Typically, a business need not like a consumer to sell products or services. In most lines of business, a seller must sell to anyone willing to pay. And although there are types of businesses where a seller can legally refuse a sale, most rational sellers seek as many customers as possible.

In contrast, a consumer can purchase products and services from a provider even if the consumer makes rude remarks, shows up late, quibbles, refuses to deal, or engages in a wide range of other anti-social behavior. Reverse the roles, and a transaction rarely occurs. Indeed, a seller who maintains such activities may very well go out of business.

The asymmetric nature of the buyer-seller relationship is even more acute in competitive markets, where many sellers vie for a finite number of sales. In the United States, most markets are competitive. Since consumers can choose to purchase from businesses they like, businesses compete to be likeable.
Businesses cannot even know the customer's true intent until a sale is consummated. Perhaps a customer is “just browsing.” Perhaps the customer is seriously seeking a purchase. Perhaps the customer will pay a king’s ransom for a trinket, or perhaps this customer is only interested in a bargain.

A business can seek information on consumer intent, but ultimately it can only guess the true intent. A buyer, however, can demur, obfuscate, and even mislead. And if the business seeks too much information about the buyer, the buyer may leave and seek satisfaction elsewhere.

The consumer’s elevated status relative to business forms the foundation of consumer sovereignty. As sovereigns, consumers can pick and choose those goods and services that meet their wants and needs, based on their resources and available prices. In a market economy, it is consumers, not businesses, who determine markets. And it is consumers whom every seller goes to the greatest lengths to satisfy.

Walk down a street, browse the internet, ride in public transit—live for a day in the United States—you will be confronted with advertisements and other messages about the wonders and worthiness of a certain company or product. Rarely, if ever, do you see the overt signs of how worthy a particular consumer is. Ironically, the absence of consumer self-promotion is the surest reminder that we live in the realm of sovereign consumers, not businesses.

But sovereign consumers are not absolute monarchs. They choose governments for themselves for the protection of property, the enforcement of contracts, and generally, the promotion of consumer interests, among other purposes. Governments should be defenders of consumer sovereignty. But governments may also ban or limit some transactions between willing buyers and willing sellers. Wise governments use this power sparingly.

Sparing use of the power to block transactions is the basis for preliminary screens that assess whether a proposal will harm consumers. Although governments may give any number of reasons to limit commercial transactions between willing buyers and willing sellers, these reasons almost always fall into one of three categories: (1) unintended negative effects on third parties, (2) risks to the buyer, or (3) risks to the seller. These categories correspond with the parties that such government interference is intended to protect: third parties, the buyer, or the seller.

The structure of transaction limitations usually reflects one of these three categories: (1) Rules to mitigate harm to third parties typically ban or tax activities that cause the harm. (2) Rules to protect frail buyers usually prohibit certain classes of buyers from engaging in certain transactions. (3) Rules to protect sellers usually block certain classes of sellers from participating in the market, or discourage them through higher regulatory costs.

It is easy to understand how the first two categories may help consumers. All consumers are third parties to transactions involving other parties, and most, if not all, have blind spots and may need some limited protections in some markets. Even so, these categories merely establish necessary conditions for government restrictions on transactions, not sufficient conditions. Consumers often are capable of looking after their own interests without the government interfering in transactions. Consequently, government should be cautious.
It is the third category—seller frailties that result in some sellers being blocked from the market—that is most problematic for consumers. Although there are certain unusual circumstances when limiting the access of some sellers will benefit consumers, those are the exception rather than the rule. Not surprisingly, proposals to block certain sellers from the market often originate with their competitors rather than consumers.

In reviewing potential laws and rules that would stand between willing buyers and willing sellers, government officials should seek to understand the nature of the proposed intervention. If the proposal unnecessarily limits competition or unreasonably favors one class of sellers over another, it likely will harm, rather than benefit, the consumers it seeks to protect. Even proposals to limit transactions that do not involve blocking competitors should be reviewed to see if an absence of government intervention would benefit consumer sovereignty.
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