



Consumer protection legislation: A neglected determinant of destination competitiveness?



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ABSTRACT

Consumer protection measures enhance destination competitiveness, helping to minimise tourist dissatisfaction through more transparent and efficient market operations, while creating and maintaining customer loyalty, and consumer confidence. However, the impact of consumer protection on destination competitiveness is limited by certain complexities that erode consumer confidence within tourism contexts. The paper identifies several additional complexities that can erode destination competitiveness. Various examples are offered of the exercise of consumer protection laws in tourism contexts. Issues for further research into the links between consumer protection legislation and destination competitiveness are discussed.

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1. Introduction

Competition between suppliers responding to signals of well-informed and confident consumers, can variously lead to lower costs, improved product quality, greater innovation, higher productivity, as well as a more dynamic and efficient economy that promotes consumer well-being (OECD, 2014). In reality, such ideal outcomes are often precluded by information asymmetries as between businesses and poorly informed consumers who send weak and confused signals to the market. This limits the benefits that consumers receive from transactions, reducing the gains from competition more generally. Information asymmetries are commonly addressed through the establishment of consumer protection mechanisms.

The specific consumer protection mechanism addressed in this paper is consumer protection legislation. Consumer protection laws are a form of government regulation, which aim to protect the rights of consumers as well as fair trade competition and the free flow of truthful information in the marketplace. Consumer protection laws are designed to prevent businesses that engage in

fraud or specified unfair practices from gaining an advantage over competitors; they may also provide additional protection for the disadvantaged.

Consistent with The United Nations World Tourism Organization recent affirmation of the essential need for an effective, consistent, fair and reasonable consumer protection framework for tourism (UNWTO, 2013, consumer laws have been developed in many countries). The proposal to develop a global legal framework for the protection of tourists is based on the guiding principle on stakeholders' responsibilities, contained in UNWTO's Global Code of Ethics for Tourism (UNWTO, 2001). While the moral weight of the Code may be significant, as a voluntary, non-binding instrument with no legal implications, governments are at liberty to decide whether to incorporate its provisions into national legislation.

The paper first argues that consumer protection is an important determinant of destination competitiveness, albeit one that is not always explicitly identified by researchers in this area. It then discusses some features of tourism that limit the effectiveness of consumer protection legislation within its domain. The paper next identifies some additional complexities that erode consumer confidence within the tourism context and which can erode destination competitiveness. Various examples are offered of the exercise of consumer protection laws in tourism contexts. The paper concludes with a discussion of how consumer protection legislation can create confident consumers, a necessary condition for sustainable destination competitiveness.

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2. Consumer protection as an important determinant of destination competitiveness

Models of destination competitiveness comprise a substantial number of diverse factors purporting to bestow competitive advantages on tourism destinations (Dwyer & Kim, 2003; Ritchie & Crouch, 2003; World Economic Forum, 2013). While the major models that have been advanced have different structures and emphasise different features of destination competitiveness, not surprisingly, they identify many of the same determinants. In particular, the role that tourists as consumers play in destination competitiveness is linked with several commonly accepted determinants of destination competitiveness. These determinants include destination management, service quality, fair and equitable legal system, ethical business behaviour, safety and security, destination image, including sense of place. These factors are discussed below. While seemingly distinct, it is argued that each is relevant to consumer protection, indicating the broad ranging importance of this concept to the competitive advantage of destinations.

2.1. Destination management

In the established models (Dwyer & Kim, 2003; Ritchie & Crouch, 2003) an (oft neglected) task of destination management is to improve consumer wellbeing by fostering effective competition and enabling the confident participation of consumers in markets in which both consumers and suppliers can trade fairly and with mutual trust. This in turn requires effective and efficient mechanisms that protect consumers from unconscionable or deceptive conduct, and from unsafe or defective goods and services with remedies for redress (Haupt, 2003). Consumer protection mechanisms that reduce the risks of financial loss associated with tourist purchases of goods and services, as well as promotion of visitor safety and security generally, may be expected to enhance destination competitiveness (PWC, 2010).

2.2. Service quality

Quality of service is a prominent factor in most destination competitiveness models (Dwyer & Kim, 2003). Researchers stress the relevance to destination competitiveness of the concept of the integrity of visitor experiences (Go & Govers, 2000). This concept conveys the idea that the quality of the experience actually provided should be appropriate to the situation and the price charged. In consumer settings, both the focal (service) and the contextual (environmental) dimensions of a product play a significant role in determining quality. Whatever the specific context, consumer protection mechanisms can underpin assurances of service quality.

2.3. Fair and equitable legal system

Transparency in policy making, enshrined in legislation and legal precedent, is an important component of a fair and equitable legal system, another indicator of destination competitiveness (Enright & Newton, 2005). If there is a perception by society that the legal system is unfair then it will be rejected or misused. The legal system is not foolproof, but as society evolves in concert with changing values, technology and access so does the law, albeit slowly in some countries.

2.4. Ethical business behaviour

Business operations that rest upon a foundation of shared interests and mutually agreed upon rules of conduct enhance

destination competitiveness (Porter & Kramer, 2011). Protection to consumers is an outcome of ethical business behaviour wherein tourists can thence reasonably expect to receive fair treatment and value for money when making purchases. Ethical business firms are characterised by their emphasis on: driving positive social change as an organizational objective; creating mutually beneficial relationships with stakeholders; creating a culture of trust, authenticity, caring, transparency, integrity, learning and empowerment (Haigh and Hoffman, 2012). Enterprises that place such higher purposes at the very core of their business model tend to inspire trust from all of their major stakeholders setting in place important preconditions for achieving and maintaining destination competitiveness.

2.5. Safety and security

Issues of security and safety are now firmly established as key elements of destination competitiveness (Hassan, 2000). In Heath's model, safety and security comprises a foundation of destination competitiveness and is regarded as a 'fundamental non-negotiable' (Heath, 2003). While 'safety and security' is often assumed to be safety from terrorism or natural disasters (World Economic Forum, 2013), the concept equally applies to the reliability of products and services purchased by tourists as well as the financial and physical safety afforded by consumer protection mechanisms. These latter types of safety and security issues have tended to be ignored in the destination competitiveness literature.

2.6. Destination image

Destinations with strong, positive images are more likely to be considered and chosen in the travel decision process (Echtner & Ritchie, 2003). Destination image is particularly associated with customer loyalty. Consumer protection mechanisms can help to forge greater loyalty of visitors both to individual operators and to the destination as a whole. Further, given that destination branding reflects the social and cultural characteristics of a destination, perceptions of bribery, fraudulent business practices, dishonest law enforcement or other forms of corruption, all of which can be reduced through consumer protection mechanisms, can damage the social and cultural image of the destination and, in turn, its competitiveness.

Regardless of the headings under which consumer protection is classified in the different frameworks of destination competitiveness, it is clear that the concept does not 'stand-alone' but is relevant to a diverse set of factors that underpin destination competitiveness. However, many models do not explicitly identify consumer protection as a determinant of destination competitiveness. Perhaps this is because consumer protection is neither a 'push' nor a 'pull' factor as discussed by tourism researchers (Kozak, 2002). In itself, the level of protection afforded to tourists as consumers is unlikely to motivate a tourist to travel to a destination that lacks other attributes required by the potential visitor. Consumer protection seems to be more closely related to 'hygiene' factors as emphasised in Herzberg's Motivation-Hygiene theory (Herzberg, 1964). According to Herzberg, hygiene factors are not motivating; they serve only to prevent dissatisfaction. In a tourism context, hygiene factors would meet the visitor's need to avoid any unpleasantness but would not in themselves be strong 'satisfiers'. From this perspective, consumer protection mechanisms act to prevent dissatisfaction by tourists, rather than create satisfaction. Nonetheless, hygiene factors can create a favourable environment for visitor motivation, based on the quantity and quality of the resources present in the destination. This role is important in enhancing destination competitiveness, both to add

value to existing product offerings and particularly in its potential to foster repeat visitation and in influencing positive word of mouth and media publicity regarding a destination.

3. Challenges inherent in the nature of tourism

Tourism has several features that make consumer protection mechanisms more essential than for other industries, but at the same time render these mechanisms less effective in achieving destination competitive advantage.

3.1. Fragmentation of the tourism industry

The tourism 'industry' comprises outputs from a wide variety of different industry activities. Visitor consumption of industry 'output' is not restricted to a set of predefined goods and services produced by a predefined set of industries. Whether the same product or service is or is not a tourism related economic activity is based on certain characteristics of the consumer, rather than anything inherent in the product or service (UNWTO, 2008). This approach places great weight on the definition used for a tourist, and for the notion of destination competitiveness, since the supply of any product or service to a person who is a tourist is a tourism activity, while the supply of the same product or service to a person who is not a tourist is not a tourism activity. However, consumer protection mechanisms typically do not distinguish between consumers who are tourists and those who are not. By implication, any enhancement of destination competitiveness resulting from consumer protection mechanisms is a welcome but unintended consequence of their development.

3.2. Tourism 'outputs'

The 'outputs' of tourism firms are either 'goods' (eg. shopping items) or 'services' (eg. tour guiding) or, most likely, combinations of the two, since most tourism experiences are based on the consumption of a (tangible) product and an (intangible) service. Several features of tourism 'outputs' may be noted which complicate the effectiveness of consumer protection mechanisms in tourism contexts (Dwyer, Forsyth and Dwyer, 2010).

3.2.1. Intangibility of services

Buyers cannot feel, see, smell, touch or taste a service before they agree to purchase it. Goods are impersonal, while services are personal. Since goods are made while services are delivered and 'experienced', the output of services and cost per unit are often much more difficult to measure than for standard products.

3.2.2. Experience products

Tourism products are 'experience' or 'credence' products rather than 'search products'. Experience goods and services (Klein, 1998) are those for which quality can be difficult to fully establish until after purchase and consumption, e.g. the quality of a resort hotel or cruise vacation, or advice offered by a travel agent. This can lead to dissatisfaction in circumstances where product quality differs from that anticipated by the consumer. Credence products and services are those for which verification of quality may not be possible even after purchase (Klein, 1998). In many circumstances, it may be difficult for the tourist to determine whether an unsatisfactory outcome is due to the lack of ability or effort on the part of the supplier (for example; delayed departures, food poisoning) or that some product characteristics are difficult to verify (such as whether restaurant food is really 'locally grown', or whether tour guides are fully accredited). To reduce uncertainty buyers look for signals of

service quality such as reputation and product reviews, guide books, ratings organisations and the like.

3.2.3. Irreversibility

Once consumed, a service cannot be returned. While many manufactured products can be returned to the supplier or can be recalled by the manufacturer, once used, tourism services, such as tours and air travel, cannot be so returned.

3.2.4. Inseparability of production and consumption

The bulk of tourism services are supplied and consumed simultaneously with buyers bringing their own experience to the supply. Since personal experience is part of the tourism product, tourism supply always faces an added difficulty of ensuring consumer satisfaction.

3.2.5. Perishability

Unlike most manufactured products much tourism supply cannot be stored for sale in the future. An unsold hotel room, cruise cabin or airline seat remains forever unsold. For the firm, it is revenue foregone. This can lead tourism suppliers to engage in price wars when supply exceeds demand, or result in strategic pricing that takes advantage of consumer lack of information.

3.2.6. Interdependence of tourism products and other industries

Tourism products are not supplied in isolation. Their supply (and enjoyment by consumers) is often dependent on the presence of complementary products and services offered by other suppliers. The successful supply of tourist facilities, for instance, is dependent in large part on ready access to good infrastructure and transport links. This can complicate attribution of responsibility in circumstances of product/service delivery failure.

3.2.7. Spatial fixity

Tourism infrastructure such as accommodation and tourist attractions, are place-sensitive. Location is an integral characteristic of supply as the buyer must travel to the supply. The absence of tourists from their home environment renders them more vulnerable to risks in their consumption behaviour.

3.3. Unstable tourism environments

The increasing globalisation of the tourism industry has resulted in businesses and tourists being exposed to a wider range of risks affecting their behaviour. Even a small scale event in one part of the world can have a significant impact on other parts of the world. Strategies to deal with the different crisis situations will vary depending on time pressure, the extent of control and the magnitude of these incidents. Formulating consumer protection legislation to cover all such contingencies would be an enormously complex task. Courts in Europe have recently been asked to determine the rights of travellers in crisis situations (force majeure events). The Court of Justice of the European Union (CJEU) has decreed that a railway company may not include in its general terms and conditions of carriage a clause under which it is exempt from its obligation to pay compensation in the event of a delay, where the delay is attributable to force majeure (CJEU, 2013). The German Supreme Court (BGH) has held that a bird strike constitutes extraordinary circumstances and thus exempts an air carrier from the obligation to pay compensation to the passengers in case of a cancellation or a long delay, if the air carrier can prove that it had taken all reasonable measures to avoid the cancellation or delay (BGH, 2013). BGH has also decided that a consumer is entitled to cancel a cruise to the Caribbean because of ash cloud preventing him from flying, despite the fact that the flight was not part of the

cruise package (BGH, 2012). In some cases suppliers may claim the external circumstances have impacted on their performance. Because fuel of poor quality reduced engine power, a 14 day cruise “Summer in Greenland” was performed differently from what had been expected. The German Supreme Court determined that the compensation includes loss of holiday enjoyment resulting from these shortcomings as well as the right of passengers to prematurely terminate the trip (BGH, 2013).

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

3.4. Globalisation of tourism

Consumers in all countries increasingly transact directly with international suppliers especially through the Internet. The greater internationalisation of supply complicates assigning responsibility to providers for losses incurred by travellers. Such developments raise new and sometimes complex issues for protecting consumers. A feature of tourism, that distinguishes it from many other forms of consumption, is the level and extent of prepayments that are required by suppliers. This imposes additional risks of financial loss to tourists, as compared with many other types of consumption. This is particularly the case when foreign transactions are involved (ACCC, 1997). Recently, Australian consumers have reported using a travel company to book and pay for their overseas Bali holiday, only to show up for a flight or check into a hotel that has no record of their booking or payment (Fair Trading, Queensland, 2014).

The aforementioned features of tourism combine to make tourism an activity that very much requires consumer protection laws, yet at the same time can render such legislation ineffective in enhancing destination competitiveness. The implications of this tension for achieving and maintaining destination competitiveness have, by and large, been relatively neglected by researchers. Some additional challenges are highlighted in the next section.

4. Additional issues and challenges in the tourism context

Several additional issues compound the problem of determining the role that consumer protection legislation can play in promoting destination competitiveness. In the discussion below, several types of consumer concerns which tourism shares with other industries are identified. Further examples of the exercise of consumer protection legislation are presented to highlight the role that consumer protection legislation already plays in destination management in several countries and its potential to play a greater role in the future.

4.1. Growing product complexity

The competitive global market environment in tourism has resulted in an expansion in the range of products available to consumers. This has increased the time and effort that consumers must make to gather information on products and compare alternatives. It has also led to a greater reliance of tourists on skilled intermediaries e. g. tour operators, hotel clubs, that can greatly reduce the difficulties confronting consumers in complex markets. Information complexity can sometimes be reduced by drawing on

the experience of more knowledgeable friends and relatives (word of mouth), by access to internet sites (e.g. TripAdvisor) or alternatively, by paying for published comparative information about such products. However, these options will not always be available. Nor will consumers necessarily use them even when they are available.

Increased product complexity generates more potential for misleading or deceptive representations and conduct, and unfair practices by suppliers of products and services. Tourism examples of false or misleading representation may include circumstances where goods are falsely alleged to be of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use. Sometimes tourism services are alleged to be of particular standard (e.g. hotel accommodation, cruise ship cabins, transportation services). For example, in the case of *Jarvis v Swan Tours* [1972] the UK Court of Appeal held that where the object of the ski holiday contract was relaxation and enjoyment then the plaintiff was entitled to damages for disappointment and distress. The court found the holiday did not live up to the promises and standards that were contained in the defendant's brochure. Sometimes service delivery may fall short of that which was represented due to inadequate skill levels of staff. Misleading or false claims may sometimes be made concerning the availability of facilities for the repair of goods or of spare parts for goods (e.g. car, motorcycle, bicycle or boat rental). Advertisements which promote the availability of repair facilities, spare parts, quality or standard as an inducement to buy a particular brand of goods must ensure that any representations are correct. For example, an importer sold bicycle helmets with labels indicating the helmets meet a mandatory safety standard, even though the helmets had not been laboratory tested to check whether they met that standard (Consumer Affairs Victoria, 2014).

Product complexity also makes it more difficult for consumers to fully understand the safety features of consumer goods and product related services. The ACL applies to services which relate to the supply, installation, maintenance assembly or delivery of consumer goods (product-related services). Product safety regulatory action (bans, standards, recalls or warning notices) can be taken in respect of both consumer goods and product-related services. The U.S. Department of Transportation (DOT) fined Virgin America USD \$150,000 for failing to make its in-flight safety video accessible to passengers with hearing impairments (DOT, 2013). Consumer protection legislation worldwide prohibits businesses from supplying particular kinds of consumer goods and product-related services unless they comply with any relevant safety standard in force for those kinds of consumer goods or services. Tourists are entitled to expect that every retailer, manufacturer and importer complies with product safety laws. The Austrian Supreme Court has found a hotelier to be liable for legionella disease where the contamination of the bathing water was an insufficient circulation speed which made the water cool down to a temperature that stimulated the reproduction of legionella bacteria (IFTTA, 2013c).

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

Under the consumer law of different countries, general disclaimers such as ‘terms and conditions apply’ should be used with caution, not conceal important information, with the consumer being made aware of the disclaimer prior to purchase. The Australian Consumer Law (ACL) introduces a fairness test, which

measures a condition imposed by a travel or tourism firm and judges whether it is “unfair” to the consumer. An airline customer, forced to re-book his family on another carrier at an extra expense after his flight was rescheduled (22 h late) was awarded compensation (Schneider, 2011). Recently, the UK Supreme Court held that a same sex couple had been directly discriminated against because of their sexual orientation when they were refused a double room in a hotel. *The Equality Act 2006* was held to extend the prohibition of discrimination on grounds of religion or belief into, among other things, the provision of goods, facilities and services (IFTTA, 2014).

4.2. Unfair prices

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

4.2.1. Discounting

The tourism industry is notorious for offering discounts on products and services especially in times of low occupancy in transport or accommodation services (Campo & Yagüe, 2007). Under the Australian law, if a firm engages in ‘two price advertising’, comparing the present (discounted) price with an earlier price it needs to ensure that any comparison drawn is genuine and accurately reflects the previous (most recent) price with the discounted amount (Australian Government, 2010).

4.2.2. Price fixing

Price fixing is the exercise of power to control the market and fix arbitrary and unreasonable prices. The Paris Court of Appeal recently upheld a decision of the French Competition Authority fining a travel trade association EUR 660,700 for having issued instructions to members to use “fair prices” and to avoid “dumping” and “price wars”. These instructions were found to constitute price fixing as they were used as a benchmark for price quotations filed by consulting firms in response to calls for tenders (IFTTA, 2013b).

4.2.3. Multiple pricing

Consumer protection legislation often applies rules to firms’ pricing practices to ensure that the total price is always presented where possible, and to ensure that there is only one applicable sale price. For example, under ACL, where goods have more than one displayed price, they must not be supplied at a price higher than the lowest displayed price. Firms must disclose that there are only a certain number of items at a particular price, or that the offer is only for a specific time period. Prices should be inclusive of all quantifiable, compulsory fees, taxes, levies or charges. If the price is subject to variation (such as fluctuations in currency or potential changes to government or other statutory charges) the firm is required to calculate it based on information available at that time (Australian Government, 2010).

4.2.4. Component pricing

With the emergence of low cost airlines, many operators have adopted innovative ways of marketing and selling their products, such as the base fare for a core product with add-on fees for enhanced services. Where no total figure or sum is given, such

practices may mean consumers are not aware of the total price they will be required to pay to obtain that good or service. In Europe, an Austrian Supreme Court has recently determined that a firm that sells theatre and concert tickets through the internet must disclose the amount of the booking fee/commission for each transaction (IFTTA, 2013a). Australian and South African law prohibits misleading use of component pricing whereby a business represents the cost of a good or service to consumers in, or as the sum of, multiple component parts. Thus, if a supplier chooses to use component pricing in their advertising, it must also provide consumers with a prominent single (total) price for goods or services—to the extent that it can be quantified. A German court recently determined that lessor of a holiday apartment must include costs of final cleaning into the advertised price (Schleswig-Holsteinsches OLG 2013).

In the USA, the ‘full fare advertising rule’ mandates that whenever a carrier or its ticket agent states a price for air transportation, the full price be stated (DOT, 2012). The Canadian Transportation Agency has recently developed regulations requiring all-inclusive air price advertising for travel within, or originating in Canada (CTA, 2012). Effectively in support of such consumer protection legislation, the UNWTO has recently affirmed the principle of full transparency of the mark up of the fare, such that a customer will know the full cost of the airline ticket prior to accepting the responsibility to pay for the ticket. Given such concerns, the UNWTO (2013) supports Convention on International Civil Aviation (ICAO) intention to develop a set of core principles on consumer protection in areas linked to air transport matters as well as to put more focus on price transparency issues, especially when it comes to the obligation of how air carriers provide tourists with adequate and accurate information.

A practice that has often been associated with tourism and hospitality firms is ‘Bait Advertising’. This occurs when travel is advertised at an attractive ‘bait’ price but, is found to be not available at the advertised price and quality when the consumer attempts to purchase it. In such circumstances, the firm or its agent seeks to switch the consumer to a higher priced or differently optioned alternative (ACCC, 2011:12). Under the ACL, a person (firm) who offers goods or services at a specified price must also do so for a reasonable period and in reasonable quantities, having regard to the advertisement and the nature of the market. Any ‘bait marketing’ must announce the limitations of availability and validity. Where a firm has genuinely misjudged demand and is unable to supply the travel product or service as per the advertisement immediately, it is required to offer the consumer a ‘substitution’, which is a reasonable alternative acceptable to the consumer. Such incorrect representations should also be corrected by overprinting advertisements and displaying notices at the point of sale. Printing ‘apology’ notices in daily newspapers does not guarantee immunity from prosecution (Australian Government, 2010).

These considerations highlight the importance of suppliers making full disclosure of product information to consumers. While product complexity itself comprises a barrier to informed consumer choice, and hence achievement of sustained destination competitiveness, another impediment relates to the very nature of many tourism services. This leads to a situation of information failure.

4.3. Information failure

Consumer protection legislation in many countries enshrines the right to information in plain and understandable language, with all terms and conditions of the supply of the goods and/or services clearly stated. In a market with full information, there may be consumers who are prepared to accept lower quality in return for a

lower price. Low cost carriers know this and are experiencing increased share of many aviation markets. In various tourism contexts, however, there are information imbalances between buyers and sellers. Information failures, which can prevent efficient market operation, fall into two broad categories, namely: limitations on the ability of consumers to access information; or on their capacity to effectively use that information in transactions. A lack of information about relevant product characteristics increases the likelihood of consumer detriment and reduces the effectiveness of signals sent to suppliers.

As discussed above, for many tourism services, gauging quality and suitability before and even after purchase can be difficult, so that consumer confidence and trust in the supplier becomes crucial. There are a several ways in which tourists may be disadvantaged in such circumstances. First, the supplier may have an incentive to recommend unnecessary services, provide a lower standard than agreed upon, or even engage in fraudulent or misleading conduct. In tourism particularly, where customers may return home before using the purchased item, the consequences of poor product or service may not become apparent for some time. The USA Department of Transport recently fined Qantas for not informing passengers of the opportunity to leave a delayed aircraft as it sat at the gate for an extended period of time with the door open (DOT, 2014).

Second, the problem may not be associated with the supply of poor quality products *per se*, but the inability of consumers to distinguish these from higher quality items. Experience and credence goods can impair the efficient operation of the market through what is known as the problem of 'adverse selection'. The Singapore Tourism Board Act requires tourist guides to be licenced by the Singapore Tourism Board. Licenced tourist guides receive a tourist guide badge. Acting as a tourist guide without a valid licence is regarded an offence with a penalty of up to S\$5000 for the first offence and up to S\$10,000 for the second or any subsequent offence. Where consumers cannot distinguish quality, the probability of receiving low quality is reflected in the market price. As the price declines, high quality sellers may leave the market, initiating a cycle of declining quality and prices until only poorer quality products remain. There are some indicators that this situation is happening in tourism globally (e.g. the decline of legacy airlines and ascendancy of low cost airlines (Dwyer et al., 2009)).

Many of the prohibitions contained in consumer protection legislation globally have particular relevance to activities relating to the package tour market. Many tours display low service quality with low quality packages and use of employees with low skill levels, inadequate knowledge of destinations/attractions, and inadequate professional and business standards (Dwyer, King and Prideaux, 2007). Such practices are most prevalent in markets where tourists are inexperienced and have limited access to independent advice about their chosen destination and where organized groups and package holidaymakers account for a significant share of the market. These 'demand side' features characterize Asian package tours to western destinations, providing a nurturing environment for the practices of particular concern. China's new Tourism Law, enacted in 2013, contains a number of provisions designed to protect consumers, including addressing practices such as coercive shopping measures, low price and low quality tours. It applies to all itineraries (domestic and international) which are sold in China, and is enforced by the China National Tourism Administration (Tourism Australia, 2014).

Third, while repeat purchases provide sellers with the opportunity to build and maintain reputations for high quality supply, tourists in general and first timers in particular, may remain unaware of the problems experienced by others in dealing with particular operators in particular destinations. The consequence of

a poor consumer choice can be remedied by choosing a different product next time. By altering their purchasing decisions, consumers can impose penalties on those suppliers who do not conform to reasonable purchaser expectations (and by so doing precipitate the exit of those firms or changes in their behaviour). However, this adjustment process takes time during which other tourists may be exposed to the risk of loss. In many sectors of tourism, entry and exit costs to the tourism industry are low, leading to the possibility of 'fly-by-night' operators with little to lose from a poor reputation. Such firms have larger incentives to misrepresent quality to a potential client, whereas in repeat interactions there will be an increased interest in building and maintaining their reputation so as to ensure future business (Kreps & Wilson, 1982). However, in contrast to many other consumer industries, repeat transactions are less prevalent in tourism, reducing the benefits to firms of having satisfied customers. In many tourism contexts, moreover, a failure of visitors to return to a destination does not necessarily mean that particular firms will wear the costs of diminished visits. This is due to the fragmented nature of the tourism industry, as discussed above. This reduces the incentives for firms in general to attempt to retain a loyal customer base by offering quality and trustworthy service (a variant of the free rider problem).

Fourth, their unfamiliarity with many locations visited makes tourists particularly vulnerable consumers. Given that there is an information asymmetry between tourists and the suppliers of products that tourists purchase, it may not be possible for consumers to know about the financial viability of an operator and/or the quality of their advice. Accordingly, consumers required to make prepayments for particular types of tourism goods and services, have difficulty in assessing the financial risk of their decision to deal with a particular operator, directly or through an intermediary. Likewise, it may not be possible for an intermediary to know the full details of the financial viability of suppliers (e.g. airlines, tour companies) and their capacity to deliver. Recently, the European Parliament has voted to extend protection to package holiday travellers in respect of repatriation and sudden price hikes (European Parliament News; press release of March 12, 2014).

Fifth, in contrast to residents, in many destinations there are limits to the ability of tourists to obtain redress to common law remedies. Suppliers may be based outside the consumers' jurisdiction, complicating any process of compensation for deficient services. Moreover, many suppliers have few assets against which a judgement can be enforced. Given that the global tourism industry consists predominantly of small to medium sized firms (Dwyer, 2014), the cost of obtaining a resolution through the courts is likely to be high, reducing the incentive for an aggrieved tourist to seek redress.

Sixth, and additional to the direct consequences for tourists, information failures can make it easier for bad or poorly performing tourism businesses to survive. They can also make consumers less willing to deal with unfamiliar suppliers.

Each of these sources of information failure provides tourism related firms with an incentive to engage in irresponsible marketing activity. Consumer protection laws generally contain a number of provisions to address standards for fair and responsible marketing and advertising and provide a general prohibition against marketing that is misleading, fraudulent or deceptive. This enables consumers to make informed purchasing decisions when making travel arrangements and purchasing a holiday. Suppliers should not advertise goods or services in such a way which is misleading to consumers in respect of pricing, the nature thereof, properties, advantages or uses of the goods and services. The U.S. Department of Transportation (DOT) recently fined Alitalia USD \$125,000 for deceptive practices including providing inaccurate information on

its website regarding its policy on compensation to passengers on delayed and cancelled flights (DOT, 2013a).

4.4. Changes in consumer values

The rise of the socially conscious and environmentally conscious consumer is generating new patterns of tourist behaviour (European Travel Commission, 2010). Tourists as consumers increasingly wish to be involved as participants not spectators and seek a variety of new and optional experiences to satisfy their needs (Dwyer et al., 2009; Nordin, 2005). Of particular importance for this study is the trend for consumer behaviour to be increasingly driven by a desire for customised service (Cetron, 2001). Consumers increasingly demand more choice, more interactivity, more 'authenticity' and more personalized products from which to choose, and increasingly tailor holidays to meet their particular requirements (Pollock, 2012). This has important implications for product choice and quality assurance in tourism, creating a substantial and growing potential for tourism products and services to fail to satisfy customer needs.

Associated with changing consumer values and expectations, demographic changes have implications for the type of tourism experiences demanded by visitors and the types of products and services that tourism businesses need to develop to meet visitor needs. In particular, the growth in tourism globally has increased the pool of vulnerable and disadvantaged tourists at risk of suffering detriment from their consumption choices (Dwyer et al., 2009). Some important changes relate to population growth and ageing, an increasing proportion of younger persons engaging in tourism; greater tourism by the disabled; and, for western destinations in particular, a growing proportion of inbound tourists from Asian speaking backgrounds. The growing importance of such markets in tourism underpins the need for appropriate mechanisms of consumer protection to be developed.

Associated with the increased demand for customised tourism experiences, community norms about minimum acceptable levels of safety and information disclosure are rising (Productivity Commission, 2008). This has resulted in demands for 'less risky' products, including the imposition of more stringent minimum safety standards, the mandatory provision of a range of product information (e. g. whether a restaurant meal is 'gluten free'), and calls by some for (interim or permanent) bans on goods not meeting certain values-based production standards. Perhaps more than for most consumption forms, tourism presents substantial potential for suppliers to fail to meet consumer needs.

4.5. The influence of technological change

Improvements in information and communications technology have increased the availability of travel information and thereby significantly reduced the information asymmetry that travel intermediaries may have previously enjoyed. It has also empowered consumers by giving them better access to information on products and services, and expanded the opportunities for them to make purchases outside of traditional retail environments. On the other hand, increased use of the internet to purchase tourism goods and services has increased the challenges for those seeking redress, especially for transactions with international suppliers via the Internet. It has also created new opportunities for fraud and has increased related consumer concerns such as unsolicited approaches (spam) and the privacy and security of personal information (ACCC, 1997; OECD, 2014). The European Parliament has recently voted to support the new legislation on Alternative Dispute Resolution and Online Dispute Resolution (EU Commission, 2013).

The features of tourism discussed herein reduce the likelihood of market-based solutions emerging to overcome disadvantages that may be faced by tourists as consumers. The above considerations highlight the need for consumer protection mechanisms to be put into place to address the imbalance between the parties to transactions to purchase tourism goods and services. As well as the direct consequences for individuals, the features of consumer markets can make it easier for bad or poorly performing businesses to survive. They can also render consumers less willing to deal with unfamiliar suppliers. These effects will in turn reduce competition and lead to higher prices, reduced quality and less innovation. All such features reduce destination competitiveness.

5. Conclusion

Arguments have been presented to the effect that consumer protection is a neglected attribute of destination competitiveness. While several of the determinants of destination competitiveness identified by researchers relate to consumer protection, the importance of consumer protection to destination competitive advantage has, by and large, been under-appreciated and not treated in any systematic way.

This paper has discussed a number of features of tourism that make consumer protection an important area of concern for the industry globally and which, at the same time, act to erode consumer confidence, reducing destination competitiveness. These include the fragmentation of the industry, special features of tourism products and services, unstable tourism environments and globalisation. Additionally, we have identified several additional issues that tourism shares with other industries that pose challenges to developing mechanisms for protecting tourists as consumers. These include: growing product complexity, pricing strategies, information failures, changes in tourist demographics and consumer values, and technological change.

Emphasising that effective competition in tourism is stimulated by empowered consumers and responsive suppliers that trade fairly, the discussion has implications for tourism practitioners as well as researchers. Research on destination competitiveness needs to pay more attention to consumer protection as basic to destination competitive advantage and future consumer protection mechanisms should reflect this. Several challenges for research may be identified: How important is consumer protection in destination choice both in comparison to other factors and by destination? How aware are visitors to any destination of their rights as consumers? What impact does enhanced consumer protection have on the total visitor experience? Does the association between consumer protection and destination competitiveness vary according to a destination's stage of economic development? Relatedly, would increased consumer protection mechanisms have a greater effect in improving the ability of a developing country to compete in the global tourism market by enhancing its destination image and improving its existing business and economic environment? Does improved consumer protection impact more on the visitor experiences of domestic or international tourists? What is the relationship between consumer protection and destination brand equity? To what extent is international co-operation required on the development of consumer protection mechanisms for tourists? These questions, and related topics, emerge as important once consumer protection is identified as essential to destination competitiveness. Addressing such questions should be an important part of the future research agenda in this domain.

In an increasingly complex marketplace, empowered tourists should be better able to choose those products and services that match their preferences. Initiatives in the development of consumer protection mechanisms should give tourists greater access to

information about the characteristics of the products and services that they purchase. Demand from empowered tourists can encourage firms to develop new and better products, boosting innovation and productivity. Educated, informed and confident tourists are helped to reduce poor behaviour by suppliers of goods and services, reducing hidden risks, either from inferior goods and services or from rogue suppliers. When problems arise, empowered tourists are more able to seek redress and avoid further detriment. More confident and informed tourists can invigorate competition between suppliers, promoting product and service quality, efficiency and innovation.

Destination managers' worldwide need to ensure that policy development is underpinned by soundly-based research including that which provides answers to the aforementioned questions. The effectiveness of any consumer protection measures in the tourism context depends on the extent to which tourists are aware of their rights under generic legislation and quality assurance initiatives. This increased consumer confidence from consumer protection legislation will enhance destination competitiveness, improving tourists' knowledge to be able to transact effectively.

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