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**CONSUMER PROTECTION IN BRAZIL
A GENERAL VIEW**

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1-OBJECTIVE

This work aims at presenting an overview of consumer protection in Brazil and at raising some points for reflection on the future of the Consumer Protection National System - SNDC. In this work, brief information and discussions are presented on:

- a) the Consumer Protection Code - CDC and its origin;
- b) the SNDC and how it is organized;
- c) the current state of consumer protection in Brazil;
- d) consumer protection in a broader perspective with some comments on regulation, antitrust laws, information as a vital instrument for consumers and the role of the news media;
- e) the first attempt that was made to create the National Consumer and Competition Protection Agency;
- f) some subjects for reflection on the SNDC future; and
- g) some aspects of the North American model of consumer protection.

2 - THE ORIGIN OF THE CONSUMER PROTECTION CODE (CDC)

The CDC was created by legal order, actually from a constitutional commandment, and not as a result of a social movement. What is known as “consumer right culture”, therefore, appeared in Brazil from the publication of the CDC law, a little more than ten years ago. Surprisingly, it was incorporated within Brazilian society where it continues to develop. It is worth emphasizing that the Brazilian consumer movement played a very important part in including aspects which represent the State’s concern with consumer protection in the Constitutional text.

It is in the 5th article of the 1988 Federal Constitution, in Chapter I, on the Individual and Collective Rights and Duties, of Title II, concerning The Rights and Fundamental Warranties, in its incise XXXII, where we find the first reference to consumer rights. In this act, the Constitution does not leave any doubts as to the responsibility of the State to promote consumer rights. When treating the economical and financial order, as stated in Chapter I, on the General Principles of the Economic activity of Title VII, that is on the Economical and Financial Order, the Great Letter, in article 170, states that one of its basic principles is consumer protection. Finally, in the Actions

of the Transitory Constitutional Dispositions, the Constitution determined that the National Congress must promulgate no later than 120 days after its own promulgation the Code of Consumer Protection. In practice, it ended up taking approximately two years, since Law no. 8.078, known as the Consumer Protection Code, is dated September 11th, 1990.

In other places in the Letter of 1988, there are tools aiming at consumer protection, such as:

- a) Article 24, which defines the competitive competences to legislate, among Union, States and Federal District, interruption VIII -“responsibility for harm ... to the consumer...”;
- b) Article 150, which establishes limitations, to the Union, to States, to Federal District and the Counties, on the power of taxation, § 5th, - “The law will determine measures, so that consumers are clarified on the taxes of goods and services”; and
- c) Article 175, which defines that it assigns the public power, in the form of the law, directly or under concession, regime or permission, always through auction, public rendered services, only paragraph, II- in the concessions and public service permissions, the law will have to dispose on “the users rights”, which are in a certain way, the consumers of “public services” rendering.

Before the CDC, there was no legal concept of the consumer and consumption relationship, and there was no specific consumer protection legislation. Therefore, the consumers’ rights were spread out over several legal documents, such as the Commercial Code and the Civil Code, without a systematic and specific treatment. Therefore, consumer protection was not addressed as comprehensively and as consistently as it is now.

3- THE CONSUMER PROTECTION CODE (CDC)

The CDC is a law of public order and social interest, which means that it transcends private interests. It is, therefore, of the typology of those that cannot be

negotiated by the parties wish. According to João Batista de Almeida¹, they possess a cogent nature of obligatory observance, of coercive execution, of imperative nature, and finally they are inderrogable by the parties' wish. Herman Benjamin says²: “the idea that mitigation or even the overcoming of such vulnerability interests of the collective, and not just the individual consumer, is what orients the CDC.” At the same time, the Code is a set of legal principles, whose determinations and exemplifications need to be interpreted and contextualized.

In respect specifically to the “social interest” , José Geraldo Brito Filomeno³ comments that the CDC aims at rescuing a significant amount of consumers from the margins of society, not only in the face of economic power, but also to endow them with adequate instruments, enabling access to justice in both the individual, and, above all, collective level.

According to José Geraldo Brito Filomeno⁴, the “protection and the consumer defense” matter is by itself vast and complex. Therefore, in practice the complete management of everything which may concern the rights and duties of consumers and suppliers is impossible. Thus, the Code is worth much more for perspective consumers and the guidelines for which it provides for their protection, than for the harmony it might provide by being an exhaustive list of norms.

It is important to emphasize that not all the trade and contractual relationships are covered by the CDC, but just those configured as consumption relationships.

The CDC defines, in its 2nd Article, a consumer as every natural or legal person who acquires or uses products or services as a final addressee. As commented by José Geraldo Brito Filomeno⁵, the consumer concept adopted by the Code had an exclusively economic connotation. In other words, it took into account only the acquisition of goods and services rendered for a final addressee, presuming that those acts are for a personal need and not for the development of another business activity.

In the single paragraph of the same 2^d Art., the CDC asserts that ‘a group of people, although indeterminable, who have intervened in consumption relationships is

¹ João Batista de Almeida, *A Proteção Jurídica do Consumidor*, Saraiva, 2nd edition, 2000, page 44 and 45

² Antônio Herman de Vasconcellos e Benjamin, *Consumer Protection Magazine*, n° 20, Oct./Dec. 1996, page 383.

³ José Geraldo Brito Filomeno, *Código Brasileiro de Defesa do Consumidor – Commented by the authors of the Antiproject*, Forense Universitária, 6th edition, July 1999, page. 26.

⁴ José Geraldo Brito Filomeno, *op. cit.*, page. 18.

similar to a consumer”. According to José Geraldo Brito Filomeno⁶, what this paragraph is aiming at is the universality, the totality of product and service consumers, a class or category once related to a product or service.

Filomeno⁷ says that there is no way one may escape the concept of “consumer” as one of the parts of the “consumption relationships”. In other words, “legal relationships in their excellence,” The CDC is trying to treat different people unequally, taking into account that the consumer is in an obviously inferior situation to the supplier of goods and services.

Therefore, according to Filomeno⁸, it may be inferred that every consumption relationship: a) involves two clearly defined parts, on one side, the acquirer of a product or service (“the consumer”), and on the other, the supplier or sales person of a product or service (“producer/supplier”); b) such relationship is destined to the satisfaction of a consumer’s private need; c) the consumer, not disposing by himself, of control for the production of goods for his consumption or services to him destined, takes the risk of submitting himself to the power and conditions of those same goods and service producers.

Some of the most significant aspects of the CDC are the recognition of consumer vulnerability in the consumption market and the determination of governmental action in the sense of protecting the consumer. Two other important points are the definition of the principles that should guide the Consumption Relationships National Policy and the institution of consumers’ basic rights. The facilitation of consumer rights protection, particularly with the possibility of inversion of burden of proof, in favor of the consumer -- when considered so by the judge, whether the allegation is probable or when the consumer is vulnerable – represents, in practical terms, the consolidation of the idea that consumption relationships occur between unequal parties and that, they need therefore to be treated as such. The consumer is treated as the most vulnerable part in this type of relationship and, therefore, deserves the State’s intervention in his favor.

⁵ José Geraldo Brito Filomeno, op. cit., page 26.

⁶ José Geraldo Brito Filomeno, op. cit., page 35.

⁷ José Geraldo Brito Filomeno, op. cit., page 28.

⁸ José Geraldo Brito Filomeno, op. cit., page 28.

The National Consumption Relationship Policy represents the group of guidelines that should rule the State's actions, specifically related to public organizations instituted for consumer protection, with the main goals of protecting the consumer, harmonizing the consumption relationships and searching for the improvement of consumption market conditions. The National Consumption Relationship Policy must in theory, direct the state and municipal consumer protection policies. Those policies should be known and observed by the consumers and by the various economic agents.

It is said in the 4th Art. of the CDC: *“The National Consumption Relationship Policies have as their objective, the service of consumer's needs, the respect to their dignity, health and safety, the protection of their economic interests, the improvement of their quality of life, as well as the transparency and harmony of consumption relationships, according the following principles:”*

“I - recognition of consumer vulnerability in the consumption market;

II - government action in the sense of protecting the consumer effectively:

a) by direct initiative;

b) by incentives to the creation and development of representative associations;

c) by the presence of the State in the consumption market;

d) by the warranty of products and services with appropriate quality, safety, durability and performance patterns.

III - harmonization of participants' consumption relationship interests and compatibility of consumer safety with the need for economic and technological development, in such a way as to make the principles, in which the economic order is founded, possible (art. 170, of the Federal Constitution), always based on good-faith and effective balancing in the relationships between consumers and suppliers;

IV - education and informing of suppliers and consumers, about their rights and duties, with the purpose of improving the consumption market;

V - motivation of suppliers to create efficient means of quality control and safety of products and services, as well as alternative mechanisms of consumption conflicts resolution;

VI - efficient restraint and repression of all of the abuses practiced in the consumption market, including the unfair competition and improper use of inventions and industrial creations of brands and trade names and distinctive signs, which may cause damage to consumers;

VII - rationalization and improvement of public services;

VIII - constant study of the consumption market modifications.”

The legislators created some instruments aiming at the execution and implementation of the Consumption Relationship National Policies.

The CDC says, in its 5th Art. that: “For the execution of the National Consumption Relationship Policies, the public power will count with the following instruments, among others:”

I – the maintenance of juridical assistance, complete and free for the needy consumer;

II – the setting up of Consumer Protection Justice offices, within the Public Prosecutor’s scope;

III – the creation of specialized police stations for consumers who are victims of penal consumption violations;

IV – the creation of Special Small Appeal Legal Courts and Specialized Jurisdictions for the resolution of consumption litigations;

V – the concession of incentives to create and develop Consumer Protection Associations.”

These instruments were extremely important to propitiate and develop the necessary institutional apparatus to the best application and inspection of the Law. The creation of Public Prosecutors Services - Consumer Protection Specialized Prosecution Offices, Consumer Stations –DECON, Special Civil Courts (Small Appeal Courts), among other institutions can be mentioned as examples.

The consumer's basic rights are the fundamental rights which serve as inspiration for the interpretation of the other acts in the Code. In that list of rights, they have synthesized the necessary conditions, so that the consumer can look for his rights in a society of free market, marked by enormous inequalities among the several economic units. Says the CDC:

“6th Art. The consumer's basic rights are:

I - the protection of life, health and safety against the risks provoked by practices in the supply of products and services considered dangerous or harmful;

II - the education and publication of the appropriate consumption of products and services, assuring freedom of choice and equality in recruiting;

III - the appropriate and clear information on the different products and services, with correct specification of amount, characteristics, composition, quality and price, as well as on the risks they present;

IV - the protection against deceiving and abusive publicity, coercive or disloyal commercial methods, and against abusive or imposed terms or practices in the supply of products and services;

V - the modification of contractual terms that establish disproportionate execution or their review, due to supervening facts that may turn them onerous;

VI - the effective prevention and repair of patrimonial and moral, individual, collective and diffuse damages;

VII - the access to the judiciary and administrative organs viewing the prevention or repair of patrimonial and moral, individual, collective or diffused damages, insuring Juridical, administrative and technical protection to those in need;

VIII - the facilitation of the protection of their rights, including the inversion of proof obligation on his favor in the civil action, when according to judge's criterion, the allegation is probable or when it is hypo sufficient, according to the ordinary rules of experiences;

IX - (Vetoed);

X - the appropriate and effective establishment of public services in general.”

The rights foreseen in the Consumer Protection Code do not exclude other current rights of any type of legal instrument, as well as of the ones that derive from the general principles of right, analogy, habits and justice (7th Art of the CDC). Indeed, those rights overlap the others, emphasizing them whenever there is a consumption relationship. Therefore, the consumer's right can be understood as a type of “over right” once it is located somewhere over the other areas of Law. It should be applied in the cases that involve consumption relationships, without damage to the other pertinent legal norms.

According to José Geraldo Brito Filomeno⁹, besides having the character of a true juridical micro system, the CDC is both an interdisciplinary and multidisciplinary type of law. In other words, in addition to its own principles, in the extent of the so called consumption science, the Consumer Protection Code has links with other branches of the Law while it is updated and it gives new appearance to old legal institutes. On the other hand, it is covered with multidisciplinary character, once it takes care of subjects inserted in the Constitutional, Civil, Penal Civil and Penal Processual, and Administrative Procedures. The CDC is always having the consumer's vulnerability as a stepping stone

towards the supplier when the consumer is the final user of the product or service and he is not seeking for professional use of this product or service.

The Code establishes, in article 56, administrative sanctions that may be applied in case of infraction of the consumer's protection norms. The most used sanctions are: fines (maximum value of R\$ 3.192.300,00 - equivalent to 3 million UFIR-taking as reference the last value of the UFIR, before its extinction, 1,0641); seizing of the product; the product's invalidation; total or partial interdiction of the establishment, of work or activity; and counter advertising imposition.

The Code also establishes, in articles 61 to 80, conducts that constitute crimes against the consumption relationships (penal infractions), without harm to the determination in the Penal Code and special laws.

Another important aspect is the prevision in the Code, in the articles 81 to 90, of the possibility of defense of consumers' and victims interests and rights to be performed, in justice, individually or collectively. The art. 82 of the CDC says that the following organs, entities and institutions are simultaneously legitimated to treat the consumer's protection: the Public prosecution services (district attorneys); the Federal Government, States, the Municipalities and Federal District; the entities and organs of the Public direct or indirect Administration, although without corporate entity, destined to the protection of the interests and the consumers' rights; the associations legally constituted at least for one year and that may include among their institutional objectives the protection of interests and rights protected by the CDC, excused the authorization assembly.

According to José Reinaldo de Lima Lopes¹⁰, it is initially necessary to recognize the existent unbalance between consumer or final user and producer/supplier. The concentration of economical power and financial capacity on the producers side, and the pulverization and the individualization of the consumption actions on the users side, has as consequence that the luck of only one consumer cannot absolutely affect the direction of the activities of a producer. Then, a repairing of a harm judicially demanded by only one, by the isolated victim of an accident, has no capacity of influencing in the bills of the huge company. Contrarily to the that was published as common sense, the consumer

⁹ José Geraldo Brito Filomeno, Código Brasileiro de Defesa do Consumidor – Commented by the authors of the Antiproject, Forense universitária, 6th edition, July 1999, pages 19 and 20.

¹⁰ José Reinaldo de Lima Lopes, Responsabilidade Civil do Fabricante e a Defesa do Consumidor, Consumer Protection Library, vol. 3, Editora Revista dos Tribunais, 1992, pages 128 and 129.

is not able and he does not succeed separately, to be the “king of market.” The large company has market means to face and even to conduct a demand that being of mass in its associations, it is distributed in countless actions and isolated legal transactions, in individual and personal spheres. Therefore, it has become ineffective in some cases, especially to prevent future harms, in which the victim can on his own name, propose a lawsuit against the manufacturer. Such adventure can be stressful, expensive, and slow for an individual victim. Lopes concludes stating that prevention may only be obtained posing a consumers organization against the business organization. To unite hundreds or thousands of consume lawsuits is, therefore, the purpose of the procedural innovation, which we have witnessed since the creation of the CDC.

Lopes¹¹ still comments that the participation of groups in the lawsuits is one of the consumers' most important conquests. Therefore, the dispositions of the Consumer Protection Code, discipline two orders of procedural legitimating: on one side there are the direct victims, the harmed ones; in a second category, there comes the legitimated competitors. The innovation is certainly big. One can not lose sight, however, that the legitimating foreseen in Article 82 of the CDC is competitive. In other words, the consumer individually, or a group of consumers constituting a voluntary association, can start off several measures of consumer protection, in self protection. The author concludes by saying that, in this case, however, it is necessary to distinguish an individual action, with plurality of subjects constituting a part, from a group action.

CDC foresees the participation of several public and private entities, as well as the improvement of several institutes as instruments for the accomplishment of the National Policy of Consumption Relationship. As Daniel Roberto Fink¹² had said, the Code wanted the effort to be national, integrating the most varied segments that have been contributing to the evolution of the consumer protection in Brazil. In that sense, the CDC created, in its act 105, the Consumer Protection National System (SNDC). The SNDC is the combination of the country's efforts, in the several units of the Federation (in the federal, state and municipal spheres), and of civil society, for the effective

¹¹ José Reinaldo de Lima Lopes, op. cit., pages 130 and 131.

¹² Daniel Roberto Fink, Código Brasileiro de Defesa do Consumidor – Commented by the Authors of the Antiproject, Forense Universitária, 6th edition, July 1999, page 836.

implementation of the consumer's rights and for human respect in the consumption relationship.

According to the CDC in Article 105, and the Decree no. 2.181 of March, 20th 1997 that regulated it, the following institutions integrate d the National System of Consumer Protection - SNDC: the Economic Law Secretariat – SDE of the Justice Ministry, through its Department of Consumer Protection and Defense the - DPDC; the other official state organs of consumer protection, of the Federal District and municipal ones especially the PROCONS; and the civil entities of consumer protection.

It is necessary to emphasize that a legal framework is one important instrument that contributes to make the citizens' rights be respected, but it is not enough. The citizen-consumers' performance is fundamental for the effectiveness of those rights. It is necessary, still, an institutional apparatus that allows one to regulate the relationships, to supervise the practices and to apply the penalties, in case the constant norms of the legal action are not accomplished.

4-COMMENTS ON SOME ASPECTS OF THE CDC ORIGIN AND ITS PRINCÍPLES

The approval of the Code showed us, on one side, the political moment that the Country was going through, reflecting the concern with the consumer's right as an important instrument for the citizens' rights warranty, in particular of the so called economic citizenship, and, on the other, the recognition, on the dominant elite part, of the existence of an enormous socioeconomic inequality among the several layers of society and within the market forces in our Country. It is undeniable that in the capitalist societies, the consumer's right is among the most important supports of citizenship.

The Federal Constitution emphasizes, therefore, the consumer's protection before the economic activity, seen generically. The Magna Carta, in particular when it treats the economical order, alternates liberal dispositions, that intend to guarantee the free market, with other ones, frankly interventionist

It is interesting to notice that the consumer's protection is inserted in the Federal Constitution in the list of individual and collective rights, being part, therefore, of the

rights and fundamental warranties. It was considered so, the idea of the State intervention, in its three spheres: the Legislative, formulating the legal rules of consumption, the Executive, implementing them; and the Judiciary, solving the consequent conflicts; to guarantee those rights. At the same time, the Federal Constitution relates the consumer's protection as one of the principles of the economic order. The article 170 says:

“The economical order, founded in the valorization of the human work and in the free initiative, aims at assuring everybody a dignified existence, according to the dictates of social justice, observing the following principles:

I-national sovereignty;

II-private property;

III-social function of the property;

IV-free competition;

V-consumer protection;

VI-protection of the environment;

VII-reduction of social and regional inequalities;

VIII-search for of the full employment;

IX-favored treatment for the small sized firms, constituted under the Brazilian laws and that have their headquarters and administration in the Country.

Single paragraph. It is assured to all the free exercise of any economic activity, independently of authorization of public organs, except for cases foreseen in the law.”

The article 170 of the Federal Constitution leaves the intention of the legislator in establishing principles for the economical order that, besides guaranteeing the national sovereignty, the private property and the social function of the property and of means of production, contribute to the economic and social development of the Country and contemplate the protection of the environment and the conditions for the existence of an efficient and fair market. This last condition would be guaranteed by the consumer protection in its broader and genuine sense - from the guarantee of free competition and of the guarantee of the consumers' individual and collective rights, as the two sides of the same coin.

The CDC, although being a law fundamentally focused on the guarantee of the consumers' individual and collective rights, in several moments mentions, as it could not

leave aside, the concern with the protection of the economic interests and the harmonization of the consumption relationships, also considering the market angle and using typical mechanisms of “antitrust” legislation. Therefore, there are elements in the Code that denote a connection between the consumer protection and the protection of competition, although this subject is not explicitly set. Such fact is evident especially in the following articles of the Code:

a) in the *caput* of the 4th article, which deals with the National Politics of Consumption Relationships, when it relates, among the objectives of such Politics, the protection of the consumers' economic interests and the harmony of consumption relationships, and in its incisos III and VI:

*“III - the harmonization of the participants' of the consumption relationship interests and **compatibility of the consumer's protection with the need of economic and technological development, as to make the principles in which the economical order is founded, possible** (art. 170, of the Federal Constitution), always based on good-faith and balance in the relationships between consumers and suppliers;” (in bold)*

*“VI - **efficient restraint and repression of all abuses practiced in the consumption market, moreover, the unfair competition and improper use of inventions and industrial creations of marks and trade names and distinctive signs, that may cause harm to the consumers;**” (in bold)*

b) in the 6th article, that deals with the consumer's basic rights, in its incisos II and IV:

*“II - the education and publication of the appropriate consumption of products and services, **assured the free choice and the equality in the recruitments**” (in bold) (observation: the free choice and the equality in the recruitments are typical conditions of free market, where the free competition prevails).*

*“IV - the protection against the misleading and abusive publicity, **coercive or disloyal commercial methods**, as well as going against abusive practices and terms or imposed in the product supply and services; (in bold)*

c) in its article 39, which deals with abusive commercial practices, in its incisos V and X:

“V- to demand excessive manifested advantage from the consumer;”

“X- to raise without fair cause, the price of products or services.”

From the reading of the articles above, the existence of a close connection between the consumer's stricto sensu protection, with the protection of competition, aiming at the final welfare of the consumer citizen is clearly related. Such fact is still more evident when we analyze the model adopted for the federal entity responsible for the consumer protection in a wide sense - the Economic Law Secretariat -SDE, from the Ministry of Justice.

The CDC says, according to the above related, that the Department of Consumer Protection and Defense, the - DPDC, integrating organ of SDE (MJ), is the entity of coordination of the National System of Consumer Protection policy, including a series of attributions seeking implement, consolidate and develop the consumer protection in the country. The SDE is responsible, at the same time, under the Law no. 8.884, dated from June 11, 1994, known as the “antitrust” Brazilian law, through the Department of Protection and Economical Defense - DPDE, of caring for the protection of competition, supervising the execution of the “antitrust” law and following the market practices, sending Administrative Council of Protection of Competition - CADE, for judgment, the cases which it may establish, when understood that there is clear economical order infraction. The idealized model which has been working for some years, contemplates then, the consumer stricto sensu protection and the protection of competition, treated in the same entity in the federal scope.

One may ask: would there be conditions for the exercise of consumer's rights, for the application and fiscalization of the CDC, and finally, for the guarantee of legal conditions in the consumption relationships without free competition, without a free market? At the same time, would under free market regime, considering the existent practical limitations in the real world, it be possible to obtain efficient and just conditions for consuming citizens by only applying the “antitrust” legislation? These are questions which we do not intend to answer here, but only to point at elements which may help in the reflection of the subject.

5 – THE CONSUMER PROTECTION NATIONAL SYSTEM - SNDC

As already related, the article 105 of the CDC and the 2nd article of Decree no. 2.181/97, the organization of the SNDC was generically defined. The Department of Consumer Protection and Defense, or DPDC, of the Economic Law Secretariat, SDE, of the Ministry of Justice, and the other official organs and civil entities of consumer protection, integrate the SNDC.

According to Roberto Freitas Filho¹³, the official SNDC organs of consumer protections are, as applied in the Law no. 8.078/90, for administrative protection aim, applying the sanctions foreseen in the article 56 of the referred code.

The article 106 of the CDC determines that the DPDC is the coordination entity of the Consumer Protection National System policy.

The 4th article of Decree no. 2.181/97 establishes that, in the extent of its area of performance and competence, consumer protection State, Federal, District, and Municipal organs created according to the law are responsible specifically for this purpose, to manage the attributions and the administrative protection of the Consumer Protection Code and correlated legislation.

The responsibility for the fiscalization and application of the CDC is therefore, concurrent among the Union, States and Municipal districts. The official organs of consumer protection, in the state and municipal levels are the PROCON.

From the interpretation of the legislation, what may be inferred is that the SNDC was designed imagining the united, competitive and complementary performance of the official organs of consumer protection, in its several spheres (federal, state, of Federal district and municipalities), with an interface and cooperation overlapping with the civil entities of consumer protection.

There are, however, entities which, for the effects of their performance, should observe Law no. 8.078/90, a federal law which has full validity and effectiveness *erga omnes*, without constituting specialized organs in the consumer protection perspective.

The performance overlapping between the SNDC and the Public Prosecutor services (district attorneys) are relevant and deserve distinction, as well as the other

¹³ Roberto Freitas Filho, O Sistema Nacional de Defesa do Consumidor e as Agências Reguladoras, July 2000, being printed.

entities and institutions which act directly or indirectly in the protection of consumers' interests, although they are not consumer protection typical organs, as: the regulatory agencies, the sanitary surveillances, the Superintendency of Private Insurances, SUSEP, the entities of metrology system, normalization and quality (the Metrology National Institute, Normalization and Industrial Quality - INMETRO and the institutes of weights and measures-IPEM), the Central Bank, Public Defender services, the agricultural protection entities, the Brazilian Institute of Tourism - EMBRATUR, the environmental entities among others.

The consumer protection, in a wider sense, is therefore managed in a decentralized way and without a specific coordination. In the scope of the consumer protection organs, which integrate the SNDC, collective management guidelines are aimed at, particularly for treating the relevant questions.

The Public Ministry (Public Prosecutor Service) is responsible for the consumer protection in the judicial sphere which involves harm to consumers. The Public Ministry, especially through the Specialized Consumer Prosecution Offices, has been playing a growing role in the protection of the community's interest.

Some organs and institutions, especially the regulatory agencies and the Central Bank, deal with themes of great importance for the citizens' lives, as the financial system and the public services (water, electric energy, telecommunication, fuel, health plans, sanitary surveillance, among other), therefore, its performance has great impact for the consumers. Such entities and institutions are not, however, typical consumer protection entities and, consequently, do not integrate the SNDC, for the following main reasons:

- 1) Its main mission is not the consumer protection, but the preservation of the market, with focus turned towards the guarantee of appropriate price, quality conditions and offer of rendered services, besides the preservation of the users interests;
- 2) Its largest commitment is with the efficiency of service execution and not with justice in the established consumption relationship;
- 3) Its actions are fundamentally ruled by the specific legislation of the regulated sector, being the CDC usually used as subsidiary or complementary legislation;

- 4) It does not apply the sanctions foreseen in the CDC, but just those of the specific legislation of the regulated sector (they do not perform the administrative protection of the CDC).

In order to make the united performance of the official organs of consumer protection from different government spheres viable, a systematic of coordination was designed, which considers the federal organ, the DPDC, as the entity of coordination of the SNDC in the national scope; the state PROCON as the entities of coordination of the Consumer Protection State Systems; and the municipalities PROCON as the coordination entities of the Municipal Systems of Consumer Protection. Therefore, the DPDC would act fundamentally with the optics, with the perspective, aiming at those cases of national relevance or comprehension; the state PROCON aiming at those cases of state relevance; and the municipal PROCON aiming at those cases which happened in the county.

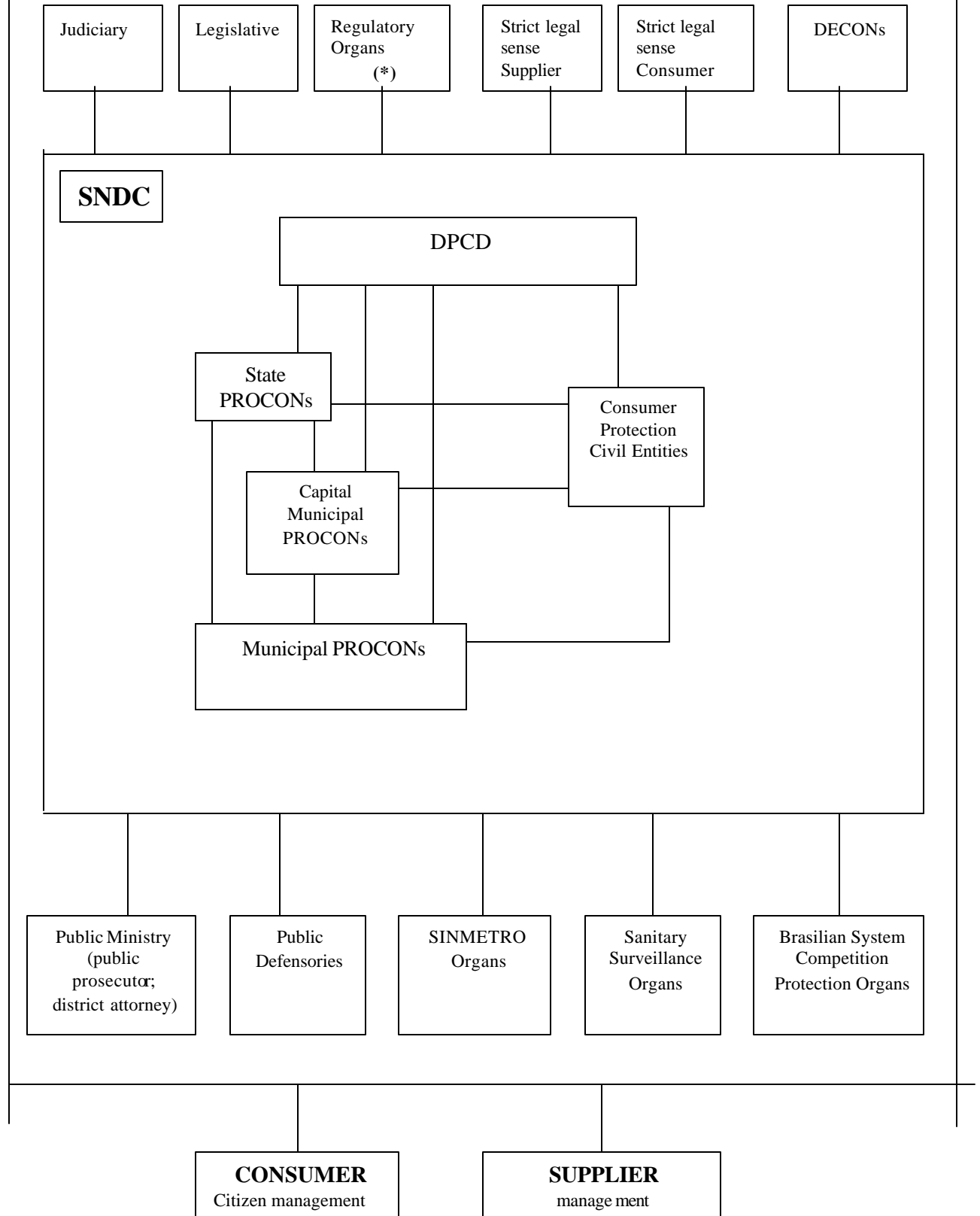
From the reading and interpretation of the CDC determinations, we can infer the competences of the official entities of consumer protection as being the following:

- a. The Municipal PROCON with attributions to, in the scope of its area of performance: elaborate, coordinate and execute the county policies of consumer protection; supervise the consumption relationships; attend the consumers; and act on the administrative protection of the law.
- b. The States PROCON and the Federal District one with attributions to, in the scope of its areas of performance: to elaborate, coordinate and execute the state policy of consumer protection; supervise the consumption relationships; attend the consumers; and act on the administrative protection of the law in the extent of the state.
- c. The DPDC, in the condition of federal entity, with attributions to coordinate the SNDC policies and the performance, promote both the consumers and suppliers education and understanding as for their rights and duties, foment the creation and improvement of organs and entities of consumer protection; promote the consumer protection; supervise the consumption relationships and to act in the cases of national relevance; and act on the administrative protection of the law in the federal extent.

In a simplified way, we may imagine the management of the consumer protection in Brazil as illustrated in the chart below:

CONSUMER PROTECTION

(*) Regulatory Agencies, Central Bank, SUSEP, etc



For best explaining the inter-relations among the official entities of the SNDC, it is necessary to explain the relationship of the DPDC with the PROCON.

According to Roberto Freitas Filho¹⁴, the official entities of the SNDC possess the following characteristics:

- 1 - they are endowed with functional and operational autonomy and independence - different governmental spheres - federal, state, of the Federal district and county;
- 2 - they are not submitted to hierarchical order;
- 3 - they are joined due to the synergies of protection and defense purposes, which inspire them;
- 4 - their inter-relationships are turned towards the optimizations of their work programs.

Therefore, there is no hierarchical relationship of the federal entity with the state and municipalities entities, not even the state ones in relation to municipalities ones, from the administrative and ruling point of view. There is, according to what was mentioned above, a relationship of coordination of policies between the federal organ and the state and municipalities ones, and between the state ones and municipalities ones.

Best explaining: the DPDC possesses a coordination relationship towards the States PROCON. Moreover, the States' PROCON execute a coordinating function in its competence scope, towards the Municipalities' PROCON.

Roberto Freitas Filho¹⁵ defines the meaning of “coordination” of the Consumer Protection National System Policies, attributed to the DPCD. He begins by raising some questions, for then, present his understanding on the theme. To what extent is this so called "coordination" done? What is that coordination? How does it take place? The coordination to which the law refers, is the coordination of the SNDC policy (art. 106 CDC). The policy to which the law refers to is a group of objectives that inform a certain governmental program and condition its execution. One of the plans where the consumer specific protection is developed, is the administrative. The author concludes by saying that the SNDC policy is this group of objectives that inform the administrative action of the consumer protection and condition it.

¹⁴ Roberto Freitas Filho, O Sistema Nacional de Defesa do Consumidor e as Agências Reguladoras, July 2000, being printed.

¹⁵ Roberto Freitas Filho, op. cit., July 2000, being printed.

The DPDC is the coordination organ of this governmental action for the consumer protection. Besides a Government Policy, the SNDC policy is a State Policy, determined by the Constitution and by the law.

The understanding of what should be the role, the institutional mission, of the federal entity of consumer protection, the DPDC, from the contextualized and systemic interpretation of the law and the understanding of the dynamics of the SNDC operation, indicates the following main guidelines for the entity's performance:

- 1- The Coordination of the National System of Consumer Protection Policy -SNDC;
- 2- Promotion of the consumer and supplier education and awareness as for their rights and duties;
- 3- Foment to the creation and improvement of consumer protection organs and entities;
- 4- Preventive performance, normative and repressive in national relevance cases;
- 5- Coordination of actions and efforts and technical solution search and orientation that may propitiate greater effectiveness and efficiency to the SNDC performance;
- 6- Promotion of consumers protection vision within the organs, entities, institutions and other forums where the consumer's interest matters are being dealt with.

The official consumer protection entities are responsible for the application of the Law no. 8.078/90, respecting some institutional theoretical aspects and the practical character of the SNDC. They are: 1) the action of consumer protection entities towards the consumers/individuals complaints must happen locally whenever possible;. 2) for those cases in which there is relevance of the subject treated in the state scope, the action should be that of the State. 3) for those cases of national relevance, the subject must be treated by the federal organ. 4) the lawsuits and the direction of the protection policies and the consumer protection should be coordinated by the federal organ, in national level, and in the respective State PROCON, in the state level, in the respective State Systems of Consumer Protection - SEDC, and by the Counties PROCON, in county level, in the respective County System of Consumer Protection - SMDC. 5 - the federal organ and the state organs should act as facilitators to the work of other local organs and

civil entities of consumer protection, gathering for that purpose, information which may interest the consumer protection in order to provide feedback to the SNDC.

Therefore, the local organs of consumer protection, the Municipal PROCON, will attend the individual, in the form inspired in the 4th article, of the Law no. 8.078/90. The State PROCON will coordinate the performance of the local organs, in its area of performance, and it will concentrate the information of counties PROCON. Identifying a pattern of register, which is relevant for the state sphere, the state PROCON will then treat the subject. The same logic will be followed by the federal entity.

The fundamental complaint register is a good example of the necessity of information coordination in the SNDC scope. According to the Article 44 of the CDC, the consumer protection public agencies will maintain updated registers of fundamental complaints against product and service suppliers, having to publish it annually, indicating whether or not the complaint was assisted by the supplier. It is worth emphasizing that a based complaint register against suppliers, which is dynamic, reliable and appropriately managed, can become an important instrument of consumer protection, once it will make information possible, which may help in the decision solution for the consumer and it will certainly contribute to sift the market, hindering the permanence of the bad supplier. Those registers are a type of counterpoint to the consumer's registers maintained for suppliers consultation, in matters related to the credit protection.

In relation to the fundamental complaint registers, Antonio Herman de Vasconcellos e Benjamin¹⁶ comments that the state files preserve information that have to do with the behavior of suppliers in the market and that such files are under the control of state agencies, little mattering if the agency does not dedicate itself, totally and exclusively to the consumer protection. Still according to Herman Benjamin¹⁷, the state files should contain qualified information for the teleological character of the law. He continues by saying that it is evidently information "against suppliers of products and services." In addition, it points out that it is not to any information. The necessary fundament is demanded, in other words, something that supports it. A purchase bill, a product's photo, a receipt, a supplier declaration, a newspaper advertisement, any of this

¹⁶ Antônio Herman de Vasconcellos e Benjamin, Código Brasileiro de Defesa do Consumidor – Commented by the Authors of the Antiproject, Forense Universitária, 6th edition, July 1999, page 424.

is enough. Benjamin¹⁸ explains that the fundamentated complaint is not only the one which has a final agency's view. "A fundamentated complaint " qualifies the one which has *fumus boni iuris*. It is the one which is not clearly improper. Decree no. 2181/97 defines a fundamentated complaint in Article 58 as: "the news of threat or harm to the consumer, the request or the register is analyzed by the public consumer protection organ, proceeding with definite decision".

According to Decree no. 2.181/97, articles 3rd and 4th, it is the Municipal's PROCON duty to elaborate and publish annually the county's based complaint register against suppliers of products and services. The same way, it is the State's PROCON duty to consolidate, to elaborate and to publish the state based complaint register annually against suppliers of products and services. As consequence, it is the DPDC's duty to consolidate, to elaborate and to publish annually the national based complaint register against suppliers of products and services. It is obvious, therefore, in the related example, the need of information coordination among the official agencies that integrate the SNDC.

It is worth pointing out that the consumer protection official agencies, besides the performance in the sense of the administrative protection of the CDC, also act with the consumption education, the harmonization of consumption relationships, promotion of "vision" of consumer protection, as well as the promotion to the creation of agencies and local entities of consumer protection.

Consumer protection agencies' performance decentralization is also called consumer protection municipality responsibility, and is fundamental for the success of SNDC performance. The local consumer protection organs are closer and more identified with consumers and suppliers of the region, having more performance legitimacy. Meanwhile, they manage to develop their actions with more agility, having conditions of promptly interacting, when the case, with the other agencies and local institutions, such as civil entities, sanitary surveillance or Public Prosecutor, among others. In addition, the existence of local consumer protection organs enables specialized and dedicated communication channels for citizens' use. These are some of the aspects which demonstrate the need of consumer protection municipality.

¹⁷ Antônio Herman de Vasconcellos e Benjamin, op. cit., page 425.

¹⁸ Antônio Herman de Vasconcellos e Benjamin, op. cit., page 425.

It is worth pointing out that consumer protection organs performance decentralization implies in a greater need of incrementation and coordination at state and federal levels, from SNDC, in order to provide more effective results to consumer citizens.

The implementation of countless actions in the Consumer Protection National System scope, stimulated the appearance and strengthening of consumer protection agencies and entities, which allowed enlarge the dimension of the consumer right practically in the whole Country.

Decree no. 2181, dated from 20.03.97, when establishing the attributions of the state and municipal agencies of consumer protection, contributed significantly to the effective decentralization of the fiscalization activities and consumer protection, as to the harmonization of interests among the federal agencies, state and municipalities that act in the area.

According to census 2000, from the Brazilian Institute of Geography and Statistics - IBGE, more than 700 PROCONs exist now in Brazil, among state and municipal ones. The recognized consumer nongovernmental organizations are around 50.

Civil entities represent segments with different profiles, such as housewife representation groups, consumers pro-citizenship, and community movements in general, who are all seeking judicial protection of their associates. In addition, Specialized Consumer Police Stations, Public Consumer prosecutor's offices, Public Consumer Defensories, Consumer Protection Commissions in the Federal, State and Municipal Legislative power were created.

The consumer protection civil entities have been occupying an important space, raising relevant subjects of debate, mobilizing segments of society, activating the responsible agencies, presenting concrete proposals to consumers' interest issues and attending its associates.

The experience shows that the consumer service, in cases of individual complaints, should be done by the consumer protection local organ, the municipal PROCON, for the main reasons numbered as follow :

- a) Easy access to the consumer and the supplier;
- b) It knows the region's particularities and it is present in the everyday life of the community, therefore, it has better conditions to touch and mobilize the community and to develop actions aimed at the consumer's education and the harmonization and improvement of the consumption relationships in the area;
- c) It has a group of inspectors that may be quickly mobilized if necessary;
- d) It may supply prompt information and due orientations and promote the necessary conciliation to the resolution of the consumer problem, as well as process, regularly, the based complaints;
- e) In the scope of its area of performance and competence, it is the consumer protection local organ responsible, created in the form of the law, specifically for this end, to exercise the attributions foreseen in the consumer protection legislation, in particular those stipulated in the Decree no. 2.181/97;
- f) It may, if it is the case, mobilize the other local organs quickly (Public Prosecutor, Consumer's Police Station, Sanitary Surveillance, among others), as well as take other reasonable measures, as to determine the end of the practice, to interdict the establishment, to apprehend the product, etc;
- g) It has conditions of organizing and publishing the register of based complaints of its region.

6-A SNDC BRIEF DIAGNOSTIC

6.1 - FAVORABLE POINTS TO THE SNDC

The official consumer protection organs, the PROCONs, possess nowadays enormous recognition and credibility within the society, the result of ready and present work in the last years. This is, probably, one of the strongest points of the SNDC in the present moment

The ramification of the Consumer Protection National System, manifested in the great number of existent organs and in its wide performance, is another significant point. The power of system mobilization, as referring to the performance of the organs as a whole, as well as to the involvement and engagement of society, is quite large and it

constitutes fundamental element of “convincing” companies, groups and market segments to seek the road of understanding and harmonization of the consumption relationships.

The diversity of agents involved with the consumer protection, directly or indirectly, like the PROCONs, civil entities, Public Prosecutors, regulatory agencies, among others, in several situations, multiplies the action power in the consumers' favor.

The Judiciary is more and more sensitive to the subjects concerning the consumer's right, as reflex, among other reasons, of the positive performance of the consumer protection organs. In this sense, the courts have produced more and more favorable decisions to the consumers, which stimulates the companies to seek for the agreement course with the consumer protection organs to solve eventual conflicts.

The consumer protection organs count with a good legal instrument, the Law n° 8.078/90-CDC, to supervise the consumption relationships and to exercise the other activities that are attributed to it. The fact that the law has established principles and has presented examples, instead of only defining final statements, contributed a lot to the interpretation and framing of the new situations arising out of the new technologies and of the market dynamics, which facilitates the work of the consumer protection organs and makes quicker and better ended results possible.

6.2-THE SNDC’S MAIN DIFFICULTIES

Even considering the expressive numbers of consumer protection agencies and civil entities, with excellent public recognition, the absolute majority of PROCON and civil entities have a reduced infrastructure and a lot of difficulties to accomplish their objectives, mainly if we take into account that consumers' demand has been rising significantly year after year, due to the larger popularization of the Consumer Protection Code, due to the consumer's larger understanding regarding his rights and to the possibility to solve his problems through complaint to the consumer protection agencies. Despite the number of local consumer protection agencies, municipal PROCONs, has increased significantly along recent years, it is still insufficient for the effective consumer protection in all the Country's regions.

Several factors clearly indicate the difficulties for the performance of the SNDC agencies, especially:

- 1) The significant regional disparities, which are reflected in different work conditions for the consumer protection agencies considered from a region to another ;
- 2) The lack of resources for the agencies and entities that result, most of the time, in precarious work conditions;
- 3) The continental dimensions of our Country, with an expressive number of municipalities, more than 5.500, distributed along the territory;
- 4) The dynamism of the economic activity makes the companies launch new products and services into the market daily, accompanied by new commercialization practices;
- 5) The multiplicity of judicial decisions related to the consumers' interests spread all over the Country;
- 6) The enormous social, economical and cultural disparities among the several layers of the population, with a great contingent of people with very low education and instruction levels.

The difficulties of coordination of the SNDC, in its several levels, are evident. The federal organ does not adequately manage to exercise its role of policy coordinator of the Consumer Protection National System, and in the same way, the State PROCONs do not also manage to accomplish, in a full way, the coordinator roles of the Policy of the Consumer Protection State System. The situation repeats itself in the municipalities. This coordination difficulty brings direct consequences for the operation of the SNDC, while System, especially regarding the optimization of the available resources and the harmonization of agreements and actions. Several factors can be pointed as the causes of this state of things, as, for instance:

- 1) The lack of resources (human, financial and material);
- 2) The political institutional situation (political-party divergences and dispute for space and power among the agencies that integrate the SNDC);
- 3) The lack of clear delimitation of the agencies performance limit, especially the federal agency and the state ones;

4) The inexistence of an integrated information system of consumer protection; among others.

Consumer protection decentralization, by performance of local PROCON, also called municipilization of consumer protection, although important for the success of the performance of the SNDC, as previously mentioned, sometimes implicates in practical order practice for the optimization of results produced by such organs.

The municipal PROCON is subordinated to the mayoralty; therefore, its manager responds to the mayor. It is constituted in common fact, mainly in smaller cities, that the groups economically dominant in the area exercise strong influence in municipal projects. As a result, the manager of the local consumer protection organs act under political pressure, in a way not to harm interests of suppliers of the area, which hinders and sometimes impedes, an absolutely free and exempt performance of the agency, with negative consequences for the consuming citizens. That is a problem which, depending on the magnitude and intensity in which it happens, may jeopardize the effectiveness of the performance of the consumer protection local agency significantly. Such situations will just be overcome with education and the consuming citizens' information, besides the organization and participation of society.

Communication, integration and information are fundamental instruments to potentiating the consumer protection, then the importance of the Consumer Protection Integrated System of Information. Such System should be constituted in a computerized communication network, interconnecting the agencies that act in the consumer protection, with information produced in the SNDC integrating agencies scope or of their interest. It is a strategic instrument in the integrating and consolidating process of the SNDC. Once it will make an effective communication overlap among the agents of the system possible, it will allow the exchange of information and of experiences. It will also establish a communication overlap with society, giving the consumers access to patterned information, and it will propitiate the organization of work and managerial information that will provide better conditions for the coordination and larger effectiveness in the aim of the SNDC actions.

A political-institutional situation of the SNDC is really particular and complex. As already mentioned previously, there is no hierarchical relationship between the DPDC and PROCONs and among the state and municipal PROCON. The consumer

protection agency managers are nominated: by the governors, in the case of the state PROCON, by the mayors, in the case of municipal PROCON, and by the Justice Minister of State, in the case of the federal agency. Therefore, distinct political forces, representing interests, several times different, interact in the process. At the same time, society demands actions and results from the Consumer Protection National System.

In face of the political-institutional picture presented in a quite brief way, the difficulties of SNDC coordination are quite evident, in all levels. The lack of resources, the enormous disparities among agencies, precarious work condition of DPDC and the inexistence of a communication system and efficient exchange of information, may also be added to this situation. The result is a great coordination and SND consolidation difficulty, resulting in harms for the best effectiveness of the System actions.

Another important aspect, which hinders the work of the SNDC excessively, is the lack of clear role definition of each of the official agencies integrating the system. Several questions related to this topic are frequently raised, a good part of them remain without definite answer, since it is not approached directly by legislation. Such as: Should the Federal Organ treat individual complaints? Should the State Organ treat individual complaints when the respective municipal PROCON exist? Should the Federal Organ have authority to solve conflicts of other agencies' competence? Similarly, should the State agency have authority to solve conflicts of jurisdiction among municipal PROCON of its State? May the Federal organ ask for processes established in several PROCON, against a same company, for a same fact, and finally decide the matter? In the same way, can the State PROCON ask for processes established in several municipalities of its area of performance, against a same company, for a same fact, and finally decide the matter?

Several of the questions above related may result in discussions in the judiciary. For instance, in the case of different decisions, related to a single complaint, issued by consumer protection different organs, a decision at municipal PROCON scope, for disconsidering and another, at State PROCON scope for the application of a sanction. Or still, if two agencies decide for the application of fines, with absolutely different values, the agencies define different rules for treating the same subject. The attendance of "recall" cases, by the official consumer protection agencies is a typical example

where situations of this nature may happen; another representative example lies in the cases of public services rendered in the controlled markets.

Therefore, there are elements that point at the need of review of part of the legislation, especially the Decree no. 2.181, of March 20, 1997, that regulated the CDC (“it disposes upon the organization of the Consumer Protection National System, the - SNDC, it establishes the general norms of application of administrative sanctions foreseen in the Law no. 8.078, of September 11, 1990, it revokes the Decree no. 861, from July 9, 1993, and it takes other measures”).

7-THE CURRENT STATE OF CONSUMER PROTECTION IN BRAZIL

The Consumer Protection Code has reached along these ten years, great repercussion within society, causing a change in consumption relationships, alerting expressive groups of Brazilian citizens to their consumer rights. Companies in general, have began respecting their customers more, creating in addition to this, the so called CAS - Consumer Attendment Services.

The implementation of countless actions in the Consumer Protection National System scope, encouraged the appearance and strengthening of consumer protection agencies and civil entities, which allowed the enlargement of the consumer's right dimension in practically the whole Country.

With the beginning of the Consumer Protection Code, a new moment for Brazilian citizenship was established. The CDC represented an immense progress in the search of fairness between producers/suppliers and Brazilian consumers, being considered an extremely advanced legal document, even for the patterns of the so called “first world.” However, the referred law does not automatically guarantee, a change of behavior from the parts involved in the consumption relationships. It is indispensable, in order for the law to reach its objectives, all consumers conscience awareness, on the rights that it protects.

The difficulties to make the Brazilian society know the Consumer Protection Code, and therefore, it can make its rights respected daily, are evident. The challenge of enlarging and making the consumer protection more effective in a country of continental dimensions, with enormous population contingent and outstanding regional differences,

will only be achieved with communication and education instruments, which are, at the same time, effective and extensive.

In spite of this progress and the results already achieved in recent years, we must recognize that in several layers of society citizens still ignore their basic consumer rights, especially in those parts of society with lower instructional levels, or with smaller access to the means of communication. At the same time, it is necessary to produce more effective and lasting results in the SNDC actions scope.

A lot still needs to be done. Several market segments are still responsible for the enormous volume of complaints from consumers, within the consumer protection agencies. Some examples include, the financial sector, health plans, the telephony system, electric power supply, insurance, school fees, among others. Another fact to be considered is that only about 15% of Brazilian municipalities count with consumer protection official agencies.

In general, the SNDC's organs still have little expressive acting in some market segments or when fighting determined commercial practices. Examples of this can be seen in deceiving publicity, in the credit market, in electronic business (internet business), in data banks, and in consumers registers, among others.

Another subject of great impact for consumer protection in Brazil is that the country's economy has changed significantly in recent years, especially since the implementation of the 'Plano Real' in 1994. The economy was much more dynamic, the market was opened to international trade, the internal competition was encouraged and expanded, the level of economy regulation decreased and several public utilities services were privatized, deserving distinction activities related to: telecommunications; electric power; fuel exploitation and distribution; and administration/maintenance of highways. The change in health policy, which has resulted in the "privatization" of medical and hospital assistance for most part of the Brazilian population, in face of health plans use, is another subject that directly affects the consumer protection agencies.

If on one hand the economy was going through a dynamic process, on the other, the government's agencies, directly or indirectly in charge, would not be, in general, adequately prepared to deal with this new picture. In this new economic, technological and social environment, two other types of governmental intervention became crucial to widespread and enforce consumer protection rights and well-being of citizens: regulation

and antitrust laws enforcement. At the same time, the introduction of technological innovations in products and services and the speed and complexity of the trade relationships has been growing in an impressive way. Therefore, new and still not pacified situations in the SNDC scope or in the judiciary, constantly appear. We can mention some examples that illustrate this state of matters: the transgenic, the cellular telephones, the e-commerce, etc.

In this economic environment, it is very important to know a little bit about issues related to regulation, antitrust practices, the importance of information for competition and the role of the news media in informing citizens, to understand consumer protection in a broader perspective. Therefore, next section is going to present, in a short way, a little about each one of these subjects, showing how they are important for improving consumers' well-being.

8 – CONSUMER PROTECTION IN A BROADER PERSPECTIVE

8.1 - REGULATION

Industries with important network features have long been a concern of public policy in almost all the countries. Those public concerns have been lasting for many years for a great number of industries with important network elements, such as: railroads, telephone, broadcasting, cable television, electricity, water pipelines, sewage systems, oil pipelines, natural gas pipelines, road and highway systems, bus transport, truck transport, airlines, inland water transport, ocean shipping, postal service, package delivery systems, refuse pickup systems, airline computer reservations systems, bank and non-bank credit card systems, bank debit card systems, bank check and payment clearance systems, local real estate broker multiple listing services, and internet. The long-standing public policy concerns over network industries are not accidental because those industries often embody two major and widely recognized forms of potential market failure. These are significant economies of scale, with the potential for monopoly, and externalities. Common features of networks include externalities, economies of scale, compatibility, and standards. Nevertheless, measures to address

those concerns have many times been misguided, resulting in inefficient and anticompetitive regulation and government ownership of network industries.

Regulation is government intervention in economic activity using commands, controls, and incentives. Regulation takes place through a public process that is open and allows participation by interested parties. In contrast to antitrust, regulation is not implemented through judicial institutions but instead by independent commissions and agencies of the executive branch. The courts, however, have played an important role in interpreting regulatory statutes, determining their constitutionality, and ensuring that regulatory decisions satisfy due process requirements.

Two theories have been offered for explaining the locus of regulation. The first is the theory of market imperfections, which predicts that regulation will be instituted to improve economic efficiency by correcting those imperfections. The second theory is political and predicts that those interest groups that are able to organize and generate pressure will be able to obtain regulation that serves their interests. The main types of market imperfections are natural monopoly, externalities, public goods, and asymmetric information, moral hazard, and transactions costs.

According to the definition, a monopoly is natural if one firm can produce a given set of goods or services at lower cost than any other number of firms. A natural monopoly results when costs are decreasing in the scale of a firm or in scope of its products or services. The classical theory of natural monopoly predicts that a monopolist will restrict its output resulting in a price above marginal cost. The restriction of output causes economic inefficiency because some consumers who would be willing to pay the cost of the resources expended to satisfy their demand are prevented from doing so by that restriction. This inefficiency is referred to as a deadweight loss, since an opportunity to achieve benefits is foregone.

Before concluding that regulation is warranted under the natural monopoly rationale, two questions must be answered. The first is whether there are any natural monopolies, and if there are, the second is whether significant economic efficiency would be gained by regulation. Economies of scale and scope certainly exist over some sets of goods and services, but these economies can be exhausted at output levels that allow more than one supplier to persist in the market. Empirical studies indicate, for example, that the large electric power plants in the United States have exhausted the

achievable economies of scale. A natural monopoly can also result if having more than one supplier would result in an uneconomical duplication of facilities. Local electricity distribution systems within cities may remain a monopoly to avoid duplicate sets of distribution wires. This rationale does not necessarily apply in the telecommunications industry, since cable television and wireless communications systems provide alternatives to the local wire connections.

If there is a natural monopoly, it does not necessarily follow that there is substantial economic inefficiency. First, if entry into the industry is easy, the threat of potential competition may limit the extent to which an incumbent monopolist can restrict output. Second, a monopolist may choose to use a nonlinear pricing policy, involving fixed charges and a low unit price, which can both increase profits and benefit consumers. Third, if there are a number of possible suppliers of a monopoly service, competitive bidding for the right to be the monopolist can be used to lower the supply price and increase economic efficiency. Similarly, an alternative to the regulation of the electric power industry is for communities to own the local distribution system and bargain with power companies for the supply of electricity.

In the early part of the twentieth century, destructive competition was said to provide a rationale for economic regulation in some industries, especially in the airline and trucking industries. Competition, it was argued, would be so intense that it would drive firms out of the industry, leaving only a few remaining. Economists now reject the destructive competition argument on two grounds. First, intense competition is good, because it provides strong incentives for efficiency and passes the efficiency gains on to consumers. Second, competition is likely to result in efficient firms remaining in the industry and inefficient ones being driven out. Unless there are substantial barriers to entry, new firms will enter, sustaining competition and holding down prices.

Market imperfections in many cases warrant government regulation. In some cases, however, regulation may be a cure that is worse than the disease. Wof 1979, p. 138, for example, argues that government intervention to deal with a market imperfection or failure may itself be subject to a “non-market failure”. He argues that the market failure “rationale provides only a necessary, not a sufficient, justification for public policy interventions. Sufficiency requires that specifically identified market

failures be compared with potential non-market failures associated with the implementation of public policies.

Regulation is not perfect and even well-intentioned regulation can in some instances worsen the performance of markets. In addition, regulation is not always intended to correct market imperfections but instead can be the result of political forces that serve interest groups rather than economic efficiency. Sometimes regulators, through contact with the firms they regulate, begin to see firms' problems as their own. Regulation then, involves over time to serve the interests of regulated firms in addition to, or instead of, the goal of economic efficiency.

Regulation can also be used for a variety of purposes, including the redistribution of wealth and the redistribution of income among classes of consumers through cross-subsidization of one customer class by another.

We are especially interested in the infrastructure network industries that have monopoly power of local utilities. In Brazil's case we can point those industries that were state owned and that were privatized in recent years, such as electrical energy, telecommunication, etc. Other activities that are controlled by the government, such as health care, highways, insurance, environment issues, finances activities, fuels, etc, also have special importance from the point of view of regulation.

The institutions in charged of regulating the markets of recent years privatized public service in Brazil, were created and organized in a hurry, from models adopted by other countries, in particular, the American model. Therefore, there wasn't any consolidated experience nor legislation on market regulation in the country.

Actually, the privatization process in Brazil was carried out before the creation and development of the regulatory agencies and the regulatory framework. It takes time to build up and to consolidate an adequate regulatory framework. Therefore, the regulatory agencies were, somehow run over by industries' interests, political and social pressures. Without an established regulatory framework or, in other words, without stable rules and policies, the regulatory risk increases and so the cost of the private investments for the whole society.

Another important thing to recall is that the most important goal of the privatization process in Brazil was to attract foreign investments, considering that there were no more governmental funds available. To make this possible, overcoming the

country's risks established by the financial market, some attractive conditions, related to high rates of return, had to be settled in the privatization contracts.

It is worthwhile to point that the economic regulation fulfilled by the regulatory agencies demand high skilled professionals. The regulatory activities are very specialized and demand years of practice to form good professionals. Therefore, the agencies have to have good wages, training programs, adequate resources and a well developed information system focused in the regulated industries. It is worth emphasizing that the regulatory agencies in Brazil do not have, up until now, permanent staff. This situation contributes to make things more erratic.

One of the problems that the agencies have to deal with is the asymmetric information. Market participants have all the information needed to make informed choices. For firms, this means knowing technology, input costs, among other important information about the industry's operation. On the other side, regulators, as industries outsiders, have to have all the necessary information to do a good job. It is not an easy task. The costs of operating a regulatory agency may exceed the deadweight loss associated with monopolistic activities. Moreover, regulators can find it difficult to obtain the information necessary to achieve a more efficient output and mistakes may be made.

The regulatory agencies are subjected to be captured by the industries they have to regulate. This capture theory predicts that regulation will be found where there are market imperfections and that over time regulation will evolve to serve interests in the regulated industry. Therefore, governments have to be aware of this potential problem and to develop mechanisms to avoid this undesirable situation.

Some regulatory agencies in Brazil are facing, sometimes, identity crisis, swinging between consumers on the one hand and regulated firms on the other hand.

The regulatory agencies have a relevant role in economic citizenship protection and its decisions, in general, produce great impact to markets and hence to consumers. The good work of regulatory agencies is fundamental to guarantee citizen's welfare and, consequently, to the good functioning of consumer protection, in its wider sense.

8.2 – ANTITRUST LAWS

Antitrust policy is an amalgam of social policy, economics, law, administrative practice, and school thought. Antitrust policy in the US had its origins in the populist movement of the 1870s when a number of states enacted statutes to regulate economic activity and control the exercise of economic power.

As social policy, the antitrust laws express concern about concentrations of economic power and the potential for abuse inherent in that concentration. Antitrust policy also reflects economic policy. Antitrust is concerned with the structure of markets, the conduct of market participants, and the resulting performance of those markets. Antitrust economics has both a theoretical and an empirical component. Theory has been an indispensable guide to reasoning about the relationships among structure, conduct, and performance; and empirical research has provided evidence about those relationships.

Antitrust law in the US includes statutes and the court decisions interpreting those statutes. The principal federal statutes are the Sherman Act of 1890, the Clayton Act of 1914, and the Federal Trade Commission Act of 1914. These acts are broadly worded, employing such terms as “monopolization”, “restraint of trade”, and “unfair practices”. This has required courts to interpret the acts in the context of the specifics of individual cases. Antitrust law in the US is thus both statutory and interpretative. It is also the subject of politics as interest groups, politicians, and public policy analysts seeking changes in the law.

The courts have held that there are some sufficiently egregious acts that on the face of it are violations of the antitrust laws. These are said to be *per se* illegal, and the only protection allowed is that the defendant did not commit the act. The Supreme Court established this rule in *Northern Pacific Railroad Co. v. U.S.*, 356 U.S. 1 (1958) in stating that, “There are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use”.

In contrast, other cases are considered by the courts on the basis of a rule of reason. Under this rule, a restraint of trade, for example, is illegal if it is unreasonable.

Per se violations are presumed to be unreasonable. The rule of reason was needed because much of the language of the antitrust laws is too sweeping and a literal interpretation would be harmful to competition and efficiency.

Although there have been few major changes in the antitrust statutes in recent years, antitrust has not been static, since change can result from its administration and enforcement. At the federal level, public enforcement is provided by the Antitrust Division of the U.S. Department of Justice (DOJ) and the Federal Trade Commission (FTC). During the 1980s the DOJ and the FTC made significant changes in antitrust policy through their merger guidelines, which revised the policies governing federal enforcement. Similarly, enforcement policies on vertical restraints of trade changed considerably. United States antitrust laws are enforced less by government, however, than by private litigants – often by one firm filing suit against another. Over ninety percent of the suits filed under the federal antitrust laws are brought by private litigants. Consequently, the decisions made by courts on cases brought by private litigants cause antitrust law to evolve, even when there is no legislative or federal enforcement activity.

Much of the recent evolution of antitrust law, and of antitrust policy more broadly, has been the result of changing economic and legal thought about markets, business strategies, and performance. This thought has a coherence and perspective not necessarily found in the historical record of court decisions, and it has shaped a number of recent decisions. There are some approaches, or school of thought, reasoning about antitrust. Antitrust policy, enforcement practices, and court decisions are influenced by the prevailing schools of thought about the purposes of antitrust policy and the consequences of specific practices.

The traditional or structural approach focuses on the structure of industries and on conduct that may foreclose or diminish competition. In the 1970s new understandings of the functioning of markets and the nature of competition were developed by the Chicago school of economics and have had a major impact on antitrust enforcement and court decisions. More recently, economists have challenged the conclusions of the Chicago school by considering more closely the consequences of informational asymmetries and strategic interactions among market participants. This strategic approach has qualified a number of the conclusions of the Chicago school.

Part of the decline in the use of antitrust statutes in the US is accounted for by the growing influence of the dynamic view of monopoly in the policymaking area. With international competition growing and the pace of technological change accelerating, any control by a supplier of a market at a given point in time is rendered more vulnerable, from a dynamic perspective, with the passing of time. For example, it is much harder for policymakers to attempt to prosecute General Motors or Ford today for having too large a share of domestic output given the stiff competition these companies now face from international rivals.

One of the most harmful practices for consumers adopted by markets is a cartel formation. A cartel is an agreement among independent producers to coordinate their decisions so each of them will earn monopoly profit. In general, firms can increase their profits (they may already be making some pure economic profits to begin with) if they collude.

We generally expect collusion to be more common in oligopolies than in competitive markets because there are only a few firms in an oligopolistic industry. The limited number of firms means that a fewer parties must participate in the collusive agreement, making reaching agreement easier. Additionally, monitoring is simpler when few firms are involved; it is easier to detect cheaters.

Another point is important. It is not necessary for all the firms in a market to participate in the cartel for it to be worthwhile. Several firms that produce most of the output in an industry can increase their profit by colluding, although not by as much as when the entire industry is cartelized. In this case, the colluding firms will behave as if they were one giant firm and collectively exploit whatever monopoly power they have. The remaining firms benefit from the higher price set by the colluding firms.

If cartels are profitable for the members, why aren't there many more? One reason is that they are illegal. But even before there were laws against collusive agreements, cartels were rare except when actually supported by government; when they did exist, they usually were short-lived. Three important factors appear to contribute to cartel instability: each firm has a strong incentive to cheat on the cartel agreement; members of the cartel will disagree over appropriate cartel policy; and profits of the cartel members will encourage entry into the industry.

To be successful, therefore, a cartel must be able to induce its members to comply with cartel policy (holding down output) and to restrict entry into the market. To be effective, a cartel must find some way to overcome the problems appointed. One approach is to enlist the aid of government. That is, if government will help to organize the cartel and agree to punish cheaters, then cartel policy can be effectively enforced.

Generally, government-established cartels have fewer problems than other cartels because they function within the laws. Prices are set without fear of antitrust prosecution. Cheating is not as great a concern because cartel violations can be declared illegal and violators punished. Finally, entry can be limited by requiring licenses (taxi) or making entry conditional on government approval (airlines).

Scholars disagree in which is the best way to enforce antitrust laws. The answers to just two questions separate students of antitrust into what David S. Evans (National Economic Research Associates, Regulation, Fall 2001, page. 26) call the “hands-on” and “hands-of” schools:

- ? Apart from price-fixing and similar behavior, are anticompetitive practices common?
- ? Apart from price-fixing and other sorts of cartel behavior, can the courts distinguish anticompetitive from pro-competitive practices with sufficient accuracy, and design remedies with sufficient precision, to ensure that regulation will make consumers better off?

In the last quarter-century, game theorists have developed models that imply that a wide variety of business strategies can harm consumers. That is especially so in industries with few firms that make differentiated products, which is a common real world phenomenon. For example, firms may exclude rivals by tying complementary products, adopting strategies that raise their rival’s costs compared to their own, and investing in innovation that destroys rivals.

Theory also buttresses the view that the invisible hand may work poorly in “network” industries wherein the product becomes more valuable as more people use it. Academic work from the late 1980s and early 1990s shows that (a) network industries tend toward monopoly, (b) the resulting monopolies may use inferior technologies, and (c) inefficient monopolists may be very difficult to dislodge.

To counter those charges, members of the hands-off school argue that such anticompetitive outcomes occur, in theory, only under very specific and often unrealistic assumptions. Moreover, they believe that, in the real world, it rarely is possible to differentiate anticompetitive from pro-competitive strategic behavior.

Opponents of aggressive intervention also argue that theoretical models ignore market forces that prevent anticompetitive conduct from enduring. Frank Easterbrook's research helped persuade the Supreme Court that predatory pricing was seldom effective because rivals usually could engage in successful counter-strategies. Some "hands-off" proponents also argue that interventionists miss the value to consumers gained through the creation – and subsequent destruction – of monopoly power through innovation.

Members of the hands-off school agree with their counter-parts that businesses may restrain competition and thereby harm consumers. And hands-on supporters generally agree that the courts have to look to the facts to determine whether conduct is anticompetitive. So it would seem that the courts should make the effort. And both schools recognize that courts make mistakes, sometimes convicting the innocent or absolving the guilty. But they part ways decisively on the frequency and consequence of such errors.

The hands-on school believes that a firm stance against certain business practices is worth the price of occasionally condemning pro-competitive actions, while the hands-off school sees the courts as having limited ability to differentiate practices in that way. And because the latter school believes that, apart from price-fixing and similar cartel actions, anticompetitive conduct is relatively rare, it sees the costs of inhibiting pro-competitive conduct as outweighing the benefits of deterring anticompetitive conduct.

8.2.1 – The Brazilian System of Competition Protection

The Brazilian System of Competition Protection, integrated by the Economic Law Secretary-SDE, of the Justice Ministry, through its Department of Protection and Economical Defense - DPDE, by the Administrative Council of Economical Protection-CADE, also from the Justice Ministry and by the Economical Attendance Secretary-SEAE, from the Finance Ministry, was not appropriately structured and prepared to face the new challenges imposed by the dynamics of the economical environment and of the

market in Brazil. In recent years the economy was much more dynamic, the market was opened to international trade, the internal competition was encouraged and expanded, the level of regulation in the economy decreased and several public utilities services were privatized. These factors resulted in overload for the SNDC and losses for the consumers.

In recent years this administrative System of Competition Protection has been working, in general terms, completely apart from federal police and from prosecutors. The departments that integrate this system don't have the authority to determine the federal police to act. The immediate result is that the ability to investigate and to prosecute a case gets damaged, weakening the system and its capability to enforce the law. At the same time, the institutions that integrate the System have inappropriate structures with few people and little resources.

The practical consequences of the related situation of the system of competition protection is that we have some abusive practices going on, carried out by firms or industries, with harmful consequences for society.

It is important to stress that a competitive economy, based in free market conceptions, needs a solid and structured system of competition protection in charged of overseeing market's behavior to improve economy efficiency by avoiding abusive practices and, after all, protecting consumers. It is not possible to have and to maintain competition, in the real world, without a strong antitrust law enforcement system.

Some conditions are fundamental to improve the operation of the antitrust law enforcement system, such as: to work together with the police and the prosecutors – the investigations must be conducted as if they were police cases, guided by the people of the antitrust agency; to work close with the courts – the judges should be prepared to deal with this kind of issues, under the point of view of economics, besides the legal approach.

In present-days it is impossible to think consumer protection in a broader perspective without an antitrust law enforcement system that really works.

8.3 – INFORMATION

Firms and consumers have to have all the relevant information if markets are to behave as the competitive model predicts. Economists have only recently begun to systematically analyze the acquisition of information and the way “information costs” influence the workings of markets. Lack of information on the part of consumers may result in market outcomes that deviate significantly from the competitive norm.

Information is the most powerful instrument for consumer protection in a free market economy once it allows consumers to make informed choices and, as a general result, leads to better and most efficient decisions.

In most economic analysis, whether of competition or oligopoly, it is assumed that consumers have complete knowledge of prices and product characteristics. It is clear that this assumption is often violated in the real world, and recent research has begun to analyze what effect this has on the way markets function. When information is costly, consumers are not fully informed and lack either knowledge of the prices different firms charge or knowledge of the qualities of the products they sell, or both. Under these circumstances, the prices, quantities, and qualities of goods traded can be quite different than when consumers have “perfect information”.

The competitive model has been based on the assumption that market participants have all the information needed to make informed choices. For firms, this means knowing technology, input costs, and the prices consumers will pay for different products. For consumers, this means knowing product characteristics and prices. Nonetheless, the assumption places meaningful restrictions on the models, and it is important to consider that in real world it is quite common to have market participants lack some information relevant to their decisions.

One common situation is when consumers have difficulty determining the quality of products prior to purchase. We are all familiar with “lemons”: products that repeatedly break down or perform unsatisfactorily relative to what we expected. Some analyzes suggests that a high proportion of goods may be lemons in a market where buyers are less well informed about product quality than sellers. The basic assumption is one of asymmetric information: participants on one side of the market (usually sellers)

know more about a good's quality than do participants on the other side (buyers). One market where this characteristic seems prevalent is the one for used cars.

When a real-world market functions differently than it would if consumers were fully informed, it does not mean that the market is necessarily inefficient. Informing consumers is costly, and that usually means that it is efficient for consumers to be something less than fully informed. That is, the costs of informing consumers may be greater than the benefits produced.

The way in which information is acquired and used by consumers depends on many factors, including the nature of the product and its price, and therefore will differ from market to market. For low-priced products that are frequently purchased (for example, ball-point pens), personal experience may be the most economical source of information. When goods are higher priced and are purchased infrequently (automobiles, stereos, and so on), it becomes more important to not be stuck with a lemon, and consumers take some care before making a purchase.

Now consider consumer behavior in a market where there is price dispersion. Consumers wish to purchase from the firm offering the product for the lowest price, but they don't know which firm it is. They can find out, but there is a cost of acquiring the information. Search costs are the costs that consumers incur in acquiring information; they include such things as time (making telephone calls, buying newspapers, reading the ads) and transportation between stores. There is also a benefit from acquiring price information, of course, because consumers can buy the product for a lower price. However, consumers are unlikely to search until they are fully informed about all the prices being charged by various stores. It is important to note that the theory predicts that the price dispersion falls when consumers search more (that is, become better informed). They will search more when the benefit from search is higher than the cost (in general, the benefit will be higher the greater the product's price).

Economists have a long tradition of skepticism regarding the benefits of advertising. In this view, competitive firms have no need to advertise because they can sell as much as they want at the market price (although this point is disputed), so the very existence of advertising implies that firms have some monopoly power. But advertising itself may not only be a symptom of market power – it can also help firms achieve and maintain market power. Firms may use marketing tools of persuasion to

convince consumers that their products are different from and better than those of competitors. This is sometimes referred to as artificial product differentiation and, if successful, increases the demand for the product and also makes demand more inelastic, conferring additional market power on the firm.

It is also charged that advertising can operate as a barrier to entry. If a new firm attempts to enter a profitable industry, it may find that advertising by the established firms has created a captive audience of consumers who are reluctant to try a new brand. It may be necessary for an entrant to wage a massive advertising campaign to get consumers to give its product a try, and the prospect could be an effective deterrent. On the other hand, advertising can also be a means of breaking into an entrenched market, giving an entrant a way to increase sales quickly so that economies of scale can be realized.

In its most extreme form, criticism of advertising holds that it manipulates consumers and leads them to choose products they don't want or need. In this view, consumer's tastes are not formed independently, but are actually created by advertisers.

Although few economists hold this extreme view on advertising today, there continues to be a belief that advertising may enhance market power, deter entry, and lead to more concentrated industries.

A view that advertising is benign in its effects has more recently emerged as an outgrowth of research on the economics of information. Advertising is held to be a low-cost way of providing information to consumers about the availability of products and their prices and qualities. It may make markets more competitive and even lead to lower prices for consumers. There is some evidence that advertising does work to the benefit of consumers. For example, according to one study, the average prices of eyeglasses in states permitting advertising is about 25 percent lower than the prices in states where such advertising is prohibited.

Even when advertising does not lead to lower prices, it may be advantageous for consumers. In the absence of advertising, consumers have to incur search costs to find out about products. The true prices they pay are then the sum of the money price and the search costs they bear. One effect of advertising is that it is a substitute for the consumer's own search efforts. Thus, advertising can reduce consumers' search costs.

The advertising-as-information view suggests that advertising is a low-cost way of conveying useful information to consumers about alternative products and their prices, and thus makes markets work more efficiently. Not all economists accept this positive view, and television advertising has been singled out for special criticism.

One standard argument usually used for government intervention in the market place is that the market does not yield us the information to make good choices of doctors, dentists, lawyers, barbers, morticians, taxi drivers, dispensers of alcoholic beverages, and so forth, and it would be inefficient for each of us to have to gather such information on our own. Instead, to remedy this market failure, we instruct the government to license practitioners of these and other trades and professions, thereby protecting us from incompetents.

As Friedman (1982) points out, licensing is only one form of giving us such protection, and is in fact the third and most intrusive form of government regulation in a chain of three different forms. The first is registration. Examples are the registration of automobiles, pedigreed dogs, and in some states, the registration of firearms. Registration can be with a government or private agency, with the government using registration mainly as a way of collecting all taxes due it; as long as the taxes are paid, the penalties for nonregistration are usually mild.

The second is certification, common in medical specialties; again, certification typically does not directly involve the police power of the state in economic transactions. Any licensed medical doctor can advertise as a plastic surgeon, even though he or she is not a “board certified” plastic surgeon. If the doctor performs bad plastic surgery, the doctor’s patient can sue for damages, but the state will not prevent the doctor from doing the plastic surgery, nor subject the doctor to criminal penalties for practicing it.

Licensure, the third form, does directly involve the police power of the state. Only licensed medical doctors are allowed to practice medicine. The unlicensed practice of medicine is a criminal act, subject to criminal penalties. There is a little detailed economic theory to guide policy on the optimum way to cure the failure of the market to provide adequate information, although there is an extensive economics literature that points out the economic inefficiencies of licensure.

In a nutshell, economists have observed that the initiative for licensing occupation X usually comes from occupation X. Likewise, after occupation X succeeds

in licensing itself, invariably the state licensing boards for occupation X are composed of members of occupation X; the principal occupation X society or organization usually chooses the members, with the governor routinely rubber-stamping the choice. Finally, the usual justification for establishing a licensing procedure is to protect the public, although it is often not obvious why the public needs protection. Why not use licenses, rather than registrations or certificates, if necessary?

All of this has led many economists to conclude that much of licensure is simply a means for an occupation to form a cartel, a cartel that the occupation can easily control and that will present high barriers to those who wish to enter the occupation. Friedman (1982) argues forcefully that certification would give the public all the protection it needs, while at the same time reducing the monopoly power of the cartels that licensure has created and increasing economic efficiency.

8.4 – THE ROLE OF THE NEWS MEDIA

The news media plays an essential role in a democracy by informing citizens about the society they live in, and the issues effecting them. The media thus has a responsibility to provide information in an accurate and unbiased manner so that individuals can formulate their own conclusions about issues. News organizations, however, operate in a world of incentives, including those provided by profits and those associated with career and professional advancement. News organizations also operate under a variety of pressures, such as competition within and among the media. These incentives and pressures complicate the fulfillment of that responsibility.

The news media plays an important role in the identification of non-market issues, the non-market action associated with them, and their progress through their life cycles. The news media finds business and its non-market issues of interest, and with stories instantly transmitted nationally and internationally, coverage often means that the firm's steps to address an issue are in the eye of the public, and under the scrutiny of interest groups, activists, and public officeholders. Managers thus must be sensitive to whether the media will cover an issue and how it treats issues it covers. The media itself is a diverse collection of organizations, including television, radio, newspapers, magazines, and journals.

The news media is a source of information for those in the non-market environment of business, and it plays an important role in setting a firm's non-market agenda. It alerts the public, activists, public officeholders, and interest groups to non-market issues and the activities of firms. Those interested in advancing an issue also may attempt to use the media as part of a non-market strategy. The internet has greatly assisted low-cost networking and coalition-forming among NGOs wishing to mobilize jointly against a common concern. Although the media guards its independence, it may at times find components of those strategies to be newsworthy.

Information is essential for democracy, and the news media is a principal source of information to citizens. Along with this role come the responsibility to uncover, report, and interpret news and to present it under standards of fairness, accuracy, and balance.

The news media at times compromises these principles, and so some critics have called for restraints. Despite its lapses and occasional abuses, the news media plays an essential role in a democracy, and the imperfections in the coverage and treatment of stories may be a price worth paying for the benefits it provides.

The news media play a significant role in protecting consumers by doing some activities such as: denouncing the abusive practices of firms or industries; alerting consumers for frauds, dangerous products and dishonest storekeepers or suppliers; informing consumers about their rights; providing information about the consequences of alternatives; alerting public, activists, interest groups, and public office holders to issues; and so forth. The news media plays an important role in identifying issues, and hence in setting agendas of governmental agencies and public office holders.

The news media activity can contribute to the progress of issues through their life cycles, especially by rushing governmental authorities and suppliers to look for solutions for consumers' problems.

The news media coverage can limit alternatives for addressing non-market issues, reduce the costs of non-market action and serve as an important component of a non-market strategy.

9- THE NATIONAL CONSUMER AND COMPETITION PROTECTION AGENCY

A lot was said, in 2000, about the creation of the National Consumer Protection and Competition Agency (ANC). The subject rose from the Presidential Decree of August 11, 2000, which established a Working Group charged with concluding the studies for the creation of the mentioned agency, with the presentation of the proposal of a Law Project about its creation. The Working Group was integrated by: the Republic Presidency Civil House, the Justice Ministry (through the CADE, of the DPDC and of the DPDE), the Treasury Ministry (through the SEAE), the Ministry of Planning, Budget and Administration (through the Administration Secretary) and the Development, Industry and Foreign Trade Ministry.

The proposal of creation of the ANC has as basis the recognition that there are serious problems in the operation of the Brazilian market, resulting mainly from the enormous inequalities in the economic agents forces, which demand strengthening of the State actuation in the protection of rights and consumer interests. The public opinion pressure, mainly in face to the problems with privatized public services, the health plans and the medicines, acted as the process catalyst. In the technical area view of the Consumer Protection and Defense Department, the agency is necessary for the following main reasons: the need for improving the consumer protection policies and the conditions for coordinating the SNDC; a historical problem of institutional underdevelopment - lack of resources; and the need of greater autonomy and agility for the consumer protection federal institution and, consequently, of the SNDC itself.

The proposal of the anti-project Law studied in the Working Group was based itself in the following main premises: the agency would be a special autarchy entrusted of exercising the administrative protection and inspection, in the federal scope, of the application of the “antitrust” and consumer protection legislations; the institutional vinculation of the agency, in other words, to which Ministry the agency would be linked to, would be defined at the end of the process (which, in practice, ended up becoming practically an insuperable problem, since such definition would indicate the general guideline of the model that one intended to adopt); the current formatting of the SNDC and the attributions of the consumer protection official agencies, would not be altered;

alterations in the CDC would not be made; the agency would include the consumer protection federal agency – the DPDC, as well as the agencies that integrate the Brazilian System of Competition Protection (SDE-DPDE/MJ, SEAE/MF and CADE/MJ); the coordination of actions between the consumer protection and the protection of competition would be potentiated; and a channel for the participation of society in the orientation of the national consumer protection policy would be opened, with the creation of a Consumer Protection Council - transparency of actions - in the agency.

It is worth pointing out that the protection of competition has as basic fundament the protection of consumer's interests, once the competitive market provides choice alternatives, better quality and lower prices, for products and services offered. On the other hand, as already mentioned, the free market, for itself, does not manage to solve the problems of justice in the consumption relationships. Therefore, it is clear that the consumer protection and the protection of competition are narrow close and complementary areas, and that this synergy should be potentiated in the consumers' benefit. This point of view was not shared by all participants of the Working Group and discussions around the creation of the National Consumer Protection and Competition Agency, in the format above related, were many and exasperated ones.

The main focus of discussions around the creation of the agency and which mobilized contrarily, so many representatives of the consumer protection area, as for the area of defense of competition, was the junction, in a single agency, of both activities, the consumer protection and defense of competition. As already mentioned, now in Brazil these two areas act in an absolutely separated way, without any change of information, as a regular practice. On the whole, the view of the technicians of the area of consumer protection is that the defense of competition exists at the government's economical area service and only worries about the industries' agenda, not considering the subjects related to justice in the consumption relationships, to a second plan. However, the technicians' of the area of defense of competition vision is that the consumer protection people, acts in a radical way and does not worry about the health and efficiency of companies and of the market. Actually, these are two disfigured views, which indicate mutual ignorance regarding the true role attributed to the other.

In the political-institutional field, a dispute of power and space between the Finance Ministry and the Ministry of Justice has always existed, both demanding the

“control” of the agency. At the same time, many of the state and municipal consumer protection agencies, besides some civil entities, always looked at the proposal of creation of the agency as a type of “coup”, in which the federal organ intended to remove space now occupied by the PROCON.

Before so many difficulties and disagreements, the proposal of creation of the Consumer Protection and Competition National Agency, began dying of abandonment. Everything indicates that the initial pretension of an only agency, including the consumer protection and the protection of competition, was abandoned, giving place to the idea of two agencies, one for each area, probably linked to different Ministries, the one of consumer protection to the Ministry of Justice and the one of competition protection, to the Finance Ministry. In any way, the subject is now paralyzed, and when it is led, it will very probably be by a Law project, to be appreciated by the National Congress.

10-SOME SUBJECTS FOR REFLECTION ON THE SNDC FUTURE

The consumer protection administrative system was fundamental for the implementation and consolidation of consumers' rights and of the culture of consumer protection in the country, starting from the validity of the CDC. The CDC and the SNDC has radically changed, for better, the consumers' conditions in the consumption relationships in the last ten years. Before the Code, the enormous socioeconomic and cultural inequalities of the Brazilian society in the operation of the market, reflected in the economy, resulted, in a general way, in absolutely disproportionate consumption relationships, asymmetrical and unfavorable to the consumers. The official consumer protection agencies began, with the CDC, to make the consumers' rights worth, working as a faithful scale, in an attempt to balance and to make the relationships between suppliers and consumers fairer.

It happens that the maintenance of the SNDC implicates in a reasonable cost for the Brazilian society (more than 700 PROCON spread in Brazil - wages, rents, consumption material, equipment, etc). The excess of intervention of the State in the free market, should also be considered as a cost for society, which ends up causing, a lot of times, increment costs for consumers in the final prices of products and services. Therefore, considering the horizons on the medium and long runs, from the scenery that

has been drawn for the development of society, economy and market, new alternatives for the consumer protection can and should be thought, considering the final net benefits produced for society.

The society and economy dynamics, mainly in face of the inexorable fact of globalization, technological innovations, and speed and complexity of market transformations, demand fast and effective answers from the State to assure an efficient and fair market. Insertion in the globalized market, in the international trade and competitiveness are subjects that cannot be left aside, as well as the guarantee of consumers' rights in the consumption relationships.

In face of this scenery, a first subject that is presented concerns the existence or not of synergy, to be potentiated and explored, between the areas of the consumer protection and defense of competition. Therefore, it is pertinent to ask if it is interesting for society, in terms of the gained net benefits, to continue with the two areas, consumer protection and defense of competition, acting separately, without any communication overlap? This issue deserves being studied and analyzed carefully.

It is worthwhile to remember that competitive economy, based in free market conceptions, needs a solid and structured system of competition defense in charged of overseeing market's behavior to improve economy efficiency by avoiding abusive practices and, after all, protecting consumers. It is not possible to have and to maintain competition, in the real world, without a strong and agile antitrust law enforcement system.

Another important issue to be considered for the improvement of consumer well-being is regulation. Regulation is usually instituted to improve economic efficiency by correcting the market imperfections or failures. Regulation has to focus specially on the infrastructure network industries that have monopoly power of local utilities. In Brazilian's case we can point those industries that were state owned and that were privatized in recent years.

The regulatory agencies have a relevant role in economic citizenship protection and its decisions, in general, produce great impact to markets and hence to consumers. The good work of regulatory agencies is fundamental to guarantee citizen's welfare and, consequently, to the good functioning of consumer protection, in its wider sense.

In an era when the regulatory framework is been built up and when regulation appears to impose, in some circumstances, substantial costs in the form of higher consumer prices and lower economic output, carefully weighing the likely benefits and costs of rules and reform proposals is essential for defining an appropriate scope for regulatory activity.

It seems that at the end of this first decade of the CDC validity, in which the official consumer protection agencies have acted a fundamentally repressive and inspection role, four challenges have presented themselves for the next phase which begins: the information of consumers, the education for consumption, the harmonization of consumption relationships and the encouragement to the organization of the civil society seeking for the creation of consumer protection civil entities.

Information is the most powerful instrument for consumer protection in a free market economy once it allows consumers to make informed choices and, as a general result, leads to better and most efficient decisions. Lack of information on the part of consumers may result in market outcomes that deviate significantly from the competitive norm. The CDC has established, in the consumers' basic rights, that the consumers have to have freedom of choice and equality in recruiting; appropriate and clear information on the different products and services, with correct specification of amount, characteristics, composition, quality and price, as well as on the risks they present; and protection against deceiving and abusive publicity. To look for guaranteeing sufficient, adequate and accurate information for consumers in the marketplace should be one of the most important tasks of the consumer protection agencies.

The education of consumers and suppliers, as to their rights and duties, with ways to the improve of the consumption market, is one of the of the principles of the Consumption Relationship National Policy. Another principle of the Consumption Relationship National Policy is about the government action, in the sense of effectively protecting the consumer through incentives to the creation and development of representative associations.

The decrease of the State's presence in the economy, through the increase of social control, from a better organized, educated and prepared society, is an alternative that not only tends to reduce the costs for society, as it tends to leave the economy more agile, productive and flexible, consequently, more competitive. More conscious and

demanding consumers contribute to the improvement of quality and the lowering of product prices, once it makes suppliers qualify themselves and become more dynamic, a survival condition, therefore positively influencing competition.

Better educated and prepared citizens and an organized society, are certainly decisive for the development and progress of a country and of a more efficient and fair economy.

Therefore, which should be the role of official consumer protection agencies referring to the aspects above mentioned? As already said, it is indispensable, in order for a law to reach its objectives, to have all consumers and suppliers awareness on the rights that the law protects and the duties that it imposes. It is worth repeating that the difficulties to make Brazilian society know the CDC and, therefore, make it deserve its rights daily, are evident. The challenge of expanding and making consumer protection more effective in a country of continental dimensions, with enormous population contingent and outstanding regional differences will only be accomplished with communication tools, information and education, which should be at the same time effective and extensive.

An aspect of consumption education which gains increasing importance and is related to several facets of the future performance of consumer protection agencies, including what refers to the harmonization of consumption relationships, is the sustainable consumption. Sustainable consumption also called responsible or conscious consumption, takes into account the current satisfaction of consumers' needs without committing the welfare of future generations. Therefore, aspects such as: use rationalization; waste elimination; recycling; environmental pollution; energy and water economy, commercial or industrial practices, which may harm rights or people, such as children or slave work; have become important in the consumers' decision when in the exercise of their free choice right. At the same time, such aspects should take part of consumer protection agencies concerns, while promoters of citizens' and collectivity's welfare in the consumption marketplace, and people in charge of the administrative enforcement of the CDC.

The harmonization of the participants' of the consumption relationships interests and compatibilization of consumer's protection with the economic development and technological need, in a way as to make the principles in which the economical order is

founded possible (art. 170 of the Federal Constitution), always based on the good-faith and balance in the relationships between consumers and suppliers, is constituted in a principle of the Consumption Relationship National Policy. The shared search of solutions for a fairer and more efficient economy should be part of the concerns of the SNDC agencies, in the protection of the consumers' interests. Therefore, considering the dynamics of the new economy operation, in these times of globalization, which should be the role carried out by the consumer protection agencies to accomplish the principle of “harmonization of consumption relationships”, with the purpose of producing more effective results for society? It seems that one possibility that can be used by the consumer protection institutions to deal with this situation is to think and to practice consumer protection in a broader perspective. In this sense, it is fundamental for the consumer protection institutions to find ways to improve the synergism and to work closer with the regulatory and antitrust enforcement agencies.

The consumers' safety, mainly before an extremely dynamic marketplace, in which the technological innovations appear every minute and in which, more and more complex products and services are offered, will certainly be another important item in the agenda of concerns and actions of consumer protection agencies. In this sense, the agencies that take care of the safety aspect of products and services, as well as the standardization and normalization, should have rethought roles and its structures adequated to the new demands. The SNDC has relevant role in the redirection of the performance of the agencies in charge of the products and services safety put in the consumption market.

We cannot disregard the scenery around the SNDC. The Public Ministry (Public Prosecutors) has been structuring itself and gradually acting in a present and positive way on the protection of consumers' interests. The public defender services are also in an organization process and they are playing important part in the protection of the interests of those consumers with low income. The judiciary has been restructuring itself and the ordinary consumer already manages to have access to justice, mainly through the special civil courts (small appeal legal courts). The regulatory agencies are structuring themselves, by gaining growing capacity and “expertise”. The Antitrust enforcement system is trying to organize itself. At the same time, as it has already been mentioned, the consumers and suppliers are becoming aware of their rights and duties and society is

educating itself, becoming aware and organized through the creation and consolidation of representative and active consumer institutions.

Therefore, without questioning the necessity of guaranteeing justice in the consumption relationships, some issues deserve being analyzed and reflected upon when we think in the future of consumer protection in Brazil, from the scenery around the SNDC above considered: will the maintenance of the consumer protection administrative system justifies itself, in the current model, when we think of the net benefits for society? Or will it be that, in this prospective scenery, with a more active social control and with the law enforcement institutions more effective and accessible to consumers could we think of the public prosecutors and public defenders taking care of the consumer protection in the local level, maybe some specific public organizations in the state level, and a well structured federal agency taking good care of the subjects of national relevance?

It is worth emphasizing that these last issues pointed out, do not intend to put in to discussion the need and validity of the actions which seek guarantee justice in the consumption relationships or purely oppose economical arguments resulting in juridical actions, especially because the purely economical evaluation of net benefits gained by the community, from legal actions, are quite questionable. The presented questionings intend to raise practical and theoretical issues related to the future of the consumer protection administrative system, from a prospective scenery that has been built, with focus turned towards the results produced for society's welfare, calling also the attention, so that, in future considerations, aspects of economical analysis are introduced.

It seems more productive and effective that consumer protection is within social control. On the other hand, in order to have citizens really demanding their rights, it is necessary to have an accessible and active judiciary branch, which acts according to the spirit and principles of the CDC. Thus, citizens' education and awareness, the organization of civil society and the search for a closer and more present judiciary for consumers, represent some of the prospective challenges of consumer protection institutions.

Likewise, it seems that the consumer protection administrative system should go through a complete restructuring, in order to focus its attention in the causes of more relevant problems, in cases which present a behavior pattern, moving gradually its

actions from “retailing“, to “wholesale”. In this context, the consumer protection administrative system could be formed by a well structured federal agency and by some specific public institutions in the state level which should act in a coordinated and integrated way, prioritizing some issues and areas potentially more harmful to consumers.

It is worth transcribing an excerpt from a text written by José Reinaldo de Lima Lopes¹⁹, which approaches important aspects and which may help in the evaluation of the subject

“Some of the innovations brought by jurisprudence and by the Consumer Protection Code should be understood in this line of ideas: to transform the consumer into a citizen. Other necessary observations have to be made. The first and more important of them is without a doubt the one which regards the economical-social delinquency of immense parts of the Brazilian population. Only a part of our population is integrated in the consumption market of lasting service goods and public services. Another portion lives of the leftovers, of favors, of clients, etc. Without a greater social integration, the Code will do little in citizenship terms. In second place, of the integrated part of the population, only a minimum part has political implication conscience on the long run, and the extent of consumer and supplier disputes. Finally, in the exercise of jurisdiction, there is and there will always be a series of conflicts: between the particular case that undergoes judgment and the great movement-of long duration, as Fernand Braudel says - of the capitalist dynamics; also a conflict between what a Laws professional can know regarding legal rules and what escapes him in terms of social, economical and political consequences. So far on such things, that are not learned in Law books or in the jurisprudence repertory, there is a diffusion of a common sense full of misunderstandings, half-truths, and pseudo-information, transmitted everywhere and especially in the press, which is more a confusion source than a means of information, taking as a rule, the public opinion to accompany a dominant ide ological current. Against this, the Code itself, is not a specific antidote. Even so, it is a tool.

How to undo the fear in face of the expression control of business activity by the consumer? Remembering that this control is a new form of consumer's sovereignty

¹⁹ José Reinaldo de Lima Lopes, *Responsabilidade Civil do Fabricante e a Defesa do Consumidor*, Consumer Protection Library, volume 3, Editora Revista dos Tribunais, 1992, pages 149 and 150.

principle, or market respect, simply. Until recently we were accustomed to producers being organized while producers, stipulating competition terms, prices, etc. We were also accustomed to seeing the workers being organized before the suppliers, while bosses. But we do not get used to the consumers being organized. There were consumer cooperatives, that wanted to reduce costs, few boycotts, almost nothing else.

Therefore, the consumers' control over business activity is not anything of exceptional; it is the natural and progressive extension of a democracy that is organized under the market regime. The evidence is there to convince us that consumers become subject of rights just there, where the principle of market and of free initiative exists. Consumer protection, external control of business activity and initiative freedom are juridical and historical correlates.

Consumer's protection and manufacturer's responsibility are not just fruit of the industrialization process, but also of democracy development. The study of this issue confirms being essential for its appearance political freedom (of organization, of meeting) and access to the Judiciary.”

11- SOME ASPECTS OF THE NORTH AMERICAN MODEL OF CONSUMER PROTECTION

In the United States of America there isn't a specific administrative system for consumer protection, considering a system as a group of articulated and coordinated agencies that have as main objective, the protection of consumer rights, focused in justice in consumption relationships between consumers and suppliers. In the federal scope, the consumer protection is inserted in several agencies, in general as a subsidiary activity and as result of that which is done as most important by the agency. The states act in a totally independent way and in several of them, different models are adopted to treat the subject.

Generically it maybe said that the North American consumer protection model is organized in the following way: it is fundamentally based on social control, from the organization of civil society (consumer protection civil entities); the state pays special attention to competition protection, to the guarantee of a free market as means of protecting consumers; the application of the respective legislation occurs, as a rule,

directly in the judiciary; and direct consumer assistance, in cases of individual complaints, is done as in general terms, by local or state justice prosecutors who also promote conciliations between consumers and suppliers, as well as lead the case to the court, wherever necessary.

At federal level we may relate some institutions that take care of the consumers' interests, although they are not typical consumer protection agencies as we conceptualize in Brazil, as for instance: "Department of Transportation", "Consumer Product Safety Commission - CPSC", "Federal Trade Commission- FTC", "Department of Justice - DOJ", "Department of Health", "Food and Drug Administration-FDA", among others. Among the related agencies, three deserve distinction: FTC, CPSC and DOJ. We will relate the main role of each one of these agencies from information extracted out of the "The United States Government Manual", 1999-2000, Office of Federal the Register National Archives and Records Administration, reviewed June 1, 1999, and obtained within the institutions, specially .

The Federal Trade Commission is, in fact, the main consumer protection agency in the US. The role of the "Federal Trade Commission - FTC" is to maintain the free competition as the main mark of the American economic system and to impede monopoly practices and restriction to free trade, besides unfair or deceiving commercial practices. The Commission is entrusted of maintaining the competition among the companies free and fair. The main attributions of the Commission are: to promote the free competition; to protect the public against propagation of false or deceiving publicity; to impede conducts or practices which may hurt the free competition (agreements among companies; excess of market control concentration; combination of prices; etc); to impede fraudulent "telemarketing" schemes and deceiving sales by telephone; to guarantee true "labeling" for textile products of wools and skins; to demand that creditors supply appropriate information to consumers; to protect the consumers in the credit market; to educate consumers and suppliers on their rights and duties in what refers to the Commission norms; and to gather information and data about the economy and market conditions and to make it available for the Congress, for the President and for the public.

The Federal Trade Commission enforces a variety of federal antitrust and consumer protection laws. The Commission seeks to ensure that the nation's markets

function competitively, and are vigorous, efficient, and free of undue restrictions. The Commission also works to enhance the smooth operation of the marketplace by eliminating acts or practices that are unfair or deceptive. In general, the Commission's efforts are directed toward stopping actions that threaten consumers' opportunities to exercise informed choice. Finally, the Commission undertakes economic analysis to support its law enforcement efforts and to contribute to the policy deliberations of the Congress, the Executive Branch, other independent agencies, and state and local governments when requested.

In addition to carrying out its statutory enforcement responsibilities, the Commission advances the policies underlying Congressional mandates through cost-effective non-enforcement activities, such as consumer education.

The Federal Trade Commission is organized as follows: The Commission, Office of Public Affairs (Press Office); Office of Congressional Relations; Office of the Executive Director; Office of the General Counsel; Office of the Secretary; Administrative Law Judges; Office of the Inspector General; Bureau of Consumer Protection; Bureau of Competition; Bureau of Economics; and Regional Offices.

The FTC's antitrust arm, the Bureau of Competition, seeks to prevent business practices that restrain competition. As a result, purchasers benefit from lower prices and greater availability of products and services.

The Bureau carries out this mission by investigating alleged law violations and, when appropriate, recommending that the Commission take formal enforcement action. If the Commission does decide to take action, the Bureau will help to implement that decision through litigation in federal court or before administrative law judges.

The Bureau also serves as a research and policy resource on competition issues. It prepares reports and testimony for Congress, and may present comments on specific competition issues pending before other agencies.

The antitrust laws are enforced by both the FTC's Bureau of Competition and the Antitrust Division of the Department of Justice. In order to prevent duplication of effort, the two agencies consult before opening any case.

The FTC's consumer protection arm is the Bureau of Consumer Protection. The Bureau of Consumer Protection's mandate is to protect consumers against unfair, deceptive, or fraudulent practices. The Bureau enforces a variety of consumer protection

laws enacted by Congress, as well as trade regulation rules issued by the Commission. Its actions include individual company and industry-wide investigations, administrative and federal court litigation, rulemaking proceedings, and consumer and business education. In addition, the Bureau contributes to the Commission's on-going efforts to inform Congress and other government entities of the impact that proposed actions could have on consumers.

The Bureau of Consumer Protection is divided into seven divisions, each with its own areas of expertise: The Division of Advertising Practices; The Division of Enforcement; The Division of Financial Practices; The Division of Marketing Practices; The Division of Planning and Information; The International Division of Consumer Protection; and The Office of Consumer and Business Education.

The Bureau of Economics helps the FTC evaluate the economic impact of its actions. To do so, the Bureau provides economic analysis and support to antitrust and consumer protection investigations and rulemakings. It also analyzes the impact of government regulation on competition and consumers and provides Congress, the Executive Branch, and the public with economic analyses of market processes as they relate to antitrust, consumer protection, and regulation.

The FTC may begin an investigation in different ways. Letters from consumers or businesses, Congressional inquiries, or articles on consumer or economic subjects may trigger FTC action.

Investigations are either public or nonpublic. Generally, FTC investigations are nonpublic in order to protect both the investigation and the company.

If the FTC believes a violation of the law occurred, it may attempt to obtain voluntary compliance by entering into a consent order with the company. A company that signs a consent order need not admit that it violated the law, but it must agree to stop the disputed practices outlined in an accompanying complaint.

If a consent agreement cannot be reached, the FTC may issue an administrative complaint. If an administrative complaint is issued, a formal proceeding that is much like a court trial begins before an administrative law judge: evidence is submitted, testimony is heard, and witnesses are examined and cross-examined. If a law violation is found, a cease and desist order or other appropriate relief may be issued. Initial decisions by administrative law judges may be appealed to the full Commission.

Final decisions issued by the Commission may be appealed to the U.S. Court of Appeals and, ultimately, to the U.S. Supreme Court. If the Commission's position is upheld, the FTC, in certain circumstances, may then seek consumer redress in court. If the company ever violates the order, the Commission also may seek civil penalties or an injunction.

In some circumstances, the FTC can go directly to court to obtain an injunction, civil penalties, or consumer redress. This usually happens in cases of ongoing consumer fraud. By going directly to court, the FTC can stop the fraud before too many consumers are injured.

The Commission can also issue Trade Regulation Rules. If the FTC staff finds evidence of unfair or deceptive practices in an entire industry, it can recommend that the Commission begin a rulemaking proceeding. Throughout the rulemaking proceeding, the public will have opportunities to attend hearings and file written comments. The Commission will consider these comments along with the entire rulemaking record--the hearing testimony, the staff reports, and the Presiding Officer's report -- before making a final decision on the proposed rule. An FTC rule may be challenged in any of the U.S. Courts of Appeal. When issued, these rules have the force of law.

The role of the "Consumer Product Safety Commission - The CPSC" is: to protect the public against excessive risks of harms and damages that can be caused by products put in the consumption market; to attend the consumers in the evaluation of product comparative safety; to develop uniform patterns of safety for products and to minimize the conflicts among state and local norms; and to promote research and investigation in the identification of causes and in the prevention of death, disease or wound cases caused by products. The Commission's main attributions are: to demand that suppliers inform on the defects in products that represent substantial risks; to request the necessary corrections in products already in the market and which may present substantial risks for the consumers; to collect and to register information related to wounds and damages caused by products; to conduct research related to risks in products; to encourage and to pay assistance for the development of voluntary safety standard norms (self-regulation) for products; to establish, whenever necessary, norms and patterns for products; and to prohibit, when necessary, the commercialization of dangerous products.

The CPSC's regulatory authority comes from the Consumer Product Safety Act (CPSA), the Toy Safety Acts, the Child Protection Amendments, the Federal Hazardous Substances Act, the Flammable Fabrics Act, the Refrigerator Safety Act, the Poison Prevention Packaging Act, and the Hazardous Substances Act. The CPSC's basic mandate as stated in the CPSA is "to protect the public against unreasonable risks of injury associated with consumer products". The CPSC's mandate extends to virtually all consumer products except those that come under the jurisdiction of other regulatory agencies – for example, food, tobacco, pharmaceuticals, and automobiles. The CPSC has authority over approximately 15,000 products.

The CPS's authorizing statute reflects the competing pressures from safety activists and business. The statute was written to enable the public to initiate regulatory action and to turn to the courts if the regulators do not act. The Consumer Product Safety Act provided that "Any interested person, including a consumer or consumer organization, may petition the commission to commence a proceeding for the issuance, amendment, or revocation of a consumer product safety rule...". Interested parties, including business, also have the right to offer standards to the CPSC. The agency can accept, revise or reject them. These provisions allow individuals, activists, and business to set a portion of the agenda of the CPSC.

In addition to providing access to the public, the same statute provides protection for business. To conclude that a product involves an unreasonable risk, the CPSC is directed to take into account the need for the product and the effect of the standard on its performance and cost. The statute also requires the CPSC to minimize the effect of the standard on the industry. These provisions and procedural due process requirements provide bases for firms to challenge CPSC actions in the courts. Firms have frequently been successful in having the courts overturn CPSC actions.

The CPSC has the authority to set mandatory safety standards, require warnings and information, and approve voluntary standards developed in conjunction with industry. Despite its broad authority, the CPSC has set only a few mandatory standards however, total of 39 until 1996. It has worked with industry in setting a large number of voluntary standards, however, around 300 until 1996. In setting safety standards, the CPSC is required to follow procedures similar to those called for in the Administrative

Procedure Act. It publishes an advanced notice of proposed rule-making (ANPR) in the Federal Register, solicits comments, and holds hearing before issuing a standard.

In addition to setting standards, the CPSC has the authority to use the federal courts to ban an “imminently hazardous consumer product”.

The CPSC is a small agency with less than five percent of the number of employees of the Environment Protection Agency. Its modest capabilities limit its scope and effectiveness. It was designed to be both responsive to activists and yet considerate of the potential burdens that safety regulation can impose on business. Its statutory mandate to protect against “unreasonable risks” is imprecise and a source of contention. The CPSC’s early regulatory activities did not explicitly take into account social costs and social benefits, which led Reagan administration to attempt to eliminate the CPSC – an objective shared by some public policy analysts.

Congress and President Bush recognized that even if they are expensive, safety regulations have considerable popular appeal. After a decade of discord over the reauthorization of the CPSC, Congress passed reauthorization legislation in 1990. One of the principal sticking points was a battle between consumer activists and business interests over reporting requirements for product liability cases. The activists sought to strengthen Section 15 by requiring firms to report to the CPSC every products liability suit filed against them, and to report it at the time it was filed. Business objected on the grounds that many such suits were frivolous and that the use of filings tends to treat allegations as facts. A compromise was reached in which firms were required to report to the CPSC whenever three cases involving a particular product model are settled in or out of court within a two-year period. This provision improves the ability to the CPSC to identify dangerous products.

Federal safety regulation is exercised by the Food and Drug Administration, the Federal Aviation Administration, the Environmental Protection Agency, the National Highway Traffic Safety Administration, the Occupational Safety and Health Administration, the Nuclear Regulatory Commission, the Mine Safety and Health Administration, the Consumer Product Safety Commission, as well as other agencies. Safety regulation takes two forms. For some products, such as pharmaceuticals and agricultural biotechnology products, premarket approval is required. For most products, safety regulation is *ex post*, as is products liability, and imposes standards and safety

features on products once they have been marketed. In recent years safety regulation has increasingly used informational alternatives to product standards, requiring warnings and labels on products ranging from automobiles to toys.

Safety regulation is often contentious because it imposes direct costs on producers and ultimately on consumers. Social efficiency requires that safety regulation strike an appropriate balance between the benefits from injuries avoided and the costs of avoiding those injuries. Safety regulation, however, has often focused on reducing risks using perspectives other than social efficiency.

The ‘Justice Department’ is a type of important Law office for all citizens. The Department represents the citizens in the verification of the law application in the public interest. The Department has key role in the protection against crimes and subversions, in the guarantee of healthy competition among companies and of a free market system, in protecting the consumer and in the application of laws to fight drugs, of immigration and of naturalization. The Department also has significant performance in the support and protection of citizen regarding the effective application of the law, to the prevention of crimes, to arrests for crimes, and in the prosecution and in processes of offenders' rehabilitation. Besides, the Justice Department takes care of all actions, within the Supreme Court, that regards the United States Government.

It is observed, therefore, some basic differences among the Brazilian and North American consumer protection models. The first has as characteristic the State's intervention and State's responsibility, resulting in an administrative consumer protection system, formed mainly by the PROCONs. The administrative actions are more significant and visible to citizens, than legal actions. The second has as characteristic, society's action through civil associations, and the enforcement of the law directly in the Judiciary System (in the courts). Another relevant aspect has to do with the understanding of the role of consumer protection. In the North American model, competition protection is seen as fundamental tool for consumer protection, whereas in the Brazilian model, there isn't a clear perception from society in relation to this issue. In Brazil, consumer protection and competition protection systems run totally apart.

Considering the historical, cultural, of society organization, of development level differences and, more specifically, the differences in terms of conquests in the fields of social justice, education and citizenship, between Brazil and The United States, it is very

difficult to establish a direct comparison between the North American consumer protection model and the Brazilian one. Therefore, it does not seem productive to us, at least for the present work, to discourse on the theme.

It is worth standing out, however, that even in the United States, a country with absolutely liberal economy, which has as fundamental pillar, free competition, and which possesses a level of enviable socioeconomic development, consumer protection is necessary with the intervention of State in the economy, which demonstrates that free market, for itself, does not manage to solve all the problems related to the efficiency and, mainly, to justice of consumption relationships.

12- FINAL REMARKS

The relationships between consumers and suppliers have radically changed in Brazil from the edition of the consumer protection Code. The consumers started to be effectively subjects of rights and to count with specific institutions to protect these rights. The SNDC, in the exercise of its mission to responding for CDC's administrative protection, has been playing relevant role in the implementation and consolidation of consumers' rights.

Practically eleven years have passed from the promulgation of the CDC and a lot has advanced in the conquest of rights for consumers. It can be affirmed that the consumer's right is within the context of Brazilian society, maybe not in the desired magnitude, but without any doubt, it has begun to be part of the everyday life of citizens and companies.

Society and economy dynamics, mainly in face of the inexorable fact of globalization, technological innovations, and the speed and complexity of market transformations, demand fast and effective answers from the State in the protection of an efficient and fair economy.

The role of consumer's protection official organs and consequently, of SNDC, has to be redirected and rethought, considering the horizons on the medium and long runs. Consumer protection has to be thought in a broader perspective. Regulation and antitrust laws should be seen as important tools for consumer protection.

We can not lose sight of the importance of the judicial system for the consumer protection interests and activities. The rule of law is fundamental not only for guaranteeing civil rights but for sustaining democracy itself. Rules and contracts should be protected and enforced so that free market and competition can take place and consumers can benefit. Therefore, it is crucial to have a reliable, unbiased, agile, accessible and fair law enforcement system in order to protect consumers and to guarantee citizens' rights. The administrative consumer protection institutions can do little without a structured, respectable and efficient judicial system behind.

Finally, the question that remains and that represents the great challenge for the consumer protection is to define which is the best way to seek for an efficient and fair marketplace, one which may produce the largest net benefit for consumers, defining the conditions and form of State intervention in consumption relationships.

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