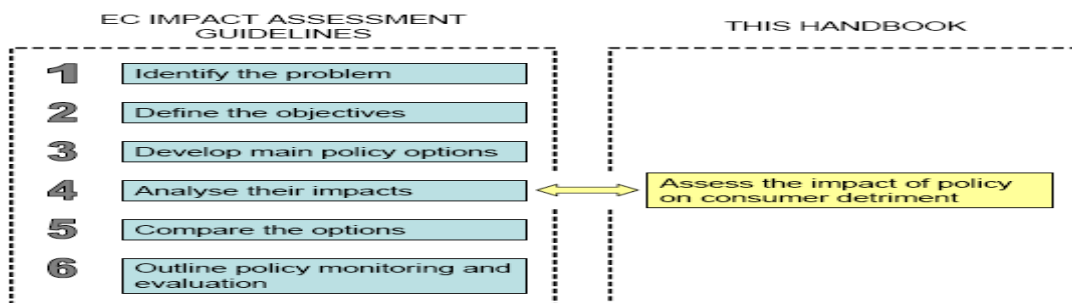


## Handbook to assess consumer detriment

### Aim of this Annex

This annex is designed as a handbook to assist desk officers in identifying and possibly also quantifying the potential impacts of policies on consumers, in particular during the problem definition and the Impact analysis stage. It should be noted that desk officers will be able to perform in any case a qualitative assessment on their own, but might need further research and external assistance (e.g. with consumer surveys or economic modelling) for performing complete quantification. This will of course only be proportionate in proposals where consumer impacts are among the most important ones of a proposal.



### What is consumer detriment?

Whenever a measure is likely to have significant impacts on consumers and households, the consumer detriment methodology can be applied. Put simply, consumer detriment involves consumers suffering harm or damage. In EC consumer protection law, a “consumer” is typically defined as a person who buys a product for personal rather than business use.<sup>12</sup>

More concretely, research study for the Commission<sup>3</sup> has suggested the following two definitions of consumer detriment, for use in different policy contexts:

1. **Personal detriment** — negative outcomes for individual consumers, relative to reasonable expectations.
2. **Structural detriment** — the loss of consumer welfare (measured by consumer surplus) due to market failure or regulatory failure.

<sup>1</sup> **Consumers** are defined as any natural person who is acting for purposes which are outside his trade and business. The focus is on **end-consumers** and impacts on business are therefore only of interest insofar as they may be a proxy for impacts ultimately passed through to end consumers. (e.g. when an intermediate business pays higher prices due to an upstream firm exercising market power and this might be passed on through to end consumer). In most cases consumers are best thought of as individuals, but if e.g. consumption of children under parental care is at stake the better unit might be households.

<sup>2</sup> It is important to remember that the concept of consumer detriment does not cover all policy impacts which matter from the consumer perspective (e.g. it does not cover impacts on people in their roles as workers or shareholders). Hence, analysis of the impact of policy on consumer detriment should be viewed as only one input into the process of impact assessment and evaluation. The research study has produced a Handbook for Policy Officers, which DG SANCO is currently adapting to the needs of Commission policymaking, implementing, in particular, a more modular structure for different types of application of the methodology.

<sup>3</sup> Europe Economics (2006), “An analysis of the issue of consumer detriment and the most appropriate methodologies to estimate it; Final report for DG SANCO by Europe Economics”

In line with these definitions of consumer detriment, there are two types of consumer detriment analysis that follow:

1. It can be assessed **ex-ante (structural level detriment)** at the **aggregate level** which is useful for any new legislative initiative with likely considerable impact on consumers. It demonstrates loss of consumer welfare (measured by consumer surplus).
2. The second type of detriment (**personal detriment**) analysis is used **ex-post**, looks at negative outcomes for individual consumers and can demonstrate consumer outcomes in given contexts. The stated harm suffered by consumers is benchmarked against reasonable expectations. This will generally be a survey-based exercise. A personal detriment assessment might of course be followed up by a structural detriment assessment (so to help inform the policy making in the case of a review etc).

Why is consumer detriment important for policy-making?

The concept of consumer detriment is potentially relevant for assessing the expected impact that *any* policy proposal may have on consumers and households, both at the individual and the aggregate level.

Protecting consumers against serious personal detriment can be seen as a matter of “fairness”, since it can be argued that individuals should be protected from negative outcomes which are so serious that society views them as unacceptable. Further, protecting consumers against personal detriment may sometimes improve the functioning of markets, leading to more efficient market outcomes. Consumers may be more willing to participate in markets, or to switch to new suppliers or products, if they feel reassured that they have some level of protection against negative outcomes.

Structural detriment is also an important concept when assessing the impact of policy on consumers, because it relates to the welfare of consumers in aggregate (unlike personal detriment, which relates just to those individuals who experience negative outcomes).

Which type of consumer detriment should be analysed?

When is each type of consumer detriment most relevant to policy-makers? In other words, when should desk officers focus on analysing personal detriment, and when should they focus on analysing structural detriment?

Personal detriment is particularly relevant when assessing consumer protection rules, since these seek to provide individual consumers with protection against negative outcomes. For instance, desk officers should consider impacts on personal detriment when assessing policies which deal with matters such as the following:

- (a) Scams and fraud;
- (b) Misleading advertising;
- (c) Unfair marketing practices;
- (d) Unfair contract terms;
- (e) Sales of unsafe products;
- (f) Sellers providing inadequate redress in response to complaints.

Structural detriment is relevant to *all* policies which have an impact on consumers, given that it relates to the overall impact on consumers in aggregate. This includes consumer protection rules,

and hence for some policies desk officers may need to assess impacts on both personal and structural detriment.

## Analysing personal consumer detriment

As said above, this is a methodology to gather evidence on what the experience is with the current market and regulatory situation and it will usually be used to gain insight into the usefulness of existing legislation for consumer protection provisions and deliverable of consumer benefits as to estimate the benchmark. It can e.g. also precede a full structural detriment analysis. **Its focus – ex-post - is on those individual consumers that have experienced negative outcomes** and hence looks at a subset of consumers rather than all consumers in aggregate. Personal detriment can comprise both **financial and non-financial detriment** (see *table*), therefore both a quantitative and qualitative assessment is possible. Desk officers should aim at translating the quantifiable impacts in monetary terms.

**Table 2.1: Different Elements of Personal Consumer Detriment**

<p><b>Financial detriment</b></p> <p>Cost of repairing or replacing product Administrative and travel costs incurred resolving the problem (e.g. telephone costs, petrol) Reduction in value of asset (e.g. poor house repairs reducing value of house) Cost of expert advice or assistance (e.g. legal costs) Lost earnings (e.g. due to loss of time or injury) Damage to other property (e.g. electrical fault causing house fire) Other financial costs</p> <p><b>Non-financial detriment</b></p> <p>Psychological detriment (e.g. stress, anger) Loss of time Inconvenience Injury or adverse effect on health Other non-financial detriment</p>
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In some cases when consumers suffer problems, they will obtain **redress** from their supplier (e.g. a replacement product, refund or compensation). This may partly or wholly offset the detriment that they have suffered. The redress has to be considered during the assessment of personal detriment. This enables identification both of the problems which consumers suffered in the first place, and the extent to which they were able to obtain redress under the existing legal framework.

## Step 1: Qualitative assessment of personal detriment

You will describe – in words the causal mechanisms by which a policy resulted in certain outcomes. There are various ways of carrying out this analysis (see *pages 26-36 of EC impact assessment guidelines*)

Particular focus will be on **how the consumer behaviour changed** (see *box below*) and whether there were distributional effects (particularly affected groups of the population, or re distribution of wealth e.g. from consumers to producers) and finally **on unintended vs. intended consequences**.

**Unintended consequences** could e.g. mean that firms reacted in a way that was not expected when the legislation was drawn up and that that had a negative impact on the end

consumer e.g. when firms did choose not to comply with the policy (or in some cases, perhaps not even being aware of the policy change); to evade, raise prices due to compliance costs, maybe even exit the market or stop investing in new products/services...

**Changes in consumer behaviour:**

On consumer behaviour, the following types of impact are particularly important:

- (a) **Changes in the confidence that consumers have in the market.** Policies make consumers more or less confident with stronger or weaker legal rights when something goes wrong. This may in turn affect the total number of market transactions which consumers engage in. For instance, tighter consumer protection rules in respect of particular holiday products that had previously attracted negative publicity as a result of unfair commercial practices could likely result in better consumer outcomes, hence an improved product image and higher consumer confidence.
- (b) **Changes in the choices made by consumers between different suppliers and products.**
- (c) **Changes in consumer behaviour when something goes wrong.** Consumers' decisions about whether to complain and seek redress when problems occur will be partly determined by the likelihood that this will improve outcomes for them.
- (d) **Changes in the psychological impact of problems.** Psychological harm such as increased levels of stress or anger, but also or long-term loss of consumer confidence can be an important source of non-financial detriment to consumers. (Quantification is not always feasible).

Once the various direct and indirect effects of the policy have been identified, the final stage of the qualitative analysis is to arrive at an overall judgement (if possible) on the likely direction and scale of any impact on personal detriment. In particular, you should consider what effects there might be on:

- (a) The number of transactions;
- (b) The number of consumer problems, particularly as a *proportion* of transactions;
- (c) The nature and magnitude of problems where they occur;
- (d) The redress obtained by consumers when problems have occurred.

Effects on the total number of transactions can be interpreted as an indication of whether the policy is successful in promoting a well-functioning market. (Such effects are important in assessing structural detriment).

**Important:** When evaluating whether a policy increases or reduces personal detriment, do not take the absolute number of transactions, but consider instead the proportion of transactions which give rise to problems, and the seriousness of individual incidents. This is because a product/service with high market share will probably also have a higher share of problematic transactions.

**Important:** Sometimes it is not necessarily market or regulatory failures, but **behavioural biases** can themselves lead to consumer detriment. This means that consumers do not always behave rationally – even when there are no supply-side problems. This is particularly the case for those biases which involve *errors of reasoning* (e.g. misunderstanding the laws of probability). *For more detailed information please see the full study on Consumer detriment.*

**Important:** It should be noted that it does not always follow that a reduction of personal detriment will lead to improvements in the overall welfare of society: the identification of

personal detriment will give indications of problems in given markets that need to be addressed. However a policy may protect a small group of consumers from experiencing personal detriment, but at the same time impact other consumers (e.g. in terms of higher prices), which will affect the overall balance of costs and benefits. These tradeoffs should always be borne in mind. For instance, a policy may reduce the tariffs for mobile phone roaming, but you may lead to prices increases for domestic calls falling disproportionately on less affluent consumers.

In qualitative analysis, desk officers and advisers would naturally tend to analyse issues in relation to what they regard as reasonable (rather than unreasonable) expectations. However, it is important that desk officers state clearly what they regard as constituting reasonable expectations in the specific context, and on what basis.

The issue of whether expectations are reasonable also arises in any quantitative analysis which involves collecting self-report data from consumers. For instance, the number of problems reported by consumers taking part in a survey is likely to depend on their *actual* expectations, even if these are higher or lower than what is reasonable. This could be done by *including control questions to identify which individuals have high/low expectations as consumers*. Examples of control questions would be asking people about their general attitudes to consumer rights and to complaining.

## Step 2: Estimation of personal detriment

An important source for data will be the number of **consumer complaints** recorded by public bodies or consumer organisations which can provide a useful proxy for personal detriment. However, complaint data need to be interpreted cautiously, as they can be affected by a number of biases (e.g. consumers do not always complain when they suffer detriment, and the tendency to complain varies between groups of consumers, some complaints may be unreasonable). Also the number of complaints is causally linked to the number of overall transactions so you have to look at the proportion of complaints, not the absolute number. If no information on the number of transactions is available, it can be estimated by dividing turnover in the sector by the typical value of the purchase. Generally, complaint data should be used to compare *relative* consumer outcomes over time or across sectors, but not as measure of the absolute amount of detriment suffered by consumers.

Also the **number of court cases** or other indicators of the **publicity caused by a specific consumer** issue such as campaigns by consumer organisations, the number of academic studies or press coverage can be an indicator.

**Consumer surveys** involve asking a representative sample of the population about the problems which they have experienced. It is recommended to design a specific consumer survey only for cases where the scale of the consumer-related problem justifies this.

Before establishing such a consumer survey, please consider the more detailed study on consumer detriment to find more information on:

- what type of survey to use
- how to draft the questionnaire
- how to detect consumer behavioural biases (error's of reasoning etc.)
- how to include control questions on reasonable expectations, to inform on distributional effects etc.

## Step: 3. Aggregation of findings at macro level

From the results of the consumer survey, an extrapolation should be possible on how much consumer detriment exists in aggregate based on the findings at individual level. This can be extracted from the proportion of transactions which give rise to problems in a given market context, and the seriousness of individual incidents. This is because a product/service with high market share will probably also have a higher share of problematic transactions.

## **Structural detriment analysis – estimating likely impacts on consumers**

Once you have identified, during the problem definition phase that the proposal is likely to have effects on consumers, you can continue with a more detailed analysis of the likely impacts on consumers. This is usually done both **qualitatively** and **quantitatively**.

A **qualitative analysis** will simply spell out – in words - the causal relationships between the market/policy imperfection and the consumer market outcome. There are various ways of carrying out a qualitative analysis (see pages 26-36 of EC impact assessment guidelines).

The following list gives you an overview about general questions that should be asked at this stage:

### **General questions**

Does the policy option affect **prices** consumer pay?

Does it affect their financial situation or economic protection in the long run?

Is there one **particularly affected group of consumers**? (E.g. the elderly, people without internet connection, people living in remote areas?)<sup>4</sup>

Does it affect the **quality and safety** of the available products/services

Does it affect the ability of consumers to benefit from the IM, their **rights** (e.g. redress) and their **information level**?

As said above, structural detriment looks at the totality of consumers and the welfare losses that they might experience. The concept is hence linked closely to Annex 2 of the IA guidelines which explains in more detail market and regulatory failures as part of the problem definition. From a demand-side perspective, the following are the most frequently encountered market imperfections and the questions that should be asked when encountering these failures:

### **Consumer-relevant questions to be asked if certain market/regulatory failures are detected:**

#### **Market power:**

- Will reduced (increased) competition increase (reduce) the price paid by the end consumer?

#### **Imperfect information**

-Do considerable *search costs* exist in the market which prevents consumers from having all information needed to make an informed choice? Do these search costs allow firms to exercise a degree of market power, since they are unlikely to lose all their customers if they raise prices above competitive levels?

<sup>4</sup> When consumer surveys are being conducted, it is usual to include a number of demographic questions. These should be chosen so as to permit subsequent analysis of the most important distributional impacts.

-Is product diversity and the way products are offered (bundled offers etc) making it more difficult for consumers to compare price and quality?

-Is the product/service at stake typically resulting in *asymmetric information* (when sellers will typically know the quality of their own products even if consumers do not)?

Example: Consumer choices and information

If consumers are unaware of factors such as energy consumption of different models of household appliances or the nutritional content of foodstuffs, they are unable to make well-informed choices in their own interest or the wider interest of society.

### **Suboptimal rate of Innovation**

- Is it possible that in the long term consumers might get less innovation when a certain policy option is implemented (eg IPR protection regimes etc.)

Example: Consumers and IPR

Intellectual property rights may create structural detriment in the short-term, by enabling inventors to exercise market power, but are likely to yield long-run benefits by encouraging innovation. In these cases, failure to take account of all impacts on innovation may lead to the adoption of policies which harm the long-term interests of consumers.

### **Suboptimal product variety**

- Is there a choice overload so that consumers are confused about the quality of products/services (e bundled packages that cannot be compared with other offers)?

-Will the Regulation restrict product variety (e.g. licensing regimes or harmonisation of provisions)?

### **Public goods:**

-Does the market/regulated product or service at stake have features of a public good (like e.g. food safety)?

-Is the policy in question likely to affect the size of any externalities (both costs or benefits)?

### **Regulatory failure:**

- Does the policy option set up tariffs, bans, and quantity or price restrictions that impact on the final consumer?

- Is it likely that the compliance costs for business are passed on to the consumer?

-Do consumers have adequate contract rights and do they have sufficient legal rights of redress when suppliers fail to deliver on their commitments?

Example: Energy markets and consumer outcomes:

Example for a failure to provide well-functioning markets could be the necessary degree of unbundling in the energy sector as part of the first energy liberalisation package which meant to ensure that previous incumbents and new entrants can compete on a level playing field. It turned out that competition is indeed difficult to ensure when former incumbents controlled access to the grid –issue which is now being addressed again for this reason. This will also ensure that markets better deliver tangible consumer outcomes.

### 3. Quantitative analysis of the impact on consumers (for structural detriment analysis)

Once you have sketched out what the possible effects of future policies could be, you then proceed to trying to **quantify** the effects on consumers, i.e. the likely changes in consumer surplus. Monetisation is advisable to allow comparison with other costs and benefits, but is not always possible.

#### Step 1 Gathering evidence

##### 1. Direct Evidence from existing sources

Useful information on consumer market outcomes as well as on consumer behaviour will soon be available in the **Consumer Scoreboard**.

##### Box: The Consumer Scoreboard

The Commission will present in early 2008 a consumer scoreboard setting out the indicators and benchmarks it will use to monitor consumer market outcomes – including prices, complaints, satisfaction, safety, switching possibilities and other indicators. Some of the data needed for this monitoring is currently missing but will be developed over time, notably the collection by Eurostat of comparable data on prices across the internal market. The Scoreboard, is foreseen to be a regular publication, should in time provide data which help to identify whether consumer markets are performing in terms of economic, and social outcomes for consumers, and where intervention may be needed. For more information and the latest data please contact the newly set up Task Force on Consumer Markets in SANCO Directorate B.

Other useful sources are e.g. Eurobarometers, EUROSTAT data, OECD reports, Member States etc.

##### 2. Direct evidence from cross sector and cross country comparison

These are methods to find out about the performance of a given market/sector/product by comparing them with existing similar markets/sectors/products.

Tools used to quantify estimates of the effect of policy on prices and consumer detriment include **empirical studies (e.g. before/after analysis, or cross-sectional or cross-country comparisons of price-cost ratios)**. That means you would e.g. look into a comparable case of a product/service in the past, or across countries or across sectors to compare the market outcomes and conclude from there whether an intervention is needed.

In some cases (e.g. when the product/ services have features of public goods) the loss of consumer detriment can be estimated, where proportionate, by examining the value that consumers place on any increase or reduction in the provision of the public good (or the public good feature of the product).

For trade-related questions, **International price comparisons** - can sometimes be used to inform analysis of structural consumer detriment. For instance, if prices for a tradable product differ across the EU due to (non-tariff) trade barriers, then a policy which removes those barriers is likely to lead to price equalisation across the EU (with any residual differences in price being due to transport costs).

**Important:** Quantification will not be possible in all cases - it can be in particular hard to guess what the effect of e.g. specific innovations will be and it will also not always be possible to produce a monetary estimate of the change in consumer surplus. *For more details regarding these tools please see full study.*

### 3. Indirect evidence test how consumer behaviour may be affected by the policy

This includes basically **consumer surveys and consumer focus groups**. Consumer Focus groups typically involve in-depth structured discussions with a small group of consumers, and can be used to obtain qualitative insights. In some cases, it may be useful to conduct focus groups to explore an issue as a prelude to designing a consumer survey. Consumer surveys involve asking questions to a representative sample of consumers, and can be used to obtain both qualitative and quantitative data. If proportionate, one could also **involve testing effects on consumer behaviour** by asking volunteers to take part in an experiment or experiment/game sth which was already done in the US<sup>5</sup>. Also market modelling is an option for cases that involve very significant consumer impacts. *For further details regarding all of these options please consult the full consumer detriment study:*

### 4. Stakeholder consultation

As with impact assessment more generally, desk officers should make use of **consultation** (→see **Consumer Consultation Toolbox**), as well as drawing on the knowledge of experts where appropriate.

## Step 2 Calculating Changes in Consumer Surplus

Interventions in the market can bring about different changes for consumers which will have to be predicted and quantified, when feasible. Structural detriment captures the loss of consumer welfare and is typically measured using the concept of consumer surplus, which is the difference between what a consumer is willing to pay for a product and what he is actually paying.

#### (a) Changes in the price that consumers pay for existing volumes of consumption.

This is the simplest case: consumer surplus can be calculated simply by multiplying the volume of consumption by the change in price.

(b) **Changes in the quality of a good or service, for existing volumes of consumption.** In this instance, the first step is to estimate how much consumers are willing to pay for the increase in quality, using one of the methods presented above on *consumer behaviour*. The second step is to multiply this estimated value by the volume of consumption.

(c) **Changes in the volume of consumption of an existing good or service.** This type of change in consumer surplus only needs to be estimated where the change in volume is significant. Where an increase (or decrease) in volume results from a fall (or rise) in price, then the change in consumer surplus can be estimated by multiplying the change in price by the change in volume, and then dividing by two. In other cases, estimates can be obtained as discussed below for (d).

(d) **Consumption of a new good or service.** In this case, the calculation involves estimating consumer willingness to pay for the new good or service, and subtracting the likely market price. The likely market price could be based on data from other countries or sectors where the product is available, or (if the sector is expected to be competitive) bottom-up analysis of the cost of providing the product.

Examples of EU policies that have introduced (or been proposed with the aim of introducing) changes in consumer surplus:

<sup>5</sup> An example of how the US Federal Trade Commission used a controlled experiment to assess the impact of a proposed policy can be found at <http://www.ftc.gov/os/2004/01/030123mortgagefullrpt.pdf>.

a) Changes in the price that consumers pay for existing volumes of consumption

Example: Regulation on roaming<sup>6</sup>

The proposal provides for the establishment of Community-wide maximum price limits on the charges that mobile network operators may levy for the wholesale provision of mobile roaming services (for mobile voice telephony calls made from a visited network in the Community and terminating on a public telephone network also located within the Community). To ensure that price reductions are passed on to consumers, it introduces a cap on retail prices charged by mobile operators for making and receiving mobile communications abroad. The intended impact of this proposal is clearly to reduce prices paid by consumers when using their mobile phone abroad.

b) Changes in the quality of a good or service, for existing volumes of consumption

Example: Full accomplishment of the internal market of Community postal services<sup>7</sup>

The proposal confirms the date for full market opening and for the completion of the internal market for postal services compatible with the maintenance of a high quality universal service. The proposal aims to provide greater competition to improve service levels, in terms of quality, prices and choice available to customers (business and consumers). The universal service and the associated quality requirements set out in the directive have a particular relevance to consumers. The proposal stresses the cost-effectiveness of providing the universal service while at the same time the development of greater competition and choice in the market means that there may be room for price reductions (see a. above) and the introduction of new services (see d. below) that could also impact consumers.

c) Changes in the volume of consumption of an existing good or service

Example: Commission Regulation on Chinese textile products<sup>8</sup>

The agreement implements quantitative limits (quotas) on the import of ten categories of textile and clothing products from China for the period 2005-2007. The aim of the proposal is to manage the growth in Chinese textile exports to the EU while giving time to adjust for the textile industry in the EU. The proposal translated into a reduction in the volume of certain items of clothing available to consumers on the EU market. Retail prices are also likely to have been impacted.

d) Consumption of a new good or service

Example: Communication on strengthening the Internal Market for mobile TV<sup>9</sup>

The main objective of the Communication is to support the take-up of mobile TV in the EU by introducing a favourable technological and regulatory environment. Mobile TV is a budding technology that combines greater mobility with new forms of accessing media content and therefore has the potential of creating new consumer services. According to figures quoted in the impact assessment of the proposal, the potential market is estimated between € 7 billion and € 20 billion, reaching between 200 million and 500 million customers worldwide by 2011.

Treatment of Business Customers

Desk officers are advised to adopt the working assumption that all impacts on business customers will ultimately be passed through to end-consumers, unless there are specific

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<sup>6</sup> Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC

<sup>7</sup> Proposal for a Directive of the European Parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services COM/2006/0594 final

<sup>8</sup> Commission Regulation (EC) No 1084/2005 of 8 July 2005 amending Annexes II, III and V to Council Regulation (EEC) No 3030/93 on common rules for imports of certain textile products from third countries

<sup>9</sup> Communication from the Commission on Strengthening the Internal Market for Mobile TV COM(2007) 409 final

reasons for thinking otherwise.<sup>10</sup> Hence, impacts on consumer surplus in upstream markets can be treated in the same way as those in downstream markets.

### Aggregating the impacts, taking care to avoid double counting

Care should be taken to avoid *double-counting* (i.e. if there are linkages between regulatory or market failures the same error may of course not be counted twice). The same is true with impact on firms in the upstream market *and* the impact on end-consumers when it feeds through downstream – it is still the same cause and may not be accounted for twice in your analysis.

### **Step 3: Interpreting the results and bringing the analysis together with the assessment of other impacts**

Sometimes, a reduction in structural consumer detriment may be partly or wholly offset by a reduction in the welfare of producers. For instance, a policy which reduces prices for consumers (without making production more efficient) would also be expected to reduce the profits earned by shareholders and/or the wages earned by employees. If the objective of policy-makers is to maximise the total welfare of society, then the negative impact on shareholders and/or employees should be netted off against the benefits which accrue to consumers when evaluating policy options. However, policy-makers may care about *distributional issues* (i.e. who gains and who loses), and hence the relative weight that should be placed on consumer and producer impacts is ultimately a matter of judgement.

Desk officers will come to final conclusions on the basis of the direct and indirect evidence gathered and interpret the results before the consumer detriment analysis is put into context – the assessment of the entirety of (relevant) impacts as explained in the Commission guidelines. Bear in mind that the role of the consumer is only one role the citizens might play and there are other impacts that matter to society such as the impact on workers, investors. Ideally possible trade-offs between consumer policy objectives and with other policy objectives should be indicated as to inform decision makers.

### **Bringing together analysis of personal and structural detriment**

Personal detriment and structural detriment interact with each other as well as with other potential impacts: how do these impacts balance-out? This section offers guidance on how to interpret the results of the analysis conducted above.

In the case of consumer protection rules, a reduction in structural detriment may sometimes follow on directly from a reduction in personal detriment. Examples would be reductions in personal detriment which:

(a) *Increase consumer confidence in a particular market*, leading to an increase in the volume of transactions in that market and hence a rise in consumer surplus.

(b) *Increase consumer confidence in a particular sales channel* (e.g. cross-border sales, distance selling). This could potentially increase the range of products that consumers are able to choose from and/or strengthen competition in markets for products which can be sold through that channel.

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<sup>10</sup> An example of when this assumption would be inappropriate is when there is a problem in an upstream market which affects only EU firms, whereas competition in the downstream market is international. In this case, EU firms may be prevented from passing through cost increases to end-consumers because of competition from imports.

In cases such as these, analysis of the impact of policy on personal detriment can be used as evidence on how structural detriment may change. This is particularly useful where it is difficult to quantify impacts on structural detriment itself.

However, there may be some instances in which reducing personal detriment does not improve the overall functioning of the market, and hence does not reduce structural detriment. For instance, a policy may protect a small group of consumers from experiencing personal detriment, but at the same time lead to higher prices for other consumers.

In these instances, desk officers should consider whether there is a trade-off between aggregate consumer welfare (measured by the change in structural detriment) and fairness considerations.

However, care is needed here: it should not automatically be assumed that a reduction in personal detriment implies an improvement in the overall fairness of outcomes. There are two particular situations in which a reduction in personal detriment is likely to represent an improvement in fairness. These are when:

(a) The consumers who benefit from the reduction in personal detriment belong disproportionately to **vulnerable groups** (e.g. an ethnic minority, the disabled); or

(b) Individuals are protected from **very severe negative outcomes** (e.g. injury from unsafe product, or poverty in old age due to a financial institution going bankrupt).

Where a reduction in personal detriment does not improve the overall fairness of outcomes, desk officers should be guided mainly by the effect that the policy has on structural detriment.

**Bringing together analysis of consumer detriment and other policy impacts**

Monetary estimates of the impact of a policy on *structural detriment* are ideally suited for direct comparison with other economic costs and benefits, because they represent the overall impact of the policy on consumer welfare. By contrast, desk officers should be more cautious in making direct comparisons between reductions in (financial) personal detriment and other economic costs and benefits.

Sometimes, a reduction in structural consumer detriment may be partly or wholly offset by a reduction in the welfare of producers. For instance, a policy which reduces prices for consumers (without making production more efficient) would also be expected to reduce the profits earned by shareholders and/or the wages earned by employees.

If the objective of policy-makers is to maximise the total welfare of society, then the negative impact on shareholders and/or employees should be netted off against the benefits which accrue to consumers when evaluating policy options.

However, policy-makers may care about distributional issues (i.e. who gains and who loses), and hence the relative weight that should be placed on consumer and producer impacts is ultimately a matter of judgement.

The table below summarises how policy-makers should interpret different combinations of results in relation to personal and structural detriment.

		Is reduction in structural detriment greater than the net cost of all other impacts?	
		Yes	No
What happens to personal detriment?	Decreases	Policy is unambiguously beneficial	Trade-off between reduced efficiency and (possibly) improved fairness

	Increases	Trade-off between increased efficiency and (possibly) reduced fairness	Policy is unambiguously harmful