

2014

Challenges to consumer protection legislation in tourism contexts

Greenwood, V.

Greenwood, V. and Dwyer, L. (2014) 'Challenges to consumer protection legislation in tourism contexts', *Journal of Tourism Consumption and Practice*, 6(2), p.1-22

<http://hdl.handle.net/10026.1/11737>

Journal of Tourism Consumption and Practice
University of Plymouth

All content in PEARL is protected by copyright law. Author manuscripts are made available in accordance with publisher policies. Please cite only the published version using the details provided on the item record or document. In the absence of an open licence (e.g. Creative Commons), permissions for further reuse of content should be sought from the publisher or author.

Challenges to Consumer Protection Legislation in Tourism Contexts

Verity Greenwood and Larry Dwyer

Abstract

Many destinations worldwide have enacted laws to protect consumers in general but which have relevance to tourists as consumers and thus destination competitiveness. The impact of any such consumer protection, however, is limited by certain complexities that erode consumer confidence within tourism contexts. These relate to unstable tourism environments, the changing dynamics of the travel services chain, growing product complexity, information failures, changes in consumer values, and technological change. Examples are provided of consumer laws relevant to each of these important features of tourism. Issues for further research into the links between consumer protection legislation and destination competitiveness are discussed.

Keywords: Destination competitiveness, consumer protection, consumer law, tourist consumption

Introduction

The role of consumers in promoting competition and well-functioning markets has long been recognised in the economics literature (ACCC, 1997). In seeking the 'best' value for themselves (the most appropriate price/quality combination of a good or service) consumers not only advance their own self-interest, but also provide signals to suppliers on the product characteristics they require. Competition between suppliers, who respond to signals sent by well-informed and confident consumers, can variously lead to lower costs, improved product quality, greater innovation, higher productivity, as well as a more dynamic and efficient economy that promotes consumer well-being (Australian Government, 2010).

It is widely acknowledged that there may be 'market failure' preventing ideal outcomes. Thus, there may be information asymmetries as between businesses and poorly informed consumers who send weak and confused signals to the market. Such market failures can limit the benefits that consumers receive from transactions, while reducing the gains from competition more generally. They are commonly addressed through the establishment of consumer protection mechanisms. Consumer protection measures can include regulatory (eg. legislation) and non-

government measures, including self-regulatory and co-regulatory regimes (eg codes of conduct, accreditation schemes). All such measures are intended to protect the interests of and promote better outcomes for consumers via protection from unfair or unjust conduct or unsafe/defective goods; to provide assistance when loss is suffered; and assist in making better purchasing decisions (PWC, 2010, p 4). Consumer protection measures aim to improve consumer wellbeing by fostering effective competition and enabling the confident participation of consumers in markets in which both consumers and suppliers can trade fairly and in good faith. By enhancing tourist confidence in participating in markets, and penalising inappropriate business conduct, these measures also assist reputable suppliers to maintain or expand market share. Put simply, effective competition is stimulated by empowered consumers and responsive suppliers that trade fairly (Haupt, 2003).

Consumer laws have been developed in many countries. Promoting consumers' rights, prosperity and wellbeing are core values of the European Union, and this is reflected in its laws (European Union, 2007). Since 1 January 2011, Australia has had a single national fair trading and consumer protection law- The Australian Consumer Law (ACL). The ACL regulates the conduct of all businesses in all sectors, including the travel and tourism sector. Through the ACL, a generic consumer protection framework provides certainty to all businesses and consumers as to their rights, expectations, responsibilities and obligations regardless of where and in which industry they operate. (Australian Government, 2010). The South African Government has recently enacted legislation "to promote a fair, accessible and sustainable marketplace for consumer products...". The regulations are based on nine fundamental consumer rights: Right to Equality in the Consumer Market and Protection Against Discriminatory Marketing Practices; Right to Privacy; Right to Choose; Right to Disclosure of Information; Right to Fair and Responsible Marketing; Right to Fair and Honest Dealing; Right to Fair, Just and Reasonable Terms and Conditions; Right to Fair Value, Good Quality and Safety; Right to Accountability from Suppliers (Republic of South Africa, 2010). Other countries have also developed generic consumer protection laws or are in the process of doing so.

It is in the interests of a country's tourism stakeholders globally that consumer protection legislation be effective in enhancing tourist confidence in making

transactions within their destination given its potential also to enhance destination competitiveness (Dwyer and Kim 2003; Greenwood and Dwyer 2013). However, while consumer protection legislation in any destination applies to tourism as a consumption activity, additional attention may need to be paid to its relevance in tourism contexts. Recent travel disruptions, a prominent example of which is the 2013 Icelandic volcano eruption (Wilson and Vervaeck, 2013) which paralysed global tourism, have made tourism stakeholders acutely aware of the insufficiency of existing binding rules at the global level governing the rights and obligations of tourists/consumers and tourism enterprises.

The World Tourism Organisation (UNWTO) has recently affirmed the essential need for an effective, consistent, fair and reasonable consumer protection framework for tourism (UNWTO, 2013). The proposal is to develop a global legal framework for the protection of tourists. The proposal is based on the guiding principle on stakeholders' responsibilities, UNWTO's Global Code of Ethics for Tourism (UNWTO, 2001). While the moral weight of the Code may be significant, as a voluntary, non-binding instrument with no legal implications, governments are at liberty to decide whether to incorporate its provisions into national legislation.

The paper discusses some features of tourism that limit the effectiveness of consumer protection legislation within its domain. Complexities that erode consumer confidence within the tourism context arise from unstable tourism environments, the changing dynamics of the travel services chain, growing product complexity, information failures, changes in tourist demographics and consumer values, and technological change. Some examples are offered to better appreciate the complexities of consumer law in application to tourism related issues. The paper concludes with a discussion of how consumer protection legislation can create confident consumers, a necessary condition for sustainable destination competitiveness, highlighting some issues for further research.

Issues and challenges in the tourism context

Tourism has several features that make consumer protection mechanisms more essential than for other industries, but at the same time render these mechanisms less effective. These features relate variously to the instabilities inherent in tourism

environments, dynamics of the tourism industry, increased product complexity, information failures, changes in consumer values and expectations, and the influence of technological change. In the discussion below, various examples of the exercise of consumer protection legislation are presented to emphasise the effectiveness of existing laws in several countries.

Unstable tourism environments

The nature of tourism as a service industry renders it particularly vulnerable to many different types of external shocks affecting both demand and supply. The global tourism industry regularly experiences crises such as terrorist attacks, political instability, economic recession, biosecurity threats, pandemics, environmental changes and natural disasters (Ritchie, 2004). These changes in what management theorists refer to as the 'remote environment' (Dwyer, Edwards, Mistilis, Scott, Roman, 2009) disrupt tourist behaviour as well as the supply and distribution chains of operators, with detrimental effects on all tourism stakeholders.

The increasing globalisation of the tourism industry has resulted in businesses and tourists being exposed to a wider range of risks affecting their behaviour. Even a small scale event in one part of the world can have a significant impact on other parts of the world. Strategies to deal with the different crisis situations will vary depending on time pressure, the extent of control and the magnitude of these incidents. Formulating consumer protection legislation to cover all such contingencies would be an enormously complex task. Courts in Europe have recently been asked to determine the rights of travellers in crisis situations (force majeure events). The Court of Justice of the European Union (CJEU) has decreed a railway company may not exclude its obligation under the Regulation to pay compensation of the ticket price in cases where the delay is caused by force majeure (CJEU press release No 27/13 of March 14, 2013). The CJEU has also decided that there is no limitation on an air carriers' obligation to provide care to passengers in case of volcanic eruption (CJEU press release 8/13 of Jan 31, 2013). The airline sector is often hit hardest by crises affecting tourism. The German Supreme Court (BGH) has decided that a consumer is entitled to cancel a cruise to the Caribbean because of ash cloud preventing him from flying despite the fact that the flight was not part of the cruise package (BGH press release 212/2012 of Dec. 18, 2012.).

Dynamics of the Tourism Industry

The travel and travel related services market comprises a variety of markets, each differing in their structure, dynamics, and market players. Travel services are supplied to the consumer via a complex multinational distribution system comprising many different firms in different sectors, which may be based domestically or overseas (Cavlek, 2006). Consumers in all countries are increasingly transacting directly with suppliers overseas —especially through the Internet. Such developments raise new and sometimes complex issues for protecting domestic consumers. A feature of tourism that distinguishes it from many other forms of consumption is the level and extent of prepayments that are required by suppliers. This imposes additional risks of financial loss to tourists, as compared with many other types of consumption. This is particularly the case when foreign transactions are involved (ACCC, 1997). The greater internationalisation of supply complicates assigning responsibility to providers for losses incurred by travellers. By implication, destination managers should explore consumer protection mechanisms that enhance a destination's reputation for probity in its dealings with foreign consumers.

Growing product complexity

The increasingly competitive market environment in tourism has resulted in an expansion in the range of products available to consumers. Associated with greater product variety, many tourism goods and services have become more complex. This has increased the time and effort that consumers must make to compare alternatives and gather information on products. It has also lead to a greater reliance of tourists on skilled intermediaries eg. tour operators, hotel clubs, that can greatly lessen the difficulties confronting consumers in complex markets. Where large expenditures are involved, information complexity can sometimes be reduced by drawing on the experience of more knowledgeable friends and relatives (word of mouth), by access to internet sites (e.g. TripAdvisor) or alternatively, by paying for published comparative information about such products (e.g. intermediaries may offer information services to consumers). However, these options will not always be available. Nor will consumers necessarily use them even when they are available.

Product bundling can add an extra dimension of complexity to destination choice and tourism product choice. Product bundling is endemic to tourism both at across

tourism sectors (eg. different package tour options) or within an individual operator (product bundling at restaurants and fast food outlets).

The ability to make well-informed decisions can also be impaired by the circumstances under which the decision is made. Time constraints may limit the ability of consumers to fully inform themselves, with constraints sometimes being imposed by 'high pressure' sales techniques and available finance. This can happen in tourism just like any other industry.

Product complexity has also resulted in the widespread use of standard form contracts, especially in areas such as tour packages, cruise tourism and car rentals. Consumers' inability to vary terms has created concerns that suppliers can use these contracts to shift excessive risks onto consumers. The Scottish Law Commission and the Law Commission for England and Wales have opened a consultation on proposals to protect consumers from unfair terms hidden in small print. This is also expected to help to prevent honest traders from losing out to their more unscrupulous counterparts (Wukoschitz, 2012).

Increased product complexity generates more potential for misleading or deceptive representations and conduct, and unfair practices by suppliers of products and services. Tourism examples of false or misleading representation may include circumstances where goods are falsely alleged to be of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use. Tourism sectors wherein such claims may be made include car rental, retail shopping and tours, particularly where the products are complex (e.g. electronics, jewellery). Sometimes tourism services are alleged to be of particular standard (e.g. hotel accommodation, cruise ship cabins, transportation services). Sometimes service delivery may fall short of that which was represented due to inadequate skill levels of staff. Misleading or false claims may sometimes be made concerning the availability of facilities for the repair of goods or of spare parts for goods (e.g. car, motorcycle, bicycle or boat rental).

In some cases suppliers may claim the external circumstances have impacted on their performance. Because petrol of poor quality reduced engine power, a 14 day cruise "Summer in Greenland" was performed differently from what had been sold.

The German Supreme Court determined that the compensation include loss of holiday enjoyment resulting from these shortcomings as well as the right of passengers to prematurely terminate the trip (BGH press release 088/2013 of May 14, 2013).

Under the consumer law of different countries general disclaimers such as 'terms and conditions apply' should be used with caution and not to conceal important information. The ACL, for example, introduces a fairness test, which measures a condition imposed by a travel or tourism firm and judges whether it is "unfair" to the consumer. An airline customer, forced to re-book his family on another carrier at an extra expense of \$610 after his flight was rescheduled (22 hours late) was awarded compensation (Schneider, 2011). In a similar case, a customer was charged \$8000 by the rental car agency for towing his car 300 kilometres after vandals smashed the vehicle overnight outside his hotel .The company said the right to claim the money was contained in the fine print of the contract, but were forced to back down by the relevant consumer affairs commissioner (Schneider, 2011)

Product complexity can contribute to a lack of understanding on the part of consumers as to the price of the various components of products and services purchased. Consumers may persist with options they have chosen, even when better value alternatives are available. Thus tourists may return by force of habit to the same destination over time. Choice overload can also occur — consumers may avoid making decisions when there are too many alternatives on offer, or where those options appear too complicated to evaluate. This situation can impact on destination choice and in choice of providers of transport, accommodation and so on. Issues particularly relevant to tourism involve restrictions against multiple pricing, component pricing and claims of discounting.

Multiple Pricing.

Consumer protection legislation often applies rules to firms' pricing practices to ensure that the total price is always presented where possible, and to ensure that there is only one applicable sale price. Under Australian and South African law, where goods have more than one displayed price, they must not be supplied at a price higher than the lowest displayed price. Firms must disclose that there are only

a certain number of items at a particular price, or that the offer is only for a specific time period. Under Australian consumer law, prices should be inclusive of all quantifiable, compulsory fees, taxes, levies or charges. If the price is subject to variation (such as fluctuations in currency or potential changes to government or other statutory charges) the firm is required to calculate it based on information available *at that time* (Australian Government, 2010). In Europe, an Austrian Supreme Court has recently determined that a firm that sells theatre and concert tickets through the internet must disclose the amount of the booking fee/commission for each transaction (Wukoschitz, 2013).

Component Pricing

With the emergence of low cost airlines, many operators have adopted innovative ways of marketing and selling their products, like the base fare for a core product with add-on fees for enhanced services. Where no total figure or sum is given, such practices may mean consumers are not aware of the total price they will be required to pay to obtain that good or service. Australian and South African law prohibits misleading use of component pricing whereby a business represents the cost of a good or service to consumers in, or as the sum of, multiple component parts. Thus, if a supplier chooses to use component pricing in their advertising, it must also provide consumers with a prominent single (total) price for goods or services—to the extent that it can be quantified. A German court recently determined that lessor of a holiday apartment must include costs of final cleaning into the advertised price (Schleswig-Holsteinsches OLG press release of March 25, 2013).

In the USA, the 'full fare advertising rule' mandates that whenever a carrier or its ticket agent states a price for air transportation, the full price be stated (U.S. Department of Transportation (DOT), 2012). The Canadian Transportation Agency has recently developed regulations requiring all-inclusive air price advertising for travel within, or originating in Canada. The regulations support two key objectives: firstly, to enable consumers to easily determine the total advertised air price, promoting informed choice and, second, to promote fair competition between all advertisers in the air travel industry (CTA news release 2012-12-18). Recently, the Federal Court of Australia levied a pecuniary penalty of \$200,000 and a declaration to comply with the law requiring a single price to be displayed, in proceedings

brought against the self-styled 'low cost airline', Air Asia, where prices listed on its website excluded taxes, fees and other charges which the consumer was required to pay. The judgement emphasised that accurate price information, is particularly important in this competitive industry where consumers are price sensitive (*ACCC v AirAsia Berhad Company* [2012] FCA 1413). Effectively in support of such consumer protection legislation, the UNWTO has recently affirmed the principle of full transparency of the mark up of the fare, such that a customer will know the full cost of the airline ticket prior to accepting the responsibility to pay for the ticket (ATConf/6-WP/77). Given such concerns, the UNWTO supports ICAO intention to develop a set of core principles on consumer protection in areas linked to air transport matters (ATConf/6-WP/5, Appendix B) as well as to put more focus on price transparency issues, especially when it comes to the obligation of how air carriers provide tourists with adequate and accurate information (ATConf/6-WP/31).

Discounting

The tourism industry is notorious for offering discounts on products and services, especially in times of low occupancy in transport or accommodation services. Under the Australian law, if a firm engages in 'two price advertising', comparing the present (discounted) price with an earlier price it needs to ensure that any comparison drawn is genuine and accurately reflects the previous (most recent) price with the discounted amount.

Product complexity also makes it more difficult for consumers to fully understand the safety features of consumer goods and product related services. The ACL applies to services which relate to the supply, installation, maintenance assembly or delivery of consumer goods (product-related services). Product safety laws apply to products bought in shops, at home, over the phone or online. Product safety regulatory action (bans, standards, recalls or warning notices) can be taken in respect of both consumer goods and product-related services. Consumer protection legislation worldwide prohibits businesses from supplying particular kinds of consumer goods and product-related services unless they comply with any relevant safety standard in force for those kinds of consumer goods or services. Tourists are entitled to expect that every retailer, manufacturer and importer complies with product safety laws.

These considerations highlight the importance of suppliers making full disclosure of product information to consumers. While product complexity itself comprises a barrier to informed consumer choice, another impediment relates to the very nature of many tourism services - unlike most tangible products, many tourism services cannot be inspected, displayed or sampled at the time of purchase. This leads to a situation of information failure.

Information failure

In a market with full information, there may be consumers who are prepared to accept lower quality in return for a lower price. Low cost carriers know this and are experiencing increased share of many aviation markets. In various tourism contexts, however, there are information imbalances between buyers and sellers. Information failures, which can prevent efficient market operation, fall into two broad categories, namely: limitations on the ability of consumers to access information; or on their capacity to effectively use that information in transactions. A lack of information about relevant product characteristics increases the likelihood of consumer detriment and reduces the effectiveness of signals sent to suppliers. Their unfamiliarity with most locations visited makes tourists particularly vulnerable consumers.

Consumer protection legislation in many countries enshrines the right to information in plain and understandable language. All terms and conditions of the supply of the goods and/or services must be clearly stated (Republic of South Africa, 2010).

Tourism is different from many other industries as potential tourists are often unaware of differences in quality of different travel options. For many tourism services, gauging quality and suitability before and even after purchase can be difficult, so that consumer confidence and trust in the supplier becomes crucial. A good proportion of tourism products and services may be classified as either 'experience' or 'credence' goods.

Experience goods and services (Klein, 1998) are those for which quality can be difficult to fully establish until after purchase and consumption, e.g. the quality of a cruise vacation, or advice offered by a tourist agent. This can lead to dissatisfaction in circumstances where product quality differs from that anticipated by the consumer.

The extent of dissatisfaction would also depend on the identity/profile of the consumer (Greenwood, 2011).

Credence products and services are those for which verification of quality may not be possible even after purchase (Klein, 1998). In many circumstances, it may be difficult for the tourist to determine whether an unsatisfactory outcome is due to the lack of ability or effort on the part of the supplier (for example; delayed air service, food poisoning) or that some product characteristics are difficult to verify (such as whether restaurant food is really 'gluten free' or whether the resort's scuba diving instructors are all fully qualified). Due to the infeasibility of precisely specifying quality before the transaction is undertaken, the consumer is required to take some aspects of supplier performance on trust.

There are a several ways in which tourists may be disadvantaged in such circumstances. First, the supplier may have an incentive to recommend unnecessary services, provide a lower standard than agreed upon, or even engage in fraudulent or misleading conduct. In tourism particularly, where customers may return home before using the purchased item, the consequences of poor product or service may not become apparent for some time.

Second, the problem may not be associated with the supply of poor quality products *per se*, but the inability of consumers to distinguish these from higher quality items. Experience and credence goods can impair the efficient operation of the market through what is known as the problem of 'adverse selection'. Where consumers cannot distinguish quality, the probability of receiving low quality is reflected in the market price. As the price declines, high quality sellers may leave the market, initiating a cycle of declining quality and prices until only poorer quality products remain. There are some indicators that this situation is happening in tourism globally (e.g. the decline of legacy airlines and ascendancy of low cost airlines) (Dwyer et al, 2009).

Many of the prohibitions contained in consumer protection legislation such as the ACL have particular relevance to activities relating to the important package tour market. Many tours display low service quality such as low quality packages and

use of employees with low skill levels, inadequate knowledge of destinations/ attractions and inadequate professional and business standards (Dwyer, King and Prideaux, 2007). Such practices are most prevalent in markets where tourists are inexperienced and have limited access to independent advice about their chosen destination and where organized groups and package holidaymakers account for a significant share of the market. These 'demand side' features characterize Asian package tours to western destinations, providing a nurturing environment for the practices of particular concern (Dwyer et al., 2007).

Third, firms distinguish themselves from others through branding and reputation. Repeat purchases provide sellers with the opportunity to build and maintain reputations for high quality supply. However, tourists in general and first timers in particular, may remain unaware of the problems experienced by others in dealing with particular operators in particular destinations. In many market contexts, the consequence of a poor consumer choice can be rectified by choosing a different product next time. By altering their purchasing decisions, consumers can impose penalties on those suppliers who do not conform to reasonable purchaser expectations (and by so doing precipitate the exit of those firms or changes in their behaviour). However, this adjustment process takes time during which other tourists may be exposed to the risk of loss. In any case, in many sectors of tourism, entry and exit costs to the tourism industry are low, leading to the possibility of 'fly-by-night' operators with little to lose from a poor reputation.

Fourth, in contrast to many other consumer industries, repeat transactions are less prevalent in tourism, reducing the benefits to firms of having satisfied customers. In many tourism contexts, moreover, a failure of visitors to return to a destination does not necessarily mean that particular firms will bear the costs of diminished visits. This is due to the fragmented nature of the tourism industry. Thus, a tarnished destination image affects all constituent firms not just those firms that deliver the poorest quality services. This reduces the incentives for firms in general to attempt to retain a loyal customer base by offering quality and trustworthy service (a variant of the free rider problem).

Fifth, given that there is an information asymmetry between tourists and the suppliers of products that tourists purchase, it may not be possible for consumers to know about the financial viability of an operator and/or the quality of their advice. Accordingly, consumers required to make prepayments for particular types of tourism goods and services, have difficulty in assessing the financial risk of their decision to deal with a particular operator, directly or through an intermediary. Likewise, for the intermediary, it may not be possible for it to know the full details of the financial viability of suppliers (e.g. airlines, tour companies) and their capacity to deliver.

Sixth, in contrast to residents, in many destinations there are limits to the ability of tourists to obtain redress to common law remedies. Suppliers may be based outside the consumers' jurisdiction, complicating any process of compensation for deficient services. Moreover, many suppliers have few assets against which a judgement can be enforced. As noted above, the global tourism industry consists predominantly of small to medium sized firms (Čavlek, 2002). In many cases the cost of obtaining a resolution through the courts is likely to be high, reducing the incentive for an aggrieved tourist to seek redress. That noted, the U.S. Department of Transportation (DOT) recently fined Alitalia USD 125,000 for deceptive practices including providing inaccurate information on its website regarding its policy on compensation to passengers on delayed and cancelled flights (DOT, 2013a).

Each of these sources of information failure provides tourism related firms with an incentive to engage in irresponsible marketing activity. Consumer protection laws generally contain a number of provisions to address standards for fair and responsible marketing and advertising and provide a general prohibition against marketing that is misleading, fraudulent or deceptive. This enables consumers to make informed purchasing decisions when making travel arrangements and purchasing a holiday, including the choice of hotel, upgrades, airfares, duration of the trip, any tours, transfers or other inclusions, fees, charges, terms and conditions. In South Africa, advertising of goods by suppliers cannot mislead consumers in respect of pricing and the nature, properties, advantages or uses of goods or services. Suppliers may not advertise goods or services in such a way which is misleading to consumers in respect of pricing, the nature thereof, properties,

advantages or uses of the goods and services. For example, suppliers must not use illustrations that are not related to the facilities on offer.

A practice that has often been associated with tourism and hospitality firms is 'Bait Advertising'. Bait advertising occurs when travel is advertised at an attractive 'bait' price but, is not available at the advertised price and quality when the consumer attempts to purchase it. In such circumstances the firm or its agent seeks to switch the consumer to a higher priced or differently optioned alternative. Under the ACL, a person (firm) who offers goods or services at a specified price must also do so for a reasonable period and in reasonable quantities, having regard to the advertisement and the nature of the market. Any 'bait marketing' must announce the limitations of availability and validity. Where a firm has genuinely misjudged demand and is unable to supply the travel product or service as per the advertisement immediately, it is required to offer the consumer a reasonable alternative.

As well as the direct consequences for tourists, information failures can make it easier for bad or poorly performing tourism businesses to survive. They can also make consumers less willing to deal with unfamiliar suppliers. These effects will in turn weaken competition and lead to higher prices, reduced quality and less innovation. All such effects reduce destination competitiveness.

Changes in Tourist Demographics and Consumer Values

The industrialised world is in transition from the service to the experience economy (Pine and Gilmore, 1999). The focus has switched to delivering unique experiences that personally engage the consumer. In the tourism context, the experience economy is generally based on customized holidays and personalized services allowing travellers to participate more actively in the experiences (Nordin, 2005). Tourists typically are becoming more critical, less loyal, seeking value for money, not necessarily lowest prices. Characteristics of the evolving tourist include being money rich-time poor; having greater flexibility in the taking of leisure time; being hedonistic, discerning, quality conscious, individualistic, socially and environmentally aware, experimental but safety conscious (Cetron, 2001; Dwyer et al., 2009). By implication, tourists as consumers increasingly wish to be involved as participators not spectators and seek a variety of new and optional experiences to satisfy their needs.

Of particular importance for this study is the trend for consumer behaviour to be increasingly driven by a desire to self-differentiate (Cetron, 2001). Consumers are increasingly demanding more choice, more interactivity, more 'authenticity' and more personalized products from which to choose, and increasingly tailor holidays to meet their particular requirements (Alford, 2005). As travellers become more experienced, they are no longer satisfied to be processed through an impersonal, non -interactive system of 'mass tourism'. The fact that consumers increasingly demand opportunities to customize or personalise purchases to meet their specific wants and needs, drives an expectation for almost universal customization. This has important implications for product choice and quality assurance in tourism, creating a substantial and growing potential for tourism products and services to fail to satisfy customer needs.

Simultaneous with changing consumer values and expectations, demographics are changing. Demographic changes have implications for the type of tourism experiences demanded by visitors and the types of products and services that tourism businesses need to develop to meet visitor needs. As a result of better education and access to the Internet, many consumers are now more confident and informed. At the same time, the growth in tourism globally has increased the pool of vulnerable and disadvantaged tourists at risk of suffering detriment from their consumption choices (Dwyer et al, 2009). Some important changes relate to population growth and ageing (with relevance for 'seniors tourism'); an increasing proportion of younger persons engaging in tourism; (backpackers, gap year tourists, volunteers), greater tourism by the disabled; and, for western destinations in particular, a growing proportion of inbound tourists from Asian speaking backgrounds. The growing importance of such markets in tourism underpins the need for appropriate mechanisms of consumer protection to be developed.

In parallel with the increased demand for customised tourism experiences, community norms about minimum acceptable levels of safety and information disclosure are rising (Productivity Commission, 2008). This has resulted in demands for 'less risky' products, including the imposition of more stringent minimum safety standards, the mandatory provision of a range of product information (eg. whether a

restaurant meal contains MSG), and calls by some for (interim or permanent) bans on goods not meeting certain values-based production standards (ethical consumption). Perhaps more than for most consumption forms, tourism presents substantial potential for consumer needs not to meet the quality level expected.

The influence of technological change

Both travel suppliers and intermediaries have detailed information about their products and services online, allowing them to market directly to consumers. Information technologies can give operators a better understanding of consumer needs because of research interaction and data mining, thus allowing differentiation and customisation according to personal preferences. Improvements in information and communications technology have increased the availability of travel information and thereby significantly reduced the information asymmetry that travel intermediaries may have previously enjoyed. It has also empowered consumers by giving them better access to information on products and services, and expanded the opportunities for them to make purchases outside of traditional retail environments.

On the other hand, increased use of the internet to purchase tourism goods and services has increased the challenges for those seeking redress, especially for transactions with overseas (or even interstate) suppliers via the Internet. It has also created new opportunities for fraud and has increased related consumer concerns such as unsolicited approaches (spam) and the privacy and security of personal information (ACCC, 1997). The European Parliament has voted to support the new legislation on Alternative Dispute Resolution and Online Dispute Resolution (EU Commission, 2013).

The features of tourism discussed herein reduce the likelihood of market-based solutions emerging to overcome disadvantages that may be faced by tourists as consumers. The above considerations highlight the need for consumer protection mechanisms to be put into place to address the imbalance between the parties to transactions to purchase tourism goods and services. As well as the direct consequences for individuals, the features of consumer markets can make it easier for bad or poorly performing businesses to survive. They can also

make consumers less willing to deal with unfamiliar suppliers. These effects will in turn weaken competition and lead to higher prices, reduced quality and less innovation. All such features reduce destination competitiveness.

Conclusion: Creating Confident Consumers

This paper has discussed a number of features of tourism that make consumer protection an important area of concern for the industry globally. We have argued that the nature of these problems is such as to warrant developing mechanisms for protecting tourists as consumers.

This paper has focussed on consumer law as a mechanism protecting tourists. It has not addressed initiatives such as industry association codes of conduct which define supplier obligations and which can complement consumer laws. Consumer protection legislation creates confident consumers. This increased consumer confidence will enhance destination competitiveness, improving tourists' knowledge to be able to transact effectively. In an increasingly complex marketplace, empowered tourists should be better able to choose those products that match their preferences. These initiatives also give tourists greater access to information about the characteristics of the products and services that they purchase. Demand from empowered tourists can encourage firms to develop new and better products, boosting innovation and productivity. Educated, informed and confident tourists are helped to reduce poor behaviour by suppliers of goods and services, reducing hidden risks, either from inferior goods and services or from rogue suppliers. When problems arise, empowered tourists are more able to seek redress and avoid further detriment. More confident and informed tourists can invigorate competition between suppliers, promoting product and service quality, efficiency and innovation.

The discussion has implications for tourism practitioners as well as researchers. Destination managers' worldwide need to ensure that policy development is underpinned by soundly-based research on consumers and consumer issues. The effectiveness of any consumer protection measures in the tourism context depends on the extent to which tourists are aware of their rights under generic legislation and quality assurance initiatives.

Several challenges for research thence may be identified: What types of consumer protection mechanisms best complement consumer law? What impact does enhanced consumer protection have on the total visitor experience? How important is consumer protection in destination choice both in comparison to other factors and by destination? How aware are visitors to any destination of their rights as consumers? Does the association between consumer protection and destination competitiveness vary according to a destination's stage of economic development? Does improved consumer protection impact more on the visitor experiences of domestic or international tourists? What is the relationship between consumer protection and destination brand equity? To what extent is international co-operation required on the development of consumer protection mechanisms for tourists? These questions, and related topics, are seen to be important once consumer protection is identified as an important determinant of destination competitiveness.

Most consumers learn from their experiences and thereby become less susceptible over time to making mistakes. In the case of tourists however we have argued that they are particularly vulnerable - as short term visitors it is particularly difficult for them to assess the suitability or quality of a service/product prior to purchase. By making tourists as consumers more confident about participating in markets, and penalising inappropriate business conduct, consumer laws also assist reputable suppliers. Put simply, effective competition in tourism is stimulated by empowered consumers and responsive suppliers that trade fairly.

References

ACCC (1997) *The Global Enforcement Challenge: Enforcement of Consumer Protection Laws in a Global Marketplace*, Australian Competition and Consumer Commission, Discussion Paper, Canberra, Australia

ACCC v AirAsia Berhad Company [2012] FCA 1413

Alford, P. (2005) *Destination Marketing* London: Mintel.

Australian Government (2010) *The Australian Consumer Law: A Guide to Provisions* Commonwealth Copyright Administration, *Attorney-General's Department*, Commonwealth of Australia.

BGH press release 212/2012 of Dec. 18, 2012. Judgment X ZR 2/12 of Dec. 18, 2012

<http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=pm&Datum=2012&Sort=3&nr=62583&pos=3&anz=214>

BGH press release BGH press release 088/2013 of May 14, 2013

<http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=pm&Datum=2013&Sort=3&nr=64074&pos=0&anz=87>

Čavlek N (2002) Business in Tourism: SMEs Versus MNCs. In *Zagreb International Review of Economics and Business*, 5, 2, 39-48

Cavlek N. (2006) 'Travel and Tourism Intermediaries. In Dwyer, L and Forsyth, P. (eds). *International Handbook on the Economics of Tourism*. Cheltenham: Edward Elgar.

Cetron, M. (2001) "The world of today and tomorrow: the global view". In A. Lockwood, & S. Medlik (Eds.), *Tourism and hospitality in the 21st century*. Oxford: Butterworth-Heinemann

CJEU press release No 27/13 of March 14, 2013.

<http://curia.europa.eu/jcms/upload/docs/application/pdf/2013-03/cp130027en.pdf>

CJEU press release 8/13 of jan 31,2013. <http://iftta.org/spanish/news/damages>

CTA news release 2012-12-18 All-Inclusive Air Price Advertising

<http://www.cta-otc.gc.ca/eng/airservicesadvertising>

Department of Transportation (DOT 2012) DOT Fines Aerolineas Argentinas for Violating DOT Price Advertising Rule, DOT-OST-2012-0002,

<http://www.dot.gov/briefing-room/dot-fines-aerolineas-argentinas-violating-dot-price-advertising-rule>

Department of Transportation (DOT 2013a), DOT press release 27-13 of March 28, 2013 DOT Fines Alitalia for Misleading Information on Compensation for Canceled Flights

<http://www.dot.gov/individuals/air-consumer/dot-fines-alitalia-misleading-information-compensation-canceled-flights>

Department of Transportation (DOT 2013b), DOT 2013 press release DOT 47-13 of May 23, 2013 DOT fines ticket agent for violating code-share disclosure rules

<http://iftta.org/node/8073>

Dwyer, L. and C.W. Kim (2003), Destination Competitiveness: a Model and Indicators In *Current Issues in Tourism*, 6, 5, 369-413.

Dwyer, L., B. King and B. Prideaux (2007) The Effects of Restrictive Business Practices on Australian Inbound Package Tourism In *Asia Pacific Journal of Tourism Research* 12, 1, 47-64.

Dwyer L., Edwards D., Mistilis N., Scott N., Roman C. (2009) Destination and Enterprise Management for a Tourism Future In *Tourism Management* , 30, 1, 63-74.

ECJ press release 18/13 of Feb. 26, 2013

<http://curia.europa.eu/jcms/upload/docs/application/pdf/2013-02/cp130018en.pdf>

European Union (2007) EU Consumer Policy strategy 2007-2013. Empowering consumers, enhancing their welfare, effectively protecting them COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE COM(2007) 99 final

European Commission (2013) EU: New legislation on Alternative and Online Dispute Resolution, EU Commission Memo 13/192 of March 12, 2013.

<http://iftta.org/content/eu-new-legislation-alternative-and-online-dispute-resolution>

Greenwood, V.A. (2011) *Place, Health and Resilience: Widowhood and the Mediating Role of Therapeutic Landscapes*, Unpublished PhD thesis, Macquarie University, NSW, Australia.

Greenwood V. and L. Dwyer (2013) Consumer Protection and Destination Competitiveness. Paper given at the *Consumer Behavior in Tourism Symposium 2013*, Bruneck / Brunico, Italy, December 4 - 7, 2013

Haupt S. (2003) 'An Economic Analysis of Consumer Protection Law' In *German Law Journal*, 4, 1137-1164

Klein L.R (1998) 'Evaluating the Potential of Interactive Media through a New Lens: Search versus Experience Goods' *Journal of Business Research*, 41, 3, 195 – 203

Nordin, S. (2005) *Tourism of tomorrow – travel trends & forces of change*, ETOUR, European Tourism Research Institute

OFT (2012) press release 58/12 of 5 July 2012 *Airlines to scrap debit card surcharges following OFT enforcement action*. Office of Fair Trading, UK.
<http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/news-and-updates/press/2012/58-12>

Pine, B. J., & Gilmore, J. H. (1999) *The experience economy: work is theater and every business a stage*. Harvard Business School Press: Boston, MA.

Productivity Commission (2006) Rethinking Regulation Report of the Taskforce on Reducing Regulatory Burdens on Business. *Productivity Commission*, January, Canberra, Australia

http://www.pc.gov.au/_data/assets/pdf_file/0003/128028/regulation-taskforce.pdf

Productivity Commission (2008) 'Review of the Consumer Protection Framework', *Productivity Commission Inquiry Report*, No. 45, Canberra, Australia

http://www.pc.gov.au/_data/assets/pdf_file/0006/79170/consumer1.pdf

PriceWaterhouseCoopers (2010) *Review of consumer protection in the travel and travel related services market*, Prepared for the Department of the Treasury, on behalf of the Standing Committee of Officials of Consumer Affairs, November, Canberra

http://www.consumerlaw.gov.au/content/consultations/downloads/review_protection_in_travel_industry.pdf

Republic of South Africa (2010) No. 68 of 2008: Consumer Protection Act, 2008, Cape Town, Summary, March

<http://www.info.gov.za/view/DownloadFileAction?id=99961>

Ritchie Brent W. (2004) Chaos, crises and disasters: a strategic approach to crisis management in the tourism industry In *Tourism Management* 25, 6, 669–683.

Schleswig-Holsteinsches OLG press release of March 25, 2013. Schleswig-Holsteinsches OLG 22.03.2013, 6 U 27/12

<http://www.schleswig-holstein.de/OLG/DE/Service/Presse/Pressemeldungen/201305ferienhausvermietung.html>

Schneider, K., (2011) 'New law to fight against travel 'rip-offs'', retrieved 19.4.13

www.news.com.au/travel/travel-advisor/new-law-to-stop-travel-rip-offs

United Nations World Tourism Organisation (2001) Global Code of Ethics for Tourism, United Nations World Tourism Organisation, Madrid.

<http://ethics.unwto.org/en/content/global-code-ethics-tourism>

UNWTO (2013) Update on the Draft UNWTO Convention on Protection of Tourists and Tourism Service Providers

http://dtxqtq4w60xqpw.cloudfront.net/sites/all/files/pdf/item_3.4_update_on_the_draft_unwto_convention_on_protection_of_tourists_and_tourism_service_providers_en_0.pdf. retrieved 1/2/2014.

Wilson, R. and Vervaeck, A. (2013) Volcano activity of March 26, 2013 - Uncertainty phase because of seismic activity in Hekla volcano, Iceland, Earthquake-Report.com retrieved 10.3.14 <http://earthquake-report.com/2013/03/26/volcano-activity-of-march-26-2013-uncertainty-phase-because-of-seismic-activity-in-hekla-volcano-iceland/>

Wukoschitz M. (2012) UK and Unfair Contract Terms Reforms, 27 July, 2012 - 19:25

<http://iftta.org/content/uk-and-unfair-contract-terms-reforms>

Wukoschitz M. (2013) Austrian Supreme Court: ticket office must disclose commission, <http://iftta.org/news/austrian-supreme-court-ticket-office-must-disclose-commission>

Author Details

Verity Greenwood PhD is lecturer, Department of Accounting & Corporate Governance, Faculty of Business & Economics, Macquarie University, Sydney, 2109, Australia. Her research interests include tourism law, fraud risk management and corporate governance

Email: verity.greenwood@mq.edu.au

Larry Dwyer PhD is Professor of Travel and Tourism Economics, School of Marketing, Australian School of Business, University of New South Wales, Sydney, 2052, Australia. His research interests include tourism economics, tourism management and planning

Email l.dwyer@unsw.edu.au