive rendering the legislative branch of government increasingly redundant
- and much more

The right to choose what, where and when we drink, smoke, eat, etc, is under threat by bureaucrats and regulators.

As DTI and Department of Health bureaucrats advance toward the "Nanny State", they are gradually and surreptitiously removing individual rights and freedoms. The real question is: where will it end? No one knows what the next agenda will be and where state interference will end. This is why the proposed liquor laws must be opposed.

Salt

The health risk of excess salt is appreciated, but it is no basis for violating the consumer right to choose how much salt they want in their food. Disclosure of salt content and education are more appropriate. There is an obvious risk of the proposed restrictions being the thin edge of the wedge. Next will be compulsory health warnings on salt packets and salt cellars, followed by graphic health warnings with photographs of diseased body parts. Compulsory warnings as with tobacco, however, can be regarded as fulfilling the consumer right to information. Regardless of how serious or advanced such discussions are in the South African Department of Health, the rights of consumers should be considered and protected.

Sugar

Sugar is increasingly regarded by health experts as one of the biggest health risks, if not the biggest. It is one of the few issues on which there is virtual unanimity. Consumers should be aware of this, but their right to consume sugar should not be violated. Even so, it is anomalous that sugar has not been elevated to being regarded by regulators as being a priority. As with salt, regardless of how serious or advanced such discussions are in the South African Department of Health, the rights of consumers should be considered and protected. The new sugar tax is a blatant discrimination

against people who happen to be obese or have a sweet tooth.

Complementary and Alternative Medicines (CAMs) / traditional healing

CAMs: Humanity has been using natural substances for the treatment of illness and disease since the beginning of time. Modern science has allowed us to determine the healing properties within plants, roots, leaves and extract, and utilise these substances to greater effect. Other modalities that fall into this category are homeopathy, aromatherapy and traditional medicine. Many people choose these options as a more gentle and natural approach to maintaining health and well being with no or fewer side effects. New regulation however seeks to force the producers of traditional and natural products to follow the same testing regime as artificial drugs before they can be sold to the public. Already these products carry compulsory warnings that they are not meant to treat or cure any illness and the onus should be on the industry to educate and inform consumers rather than have these alternatives removed from the market due to prohibitively costly licencing processes. This makes consumers the victims of the process, subjected to censorship and misinformation in that they are denied the right to information from suppliers of CAMs.

Traditional healing: because not all of the millennia old traditions of traditional healers have been tested or approved by “the scientific method”, consumers of their products and services are being denied the cultural, psychological placebo and genuinely but not yet proven scientific benefits involved. Some products and services might well be harmful physically if not psychologically. The only protection consumers need is protection from fraudulent claims regardless of the source.

Cold drinks

Sugared beverages have been targeted abroad, such as the New York limit on what quantity consumers may buy. Here, too, risks do not justify erosion of consumer rights. In any event, a one-size-fits-all approach is self-evidently irrational. As with salt and sugar, regardless of how serious or advanced such discussions are in the South African Department of Health, the rights of consumers should be considered and protected.

Sweets

Restrictions on sweets and other food with sugar and salt, such as crackers and biscuits, are under consideration abroad. It has been proposed, for instance, that sweets may not be sold to obese children. The idea is obviously an insult to consumers of all ages. A mother with two children, one obese the other not, would be told that she may not buy sweets for the obese child. It is not known how far or how seriously such discussions have gone in the South African Department of Health. The rights of consumers at all stages need to be considered and protected.

Junk food

So-called “junk food” is also under consideration for regulation at the expense of consumer freedom. Age restrictions have been mooted for visits to such outlets as MacDonalds or Wimpy. Again consumers face the thin edge of the wedge. Attractive marketing could, for instance, be targeted.

Fatty foods and dairy products

Preceding comments are applicable to fatty foods and dairy products.

Fattening foods

Since obesity is one of the greatest health risks, measures have been considered and implemented abroad and may be under consideration here to combat it. Totalitarian countries have gone so far as to make exercise compulsory. The problem is that once the principle that consumer rights can be

restricted purportedly to protect the consumer, there is no logical stopping point. The principle should be consumer freedom with education.

Carbohydrates

Since the body turns carbohydrates into sugar, especially refined carbohydrates, there is legitimate concern that sugar control would logically be followed eventually by general carbohydrate control.

Refined foods

Refined foods generally are considered as unhealthy and therefore a potential target for regulation at consumer expense.

Carcinogenic foods

The principle objection to smoking is carcinogenic risk. By the same logic other carcinogenic substances could be targeted at the expense of consumer rights.

Gambling

Gambling is not generally considered a health risk except to the extent that people can become addicted to it. Nonetheless a similar concern is that a corresponding case can be made for prohibiting advertising and marketing at the expense of consumers.

GENERAL PRINCIPLE

A general principle that pervades all these issues is the consumer right to enjoyment. Consumers work and earn income to spend it. They spend it to improve their quality of life. Quality of life spending is often on things that give people pleasure, which is a perfectly legitimate consumer aspiration. All choices entail risk. Incurring health risks is a legitimate consumer choice and right.

THE PUBLIC EXPENSE CONCERN

One of the arguments for curtailing consumer rights is that unhealthy lifestyles impose costs on the public health system. It is true, for instance, that the single biggest cause of death and public health spending in South Africa is HIV-AIDS. Tragic though that might be, it is no basis for prohibiting unsafe sex or extra-marital sex. That government or society sees fit to provide publicly funded health care is no basis for curtailing consumer rights. In any event, the extent to which unhealthy living reduces life expectancy is the extent to which there are higher savings on public and private spending on the elderly. Rights to public spending do not justify the erosion of consumer rights.

WHAT SHOULD CONSUMER POLICY BE?

The consumer movement worldwide regards the consumer's right to information as sacrosanct. Consumer education, as opposed measures that reduce consumer rights and choices, has always been regarded as the best way to protect consumers. "Consumer sovereignty" is a well-established economic and consumer principle according to which consumers should determine by their informed choices what they buy, where and when they buy, on what terms they buy, and at what price they buy. In the absence of freely available information consumers cannot make informed choices. Accordingly, government policy should not restrict or ban legitimate marketing and distribution of lawful products and services. Furthermore, consumer choices that do not accord with what health authorities consider ideal should be regarded as legitimate.

SOME USEFUL QUOTES

Minister of Health Aaron Motsoaledi: "... government will soon introduce a total ban on smoking and advertising of tobacco and alcohol in the country."

Bay Taverners Association: "This is another example of a government which is out of touch with the lives of its people."

Free Market Foundation: "... "plain packaging" and "graphic warnings" for cigarettes [pictured below] ... proposals violate the constitutional right to freedom and dignity."



Note to the editor

"For this year's World No Tobacco Day, WHO and the Secretariat of the WHO Framework Convention on Tobacco Control are calling on countries to get ready for plain (standardized) packaging of tobacco products. Plain packaging refers to "measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standard colour and font style (plain packaging)."

Source: <http://www.who.int/campaigns/no-tobacco-day/2016/en/>

Ends