

WIN-WIN SITUATIONS: THE RELATIONSHIP BETWEEN BUSINESS AND CONSUMERS

Peter Kell, Choice

Peter:

The title of today's session, 'Win win situations-the relationship between business and consumer' when Treasury informed me that that was my topic I was a little dubious at first, I someone suggested that they'd got the title half right but I'm not a cynical person like Greg Tanzer (?) who told me not to mention his name of course so in suggesting that joke, thanks Greg. Oh I do think it's a very interesting issue to explore at this point in time and I want to approach it from a somewhat different angle to the normal approach that we'd use in looking at business consumer relationships because we are obviously in the middle of a very significant review of Australia's consumer policy framework which Choice has certainly welcomed and so today I'd like to take the opportunity to look at the relationship between business and consumers through the prism of our consumer policy framework and Australia's consumer policies and consumer protection regulators have delivered many benefits to the community over the last few decades. At one end regulatory action against misleading and deceptive conduct has helped to reduce poor practices in many markets and work by regulators and standard bodies has improved the safety of products often after considerable pressure from consumers and consumer organisations so our policy framework over time has contributed towards a better relationship between businesses and consumers in the marketplace. I think as many of us recognize, there were also many areas where that relationship is not working as it should, where it's characterized by mistrust or poor conduct where there are significant inefficiencies, where there's very significant room for improvement so if we are to address the challenge of improving the relationship between business and consumers which is after all at the heart of what markets are about, then I think we do need to modernize Australia's consumer policy framework. We need to modernize this framework so it meets both the needs of the consumers and businesses and so it works to improve the relationship between them.

So today I want to pose several questions about the consumer policy framework and it's implications to business and consumers and I don't want to suggest that I've got all the answers to these but hopefully they will simulate all of it in our thinking about this review in the, during the current congress and in the months ahead. First question; where does Australia's current consumer policy framework promote a productive relationship between consumers and business? The other flip side to that is obviously where does the current consumer policy framework that we have, fail to ensure a healthy and trusting relationship between business and consumers? And what could be done to improve the policy framework so that it actually improves the interaction between business and consumers, that's the real challenge for us when we're looking at this issue and finally partly to touch on some of the issues that Jenny has raised, what is the place within the consumer policy framework for thinking about the corporate social responsibility activities of companies as a mechanism to improve business consumer relationships? I think these are questions that we all need to think about as we prepare for the Productivity Commissions Review, I'll seek to provide some initial thoughts on these issues today and hopefully prompt us to look at some ways in which consumers and businesses can interact more effectively, but before

I grapple with that question I suspect some of you already wondering why I'm, have been inserting if you like, inserting consumer policy into a discussion about business and consumers. The most obvious reason, which I'm sure most people here appreciate is that the relationship between business and the consumers is underpinned by a framework of rules that govern market conduct and if this framework is working well, if it's effective in ensuring genuine competition and in ensuring appropriate business conduct then the relationship between business and consumers will generally be a happy one but if the policy framework is not working well then trust will break down and we'll see economic losses on both sides and if the framework is inefficient or overly burdensome or is directed at the wrong areas then consumers will also ultimately pay the price as businesses pass on cost. Another reason to look at this relationship through the prism of the consumer policy framework is that the relationship between business and consumer has changed so dramatically in recent times and we saw some of that outline this morning in the paper from Michael Jenkin in many ways the landscape is completely different from when core elements of the consumer policy framework were put in place in the early '70's and I think therefore it's an important time to reconsider how that framework actually impacts upon the relationship between consumers and business. And a final reason why I think this is an interesting and important way to look at the relationship, is because there is definitely scope for improving that relationship in many areas. The reality is that the level of trust the consumers have in businesses is much lower than it should be and this especially applies to large businesses. This is confirmed in studies both in Australia and overseas and, if anything, it appears to be getting worse. To give just one example the 2006 Grey Worldwide and Sweeney research on Australian consumers, that was reported recently in business review weekly, 67% of respondents said they do not trust large companies and believe that they lack morals, ethics and generosity of spirit oh and 77% of respondents believed that there are Australian companies committing human rights abuses as recently as today. Those are not good numbers for anyone, either on the business or consumer side or anyone indeed in the policy arena and if it was a one off study you might say well there's been leading questions, there's been something that's produced that result but you see it again and again and again and I think that doesn't reflect well on what our consumer policy framework is actually contributing to when it comes to the relationship between consumers and businesses.

I'd like now to turn to some broad objectives that should underpin our consideration of this issue. When we're looking at how to improve the consumer policy framework so that it can ensure that business and consumers can have an effective relationship, what are some of the objective, some of the big picture objectives that we should keep in mind and I think the, one of the strengths of the current productivity commission review and the way that it has been drawn up is that it actually allows you and encourages you to go back to those big picture issues that you sometimes forget when you're dealing with the day to day matters that come up. So I'd like to touch on three themes today that I think we ought to keep in mind when we're looking at how the consumer policy framework can contribute to a better consumer business relationship.

The first theme is that if we wish to improve that relationship then a key principle for an effective consumer policy framework is the need to ensure that consumers have trust, confidence and trust in businesses and market. In one sense that seems very obvious but in another way I think it's a question that is not asked often enough when it comes to looking at how we design policy frameworks, how we design regulatory interventions. Trust is a key element of efficient markets that are characterized by business and consumers working well together and I'm sure that the productivity commission understands that this is not a soft issue, the absence of trust is a

significant economic problem and there is substantial evidence of the economic losses that arise when there is a lack of trust and confidence in markets through additional transaction costs and things like that. A second theme, a second issue that we should keep in mind when we are looking at our policy framework is how can it make it easier, how can it help consumers more clearly distinguish between good businesses and poor businesses? Again that seems like such an obvious thing to say but I think in some senses it is so obvious that we don't necessarily factor it in to the design of policy in other words we need to ensure that the policy framework rewards good business conduct more directly while penalizing poor conduct in a timely fashion, in an effective fashion and a third theme I'd like to touch on is ah that we need to design policies so that consumers are the actual drivers of competition, this has received some attention of late but it's difficult to over state it's importance. Having real competition is in effect demand driven and policy's that facilitate greater demand side competition will improve outcomes for consumers. Interestingly, as we heard this morning from Michael and as we've heard from other speakers and as I'm sure Louise Silvan will touch on tomorrow, this approach will also generate better outcomes for business, we see that in Michael Porter's work and that's been reinforced in subsequent studies, the flip side to that of course is that protecting businesses from competition is unlikely to encourage a better relationship between business and consumers and ignoring markets where competition is not working for consumers is not a sensible policy approach.

I believe that the consumer pro, consumer policy framework needs fresh thinking in relation to all of these areas and that we ought to be able to identify opportunities to improve that framework and generate better business and consumer outcomes in a whole range of sectors. I'd like to touch on those three areas now and give some brief examples and then finally I'd like to conclude with the discussion of corporate social responsibility. Turning to trust, I think in many ways has become more important in markets over the last few decades and one of the obvious reasons for that was touched on this morning the growth of services which are typically intangible, complex, longer term they often involve more money when those sorts of services are taking up a larger share of consumer expenditure and become more significant for consumers then you have to rely more on the trust that you place in advisors and suppliers to ensure that you're getting the right quality at the right price. It's also seen the growth of intermediaries in many consumer markets to help guide consumers through those increasingly complex products and services, mortgage brokers being a classic example, this in turn has also increased the extent of conflicts of interest that consumers face in many markets and I hardly need to tell you that conflict of interest have a particularly corrosive impact on the essential element of trust that underpins the relationship between consumers and business. How have we dealt with this issue of conflicts of interest in those markets where trust and advice has become more important? Well, we have generally relied on disclosure and I would argue, have over relied on disclosure. Unfortunately the way we have used disclosure in many markets, particularly in financial services, has actually helped to embed conflicts of interest and this one dimensional policy approach has in effect legitimized structural conflicts of interest as long as they are disclosed with the expectation that such disclosure will reduce the conflicts, in practice that has rarely occurred. It has also penalized those firms that would seek to remove the conflict of interest generated by commissions and other payments because in fact they would be penalized if their sales force moved to alternative firms. In this way, current policy framework with its very heavy reliance on disclosure as a single policy tool, undermines the ability of better firms to act in ways that improve their relationship with consumers, it also, I would argue, imposes a cost on industry without actually properly addressing the underlying market problem. Another way that trust between businesses and consumers can be undermined is when risks are shifted onto consumers in situations where they

are poorly equipped to deal with those risks. I note in the current debate around red tape that's been going on in Australia, you could be forgiven for thinking that the shift in risk across different parts of the economy has all been one way from consumers to business and government, I've people who make that argument, I sometimes wonder whether they're aware that we have a compulsory superannuation system in Australia but policies can help ensure that the allocation of risk is sensibly thought out and there we have in some areas, some successes. The way that the FT code has helped to deal with this issue is important and I think that's one reason why the current review of that code is something that all of us should look at to ensure that it doesn't result in risks being inappropriately allocated.

The second area that I mentioned was the ability of the policy framework to help consumers distinguish between good businesses and bad businesses and this is obviously related to trust the extent that the policy framework can do this it has an obvious benefit for those businesses that want to do the right thing. In a perfect text book world of course, policies that aim to do this would be unnecessary because you would have perfect information, you would be able to determine immediately whether you were dealing with a good guy or a bad guy but in the real market, where there are both information deficiencies and consumer behavioural biases, it's unfortunately all too often the case that the lemons are very hard to see and detect until you've been sucking on them for a while so this is an area where policy makers and regulatory agencies have the potential to dramatically improve the way that consumers and businesses interact and an obvious implication is that well resourced regulators are one of the keys to ensuring that this issue is effectively dealt with, after all one of the least attractive regulatory environment in which business and consumers can operate is one where you have a complex set of regulations that are not properly enforced by regulators, what that does is it allows the poor performers to get away with bad conduct and penalizes the good performers who incur the regulatory cost, so well resourced regulators are critical if we're going to help consumers distinguish between the good guys and the bad guys.

A second area where our policy framework can contribute to better outcomes in this way is through more meaningful codes and standards, that might be, for example, through having regulatory agencies or departments actually applying rigorous approval regimes to industry codes and standards that mean they are more meaningful, that they cover a wider section of the industry and that they can help consumers make better choices. We don't want the situation that Choice found last year when we went to test children's dummies, found that 7 out of 12 didn't pass the voluntary Australian standard and some of those 7 included manufactures who claimed they did pass the standard, that's not going to help anyone, that's not going to help consumers distinguish between good and bad products and I give credit to the parliamentary secretary who did step in to help address that issue but if the regulatory environment is not fixing up those sorts of problems then it's not really helping us distinguish between good performers and bad performers. And another feature that doesn't help consumers avoid the bad and choose the good is jurisdictional buck passing and I hope, if there's one thing that this review can do is, that it can help address that area. Regulatory gaps and boundaries are where the cowboys play, I think we all know that need I mention the real estate investment industry which is currently the subject of one of the world's longest ping pong games between the federal government and the state governments about who is effectively responsible. And information is not always the answer here, sometimes you have to step in and draw a line in the sand and that's where reforms such as unfair contracts legislation or even in the ASIC Act, the prohibition against door to door sales of financial products can become very important especially in helping vulnerable consumers. Demand driven

competition, as I said earlier markets characterized by real competition where consumers are actually driving innovation and choice and effectively ensuring the prices are fair is where you're going to get better relationships between business and consumers, I won't talk about this at length because you'll be hearing about this more in some of the other sessions but it's certainly not helped in those areas where there are currently regulatory structures that protect in quite unreasonable ways a range of businesses; Qantas with its roots to North America or the free to air television stations come to mind. There are also a range of burdens that are put on consumers in this area that restrict their ability to effectively exercise choice and therefore drive competition. We now do have some choice in the superannuation area, but if you've ever tried to consolidate your funds or switch your funds, you'll know how difficult that is given the burdens that are put upon consumers there our estimate is that that is costing consumers collectively somewhere between one and two billion dollars a year and finally that also suggests that having better representation for consumers in the policy arena is vital.

I'll turn now to some observations on corporate social responsibility which, as I think we all know, is currently in vogue and indeed has been taken up with enthusiasm by some sections in the business community. What role does CSR play in improving the relationship between businesses and consumers and where does this fit in to a discussion of consumer policy? It would be all too easy to pick numerous examples of embarrassingly bad CSR activities that undermine consumer trust in business, the recent Joe Lively campaign from the advertising industry, I'm assuming everyone has heard of Joe Lively, no, funny that which cynically attempted to demonstrate a commitment to tackling childhood obesity, that was an extraordinarily poor example of a CSR initiative that was even criticized in that industry's own trade journal but I don't want to go through the litany of poor examples because today we've heard some excellent and more productive and positive engagements with this sort of issue, so instead I'd like to make three general observations about the potential contribution of CSR and the first point to note is that CSR is obviously most effective when it's when it's closely related to core business practices. CSR should first and foremost seek to improve the treatment and experience of consumers in the company's main area of business and I think that fact that too often that doesn't happen is one of the reasons why there is still great community cynicism about the corporate sector in Australia. A recent commentator in the Australian Financial Review said 'too often the CSR formula produces some tokenistic philanthropy outside the firm's core activities while its underlying world view remains entirely unchanged.' So that's not where CSR can make a contribution, it's all well and good to sponsor the Opera, I'm glad that someone does but that's really not the critical area and it even leads to greater cynicism, if a company seeks to reduce say its environmental impact but is still treating its retail customers badly then it hasn't got CSR right and in fact it may generate a view that suggests that good deeds outside a company's core business are being cross subsidized by poor behaviour towards its main stream consumer. This is understandably an area that many companies find difficult, after all improving the quality of product and services offered to customers costs more, at least in the short term, it can result in some interesting short to medium term competitive challenges and I think it's one reason why many financial services companies have found it difficult to properly come to grips with the removal of conflicts of interest in their wealth management businesses but this is where CSR will really make a difference and that's why I found ANZ's approach interesting because it has a clear philosophy of aligning CSR activities with core business and I suppose while I'm on that point I should give some credit also to the other sponsor today, AAMI as much as I love, coming from NSW, as much as I have loved AAMI's sponsorship of the rugby which really is in many ways key social responsibility sort of activity and I know that's the real reason why Simon Smith worked

there for so long, it's actually their customer charter that I think has made a bigger difference to consumers over time and has really been innovative and valuable to customers of that company. I want to make two other very brief points about CSR, one of them is an obvious one, is it a fair-weather friend? When John McFarlane leaves ANZ, as he will soon, and is replaced by Al 'Chainsaw' Dunlap, will CSR drop off the radar screen, will it change when financial circumstances decline either in the individual company or the economy more generally and what happens when current programs are faced the next high profile or fashionable issue that comes walking through the door that is that is an issue that will in some ways only stand the test of time when we see whether these programs are sustainable and my third observation concerns our wider discussion about the policy framework. I think most sensible proponents of CSR do not see it necessarily as a substitute for other regulation but having said that clearly that is how some view CSR as a replacement for policy interventions or regulatory requirements, in some areas I'm open to the view that it may actually perform that role but if that is the case, if that is the role that CSR is going to play in some areas, then the contribution that it makes to improving market outcomes for consumers and to improving the business consumer relationship needs to be assessed with the same degree of economic rigor as any other market measure. We are well past the time, and I'm sure the productivity commission is aware of this, when industry self regulation or CSR activities that are designed to replace other forms of regulation, are greeted with uncritical acceptance or some sort of starry eyed view while other policy alternatives are subjected to onus impact assessments and the irony of that approach is that too often it's these costs imposed on industry through self regulatory initiatives that still don't fix market problem.

In conclusion, the business and consumer relationship is ultimately going to determine whether individual businesses and indeed entire market sectors succeed or fail, the quality of that relationship over the long term is critical to how our economy works and it's critical to the way we live as consumers. So I suppose I've tried to raise some questions today about how can we ensure that the policy framework contributes to more successes than failures when it comes to the way that businesses and consumers interact and I've suggested that if we focus on some of the big picture themes that ah that we really, I think, all endorse then we'll be starting off on the right foot and now is the environment in which to do that. Focus on policies that build trust between consumers and business, focus on policies that help consumers reward good businesses while avoiding bad businesses, focus on demand driven competition as effective competition will drive better outcomes for consumers and see more productive businesses that meet consumer needs better, we'll see those sorts of businesses prosper. And finally CSR does have some significant contributions to make in the consumer business relationship but it is important to view those with open eyes, it's important to view those in terms of how they can contribute to market outcomes over all if we're thinking about our consumer policy framework if CSR is seen as tokenistic and operating in areas outside of core business that will only undermine consumer trust. So the productivity commission review, I think, has enormous potential to refresh our thinking on the consumer business relationship, especially if we keep some of these core themes in mind, maybe it will generate some of those win-win outcomes that we've talked about and bring benefits to both consumers and businesses. Thank you.