Consumer Protection in Cyber Space

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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 lacunae 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 distance selling of financial services

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Introduction:

Unlike the offline environment, where consumers enter a store, inspect potential purchases and judge for themselves the trustworthiness of a seller, the online world does not provide the same opportunity to use a "buyer's instinct." Rather, many consumers are forced to proceed on faith, knowing precious little about the seller to whom they are entrusting their credit card data.

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E-Commerce and its Impact on Consumers:

E-Commerce involves conducting business activities using electronic data transmission involving computers, telecommunications networks, and streamlined work processes. Business-to-business (B2B) e-commerce is a form of e-commerce in which participants are organizations. The business-to-consumer (B2C) e-commerce is a form of e-commerce in which customers deal directly with organization, avoiding any intermediaries. Worldwide, businesses and individuals use e-commerce to reduce transaction costs, speed the flow of goods and information, improve the level of customer service, and enable close coordination of activities among manufacturers, suppliers, and customers. E-commerce also enables consumers and companies to gain access to worldwide markets.

The citizens in developing countries face a number of challenges in harnessing the benefits in the area of e-commerce. If e-commerce is to succeed in raising incomes and trade flows in the developing world, a range of technical, legal, and international governance considerations need to be addressed. Thus, developing countries need to focus their efforts in two areas beyond access: capacity building, and international governance.

a. Capacity Building:

In addition to communications infrastructure, successful e-commerce relies on a variety of other public sector inputs. Legal systems must adapt to a new range of contract and liability issues, educational systems must produce a technically competent work force, and banks must be able to accept electronic payments. These factors are critical components for successful e-commerce development.

E-commerce requires a supportive legal framework in the banking and industrial sectors, as well as legal and juridical changes in response to challenges that have emerged in tandem with the new technologies. These include standards and protection of digital signatures, the liability of value-added networks, regulation of certification authority, protection of intellectual property, and computer crime and data protection. The complexity of these issues is a major obstacle for countries that lack the technical capacity to design and implement needed reforms. In response, the United Nations Commission on International Trade Law (UNCITRAL) has developed a standardized e-commerce "model law" designed to be easily integrated into most country's legal systems. The law is based on developing equivalencies for paper-based concepts such as 'writing,' 'signature,' and 'original.' In addition, the model law provides specific guidance for the design of regulations involving legal coverage of electronic communication and the transmission of goods and services via the Internet. Regional institutions have also sought to assist countries in the design and implementation of legal and regulatory frameworks for governing e-commerce.

A second major capacity issue involves human resource development and specialized technical skills. E-commerce is computer and network intensive, requiring skilled programmers and applications-development personnel. Furthermore, as the majority of Internet content and programming languages are English-based, intensive language training is necessary. In addition, for B2C e-commerce and government services online to succeed, consumers also require both basic literacy and computer skills.

Finally, the financial systems in many countries require significant upgrading and regulatory changes in order to meet the demands of e-commerce. Business and consumer trust in electronic forms of payment need to be enhanced through effective supervision and technical capacity. In particular, national banking systems will need to upgrade their infrastructure to accommodate electronic payments and settlements. In addition, due to cultural constraints, inadequate financial infrastructure, and low incomes, most countries lack a critical mass of credit-card equipped consumers who can buy goods over the Internet. As electronic forms of payment are critical for B2C e-commerce, improvements in either credit-card penetration or other forms of on-line cash will need to be developed.

b. International Coordination:

The cross-border effects of e-commerce require international coordination in order to avoid unilateral actions that could stifle trade and lead to uncompetitive practices. In this regard, the developed countries have already driven the negotiating agenda, and the developing countries are in the process of raising their concerns in the WTO and UNCTAD. Part of the problem centers on the speed with which e-commerce has turned into a major trade issue. Many developing countries are yet to be equipped to handle the technical components and trade implications of continued e-commerce growth.

First, the digital transmission of goods and services will render traditional customs procedures and domestic taxation systems archaic and/or obsolete. Through work in the OECD, the United States and Europe have adopted the position that cross border e-commerce flows should be entirely market-driven and have proposed a moratorium on e-commerce taxes. Ignoring for the moment the issue of how to collect taxes on digital goods and services (i.e. whether authorities are even aware that the transaction is taking place), countries must consider the revenue implications of tax-free transactions if e-commerce reaches the order of magnitude that many analysts predict.

Second, e-commerce makes it increasingly difficult for countries to distinguish between goods and services. WTO rules approach trade in goods and services differently; Goods are generally subject to tariffs while trade in services is limited by restrictions on national treatment and/or quantitative controls regarding market-access. As a result, several important WTO rules, particularly the General

Agreement on Trade in Services, which emerged from the Uruguay Round, may already be in need of reconsideration and negotiation.

Third, the digitization of information, combined with ability to make it available to a mass audience at small marginal cost, has raised concerns that global trade rules do not protect information producer's rights to own and profit from their work. As a result, many countries are seeking to discuss the impact of electronic commerce on the areas of copyright and related rights, trademarks, patents, domain names and unfair competition within the framework of the WTO's Trade in Intellectual Property (TRIPs) agreement. Differences have emerged, however, over balancing the needs of information and content providers with ensuring equal access to new technologies and methods. Stronger rules on TRIPs could potentially reduce developing country access to new tools and technologies.

Developing countries will have to be prepared to respond to these threats through greater participation in international for a abroad and reform and technical training at home. Further, as has been mentioned, it is likely that the networking revolution will create losers as well as winners, this greatly increases the importance of safety nets for individual workers and programs supporting structural change and re-engineering at the company and sector level.

Need of E-Consumer Protection:

Number of e-consumer is growing like nothing these days due to its user-friendly nature but at the same time the risk factors for using internet for e-shopping is also increasing and about to catch danger mark if not restricted and regulated properly by a time bound regulation on the same. Numerous reasons are there for the protection of e-consumer like creations of hackers duplicate account, disclosure of private information without consent, masking, caching etc. but few problems make the protective measure indispensible in this respect and required speediest protective mechanism. It ranges from rules for opening bank accounts to standards for the manufacture and safety of goods. Government, from the local trading standards office to the regulators of the stock market and banks, ensure that these regulations are applied, and provide complaint procedures when things go wrong. Few of these are discussed below:

1. Phishing:

Online identity theft of the consumer has long been an epidemic. An official definition of online identity theft is the practice of pretending to be someone else on the internet. The purpose can be quite harmless (like ordering to some product to someone under someone else's account), but when referred to in the media, it's often about the criminal activity of stealing someone's personal information for his or her own financial gain. More often than not, it involves phishing (online fraud) for a person's banking information and using that to order goods or transfer money to another bank account. There is a framework of legal regulations designed to provide protection as a consumer in physical or traditional modes means when shopping from a local shop. But, at present there is no similar framework that covers all situations where one purchase goods on Internet by electronic transactions. In India though the Government has promoted e-commerce aggressively which is indirectly a promotion to e-consumers activities, focusing especially on the delivery of services and legal controls for the online sale of goods have yet to catch up with those for conventional shopping.

2. Insecurity:

Another important factor is lack of guidelines for buying online with a degree of safety. It is important to realize that all computer systems cannot be one hundred percent secure, there is always a degree of risk involved in using the Internet for buying goods. Thus, it requires a strict and user-friendly law which should not only provides the security at the time of shopping but also protect the interest of the e-consumer for post transactional consequences.

3. Online Jurisdiction:

Third factor is that the Internet is a communications medium without geographical or national boundaries. By contrast, consumer protection legislation is based within national and local boundaries. To be protected by law under the present laws in India at the time of electronic shopping, the first thing an e-consumer need to be ensured is that all the parties involved in the transactions are based within national boundaries where his municipal consumer protection laws apply; in other words, that the organisations one is dealing with must come under the same legal jurisdiction as they do which is not possible in the process of e-shopping on internet because in internet the jurisdiction is borderless.

Conclusion:

Online commerce promises enormous rewards for both consumers and online sellers, if the obstacles to its development can be overcome. This Article focuses on two such obstacles: the fear by consumers that they will be swindled by sellers that are known to them only through the embassy of pixels on a computer monitor, and the unwillingness of sellers to venture online without a clear understanding of their potential legal liabilities. Governments, industry participants, and consumers all have a role to play in overcoming these obstacles. Interested parties must cooperate in facilitating the operation of market forces that can control the incidence of deceptive marketing practices—consumer sovereignty, industry self-regulation, and contract. Governments can and should intervene in online commercial transactions in a manner that is unobtrusive and complements the workings of market-based control mechanisms. They can facilitate the working of consumer sovereignty by requiring vendors to disclose certain categories of information to prospective purchasers where appropriate, forbidding sellers to make deceptive or misleading representations, and promoting consumer education. They can serve as a catalyst by encouraging industry to create self-regulatory mechanisms to control fraud. They can facilitate the functioning of the contract regime by bringing breach-of-contract actions on behalf of injured consumers and acting as adjudicator in private actions. Where market forces are unsuccessful, and especially where fraud is involved, governments must be aggressive in bringing enforcement actions. At the same time, governments must pay due regard to the problem of geographic indeterminacy, and the concomitant problem of overlapping jurisdiction. They can do so by interpreting legal rules that turn on notions of foresee ability and location in a way that recognizes the special characteristics of the online medium. More generally, governments must be willing to abide by the principle of comity: limiting the reach of their own jurisdiction, and giving up their traditionally exclusive jurisdiction over conduct occurring on their own territory, in exchange for the willingness of other jurisdictions to do the same.

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