

消費者法規翻譯叢書之十一

# 外國消費者保護法

## 第十一輯

行政院消費者保護委員會 編印

中華民國九十三年七月

# 序 言

消費者保護涉及層面涵蓋每一個人民之食、衣、住、行、育樂各方面，消費者保護法則是保障國民消費生活之基本法，中女關全體國民之生活福利，我國為推動消費者保護工作，歷經個別立法保護時期及消費者保護方案時期，於八十三無一月十一〕制定公布消費者保護法，使我國正式進入消費者保護法時期。嗣後為應社會變遷需要，解決新興消費交易爭議，乃於九十二年一月二十二日修正公布第二條、第六條、第七條、第十三條、第十四條、第十五條、第十六條、第十七條、第三十五條、第三十八條、第三十九條、第四十一條、第四十二條、第四十九條、第五十條、第五十七條、第五十八條、第六十二條；增訂第七條之一、第十條之一、第十一條之一、第十九條之一、第四十四條之一、第四十五條之一、第四十五條之二、第四十五條之三、第四十五條之四、第四十五條之五條文。

值此保障消費者之思想已蔚為世界潮流之際，我國消費者保護法之制定公布施行，已為我國法制建設及提昇國民消費生活品質樹立了一個新的里程碑，對於保障我國消費者權益有其正面助益。鑒於消費者保護為一嶄新的法律領域，為健全我國有關消費者保護法制，本會除於派員出國考察或開會時」——頃道蒐集各國之消費者保護法規外，另經由國外政府機關、國際組織網站上下載消費者保護相關法規，並正逐步將所蒐集的外國消費者保護法規進行翻譯工作，彙編為外國消費者保護法規選輯，作為進一步瞭解消費者保護有關規定及比較研究之參考資料“本書為本會翻譯印製外國消費者保護法第十一輯，主題為 ○ E CD 有關消費者保護之相關規定，內容包括：企業對消費者之替代性爭端解決機制在隱私及消費者保護部分之法律規定、經濟合作暨發展組織—亞太經濟合作會議全球論壇：數位化經濟政策立法架構、線上電子市集之消費者：準則施行三年後遞交 ○ E CD 委員會關於電子商務之消費者保護準則報告草案、第六十二次消費者政策委員會會議紀錄摘要草稿、關於跨國詐欺和集團性詐欺消費者保護綱領理事會諮文、○〔CD 電子商務消費者保護綱領之最佳實務範例，共計六篇 ○ E CD 有關消費者保護之相關規定。又本書採用中文翻譯及原文左右對照方式印刷，俾供讀者閱讀之便利“

本選輯中譯本部分，係委由財團法人資訊工業策進會科技法律中心之郭佳玫專案經理、吳兆談法律研究員、周慧蓮法律研究員、周天泰專案經理及楊婉艷專案經理，進行翻譯，併此敘明，與表謝忱。

行政院消費者保護委員會謹識

中華民國九十三年六月

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Working Party on Information Security and Privacy

**LEGAL PROVISIONS RELATED TO  
BUSINESS-TO-CONSUMER ALTERNATIVE DISPUTE  
RESOLUTION IN RELATION TO PRIVACY AND  
CONSUMER PROTECTION**

DSTI/JCCP/REG/CP( 2002)1/FINAL

17-Jul-2002

## FOREWORD

This document addresses the extent to which existing national legal provisions may impact recourse to alternative dispute resolution (ADR) in relation to electronic commerce. It presents a synthesis of Member country responses to the Questionnaire on Legal Provisions related to Business-to-Consumer Alternative Dispute Resolution (ADR) in relation to Privacy and Consumer Protection (attached as an annex).

This document provides a summary of the main points, an introduction to the project, a synthesis of the responses received, and a few concluding remarks. It was prepared by the Secretariat with contributions from the Committee on Consumer Policy (CCP) and the Working Party on Information Security and Privacy (WPISP), as part of their joint work programme on business-to-consumer (B2C) ADR in the online environment.

The Committee for Information, Computer and Communications Policy and the Committee on Consumer Policy agreed to declassify this document under written procedure, completed on 26 June 2002.

## MAIN POINTS

Although the numerous national instruments related to alternative dispute resolution (ADR) reported by Member countries are not specific to the online environment<sup>0</sup>, their collation helps provide a general picture of the nature and scope of application of existing provisions related to ADR in most OECD Member countries, and may serve as the basis for further work to facilitate online ADR at the cross-border level.

### ● Member countries recognise the potential benefits of, and encourage informal ADR.

A common theme echoed throughout the responses is the importance Member countries attach to informal ADR. In the majority of countries, policy initiatives recognising the potential benefits of ADR have been developed. These initiatives aim at increasing the availability of effective, timely and cheap mechanisms as an alternative to formal court-based dispute resolution.<sup>0</sup>

### ● Offline ADR schemes that are established, funded or run by governments are common in Member countries.

Legal provisions that establish particular types of offline ADR schemes, such as court-annexed ADR or ADR for landlord-tenant disputes, are common in Member countries. They vary from consumer ombudsmen to arbitration boards to conciliation courts. The scope of their competence is usually limited to either a particular type of dispute or a specific sector. Recourse to these schemes may be mandatory or encouraged.

● **There is little broad-based regulation addressing ADR in Member countries: the general picture is a patchwork.**

Member countries have no overarching framework regulating formal and informal ADR. Although many countries regulate arbitration, informal types of ADR remain largely unregulated. However, many countries described provisions that apply to business-to-consumer (B2C) disputes in specific contexts. Rules have been developed for different types of ADR depending on the subject matter of the dispute (eg. privacy): the underlying transaction (e.g. insurance, telecommunications): the size, value and complexity of the dispute; whether arbitration or mediation is involved. etc.

● **In most Member countries, parties generally are free to agree to non-binding ADR on a contractual basis.**

Recourse to informal B2C ADR is not subject to specific legal limitations. In most countries, parties are free to agree to ADR on a contractual basis, subject to the restrictions that apply generally to contracts such as fraud, duress or public policy concerns (eg. unconscionability, non-waivable rights, clauses unfair to an individual, and concerns of equity and fairness). These considerations appear to be a general limit to recourse to, and implementation of mandatory or binding ADR.

## INTRODUCTION

In order to gain a better understanding of the role ADR can play in enhancing user and consumer confidence in e-commerce, the OECD, the International Chamber of Commerce and The Hague Conference on Private International Law organised a joint conference on online ADR in relation to privacy and consumer protection. that was held in The Hague in December 2000. The conference explored the use of online ADR systems for disputes involving small values and/or low levels of harm that arise between businesses and consumers online. The primary focus was on informal, flexible systems that allow for the necessary balancing between the type of dispute and the formality of the process for resolution.

At their February 2001 and March 2001 meetings, the Working Party on Information Security and Privacy (WPISP) and the Committee on Consumer Policy (CCP) decided to follow up on The Hague Conference with the aim of raising user and consumer awareness about online ADR and encouraging recourse to fair and effective B2C online ADR. This follow-up work included three elements: an updated inventory of online ADR mechanisms, an educational instrument for potential parties to online ADR, and a questionnaire on legal

issues.

The questionnaire on legal issues (see Annex) was developed by the Secretariat with input from WPISP and CCP delegates participating via an electronic discussion group. In June 2001, the questionnaire was finalised and sent to Member countries and stakeholders for response.

The Secretariat received responses to the questionnaire from 24 Member countries, including Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Japan, Korea, Mexico, Netherlands, New Zealand, Poland, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Kingdom and the United States. Responses were also received from The Research Centre for Computer and Law, University of Namur, Belgium (CRID), Confcommercio (The Italian Retail Association), and two online ADR providers, TRUSTc and SquareTrade.

The objective of the questionnaire was to generate an overview of the national legal regimes applicable to B2C ADR in Member countries, with a view to understanding if and how existing legal provisions impact recourse to ADR, particularly in relation to the online environment. The questions aimed to elicit factual information on the content of legal provisions (both general and specific) applicable to ADR, both in national and cross-border situations.

There are limitations in the conclusions that can be drawn from the answers to the questionnaire. First, it was difficult to respond to the broad range of questions in a completely definitive way. In particular, for countries with legal systems in which competence over ADR is shared by national and regional or local authorities, it was not always possible to describe all relevant regulatory measures. Similarly, the fact that legal provisions related to ADR are not usually grouped together in a unique set of rules made it difficult to provide comprehensive responses. Finally, comparisons between countries were complicated by variations among national definitions of ADR processes (e.g. mediation or arbitration).

Despite these limitations, a number of commonalities emerged from the answers given by Member countries.

## **I. GENERAL PROVISIONS ON ADR**

Some Member countries have specific provisions that require or encourage parties to have recourse to informal ADR for certain types of disputes. Aside from legal provisions, a majority of countries referred in responses to general policies of encouraging consumers to

have recourse to informal ADR, particularly where government schemes have been made available. Other countries have specific provisions prohibiting or limiting recourse to ADR in certain circumstances.

#### **A. Provisions encouraging or requiring ADR**

Australia, Canada, Italy, Japan, New Zealand, the United Kingdom and the United States have provisions that encourage recourse to ADR for certain disputes. In the United Kingdom, pretrial protocols for defamation, personal injury, clinical disputes, professional negligence and construction and engineering matters encourage recourse to kDR. In Australia, the Fair Trading Tribunal Act 1998 expressly encourages the use of ADR in resolving disputes brought before the tribunal.

Austria, Canada, France, Germany, Italy, Japan, New Zealand, United Kingdom and the United States have provisions that, in certain circumstances, explicitly require parties to exhaust ADR prior to seeking judicial remedies.

#### ***Provisions requiring ADR before a complaint is filed***

Some countries require parties to exhaust ADR in certain circumstances prior to filing a complaint in court. For instance, Germany has regional legislation requiring parties to attempt conciliation for disputes relating to property law, involving small claims for compensation, neighbourhood law and claims over damage to personal reputation. In Austria and Switzerland tenancy disputes should be taken to a specific ADR administrative body. In France if agreement cannot be reached on rent when a lease is being renewed, the parties must refer the matter to the Commission Départementale de Conciliation before applying to the courts.<sup>0</sup>

#### ***Provisions requiring ADR after a complaint is filed (courtannexed programmes)***

Some countries have legislation that allows courts or tribunals to require parties that have filed complaints before them to go to ADR in appropriate circumstances for matters within their jurisdiction. Countries that referred to such provisions include Australia, Canada, Italy, Japan, New Zealand and the United States. For example, in Australia, the 1994 Tenancy Tribunal Act requires mediation as a first method for dispute resolution between parties seeking the intervention of the tribunal. As a further example, in Canada, state-based legislation requires all parties to civil disputes to attend a mediation session at the close of pleadings before any further step can be taken in the case. In British Columbia,



Canada, a mandatory settlement conference conducted informally by a judge is part of a small claims court initiative.

In a similar development, the Netherlands noted that it has recently initiated court-annexed mediation projects on an experimental basis in five different courts throughout the country. As part of the programme, judges can request that parties try to reach a solution with the help of a mediator in specific administrative and civil (including family mediation) cases. Further, in the United States, pursuant to a range of legislation, some state and federal courts require litigants to exhaust ADR first as a matter of course, after a complaint is filed, before the trial can continue. For example, in Maine, in most civil cases, after filing a complaint in court, parties must schedule an ADR conference to try to resolve the dispute.<sup>48</sup>

## **B. Provisions prohibiting or limiting recourse to ADR**

Some countries have provisions prohibiting or limiting recourse to ADR. France, Germany and Italy noted that parties could not generally seek to resolve disputes involving inalienable or non-disposable rights through ADR (e.g. divorce, familial disputes, etc.). Similarly, Mexico referred to legal provisions that prohibit certain matters such as familial conflicts and divorce to be resolved by arbitration<sup>49</sup> in the United States, while the parties cannot be required to go through court-annexed ADR for certain disputes notably involving constitutional rights<sup>50</sup>, they can voluntarily agree to try to resolve them through private ADR.

Denmark, Finland, Germany, Korea, Netherlands, Poland, Spain, Sweden and Switzerland have set up national ADR schemes to which recourse is not permitted for certain types of cases (e.g. below a specified monetary value) and/or to certain parties [e.g. exclusion of business-to-government (B2G) disputes]. In the Netherlands certified complaints boards are not able to deal with a range of disputes including those relating to death, physical injury or illness. Further in Switzerland, under the Concordat (agreement on arbitration), the parties are not free to use arbitration if the case comes under the exclusive jurisdiction of a state authority.

## **C. Exhaustion of ADR**

Few Member countries report having specific provisions that would affect the validity of a contractual agreement to exhaust recourse through ADR prior to seeking redress through the courts,

Korea, New Zealand, the United States and Spain indicated that contracts to exhaust ADR would, in practice, likely be enforceable. For example, in the United States, such a contract would generally be upheld unless the parties seeking to invalidate it can show that it was procured by fraud, duress, mistake, unconscionability or illegality. Australia, Canada and Japan reported that parties could enter contracts to exhaust ADR. However, they stressed that such contracts may be set aside or declared invalid by the court as an "unfair contract term" or because of some other irregularity such as procurement by undue influence, violation of public policy or restriction on consumer access to ordinary legal remedies.

The majority of European Union countries referenced the EU Directive on Unfair Contract Terms that, *per se*, does not allow consumers to give up their right to go to court. They also mentioned national implementing legislation as further bases on which a contract could be invalidated if its effect were to restrict access to ordinary legal remedies. For instance, Austria noted provisions in its Consumer Protection Act which declare invalid a contract that deprives a consumer of his/her right to bring a matter before court. Similarly, Italy referred to its Civil Code which states that any clauses in B2C contracts that concern or entail exceptions to the competence of judicial authorities are presumed to be abusive. Other countries to reference national legislation on unfair contract terms or the EU Directive in this context included Denmark, Finland, France, Italy, Netherlands, Sweden and the United Kingdom. In a similar but broader approach, Mexico noted that its Federal Consumer Protection Law also invalidates clauses that are generally "against consumers' rights".

#### **D. Binding ADR**

In general there are no specific provisions that prohibit contractual agreements between parties to be bound by ADR after a dispute has arisen, and, *a fortiori*, at the end of the ADR process. For example, Austria, France and Italy noted that in the case of agreements signed at the conclusion of an ADR process, contractual autonomy is recognised and agreements signed by the parties will be binding according to contract law.

However, the general practice appears to be that contractual provisions binding parties to ADR prior to a dispute having arisen may be regarded as an "unfair" contract term or contrary to public policy, notably if it deprives the consumer to the right to go to court. Countries which adopted this approach included Australia, Austria, Canada, Denmark, Finland, Italy, Japan, Netherlands, Spain and Sweden. Legislation in Sweden

and France for example mandates that consumer contracts entered prior to a dispute containing an arbitration clause are automatically invalid as unfair. Similarly, in the United Kingdom, an arbitration agreement is automatically void as unfair for consumers specifically if it relates to a claim for a small amount.

New Zealand and the United States noted that, in practice, a consumer is free to consent to be bound by ADR but that contract law will apply to ultimately determine the validity of a contract to engage in and be bound by ADR. For example, in the United States, a contract is not invalid simply because it deprives the consumer of the right to go to court-the validity of a contract in this situation is decided on a case-by-case basis. The general rule is that such contracts are valid, irrevocable, and enforceable, except where they violate general principles of contract law, such as fraud, duress or unconscionability. Legislation in Japan also indicates that an agreement to refer future disputes to arbitration is valid as long as it relates to determined relations of right and disputes arising therefrom.

#### **E. Implementation and judicial enforcement of ADR outcomes**

Many ADR outcomes are implemented by the consent of the parties and thus do not require further third-party intervention. However, when one party refuses to abide by an ADR agreement, many countries indicated that they have mechanisms for enforcement of ADR agreements. It remains unclear, in the B2C cross-border context, how an ADR outcome involving nationals from different countries can be enforced.

Japan, New Zealand, the United Kingdom and the United States indicated that ADR outcomes such as mediation or conciliation can be judicially enforced under basic contract principles. Other countries have specific legislative provisions that provide mechanisms for the enforcement of domestic ADR outcomes. For instance, in the Netherlands, agreements reached after a mediation procedure can generally be brought to court to be confirmed by a judge. Further in France, in cases of non-judicial conciliation, if the parties agree, the court may be asked to give binding force to their agreement.<sup>0</sup>

Some countries also indicated that ADR agreements made during the course of proceedings (for example in the context of court-annexed ADR) can be given the status of judgements on application to the court if both parties consent. Australia, France, Japan, the United States, and the United Kingdom referred to this approach. For instance, in France, the courts have a general conciliatory role such that if the parties reach settlement during a procedure, they may at any time ask the court to record their agreement or the court can itself prepare a conciliation agreement to be signed by the parties. Canada also indicated

similarly that an ADR outcome can be enforced with the consent of the parties in which case an ADR agreement forms the basis of a consent order issued with the same status as any other court order.

Austria, Germany, Hungary, Italy, Korea, Mexico, Poland, Spain, Switzerland and Turkey indicated that ADR decisions rendered by bodies operating under national schemes can be enforced in some circumstances. For example in Mexico, under the Federal Consumer Protection Law, outcomes issued or agreements approved by PROFECO (the Consumer Protection Attorney's Office) under its conciliation and arbitration procedures have the nature of final judgements and must be fulfilled by the parties or enforced by the courts. Also in Austria, an outcome delivered by the relevant ADR body concerning Landlord and Tenant Law constitutes an "executory title" and as such is therefore enforceable provided the dispute isn't pursued in court within four weeks of service of the ADR outcome. Conversely, Denmark and Finland indicated that the decisions or recommendations of Consumer Complaints Boards are not enforceable or binding.

Finally, a few countries mentioned specific legislative limits on implementation of ADR outcomes awarded by particular statutory ADR bodies or in the context of arbitration. For example, in Japan, under the Law of Public Summons Procedure and Arbitration Procedure, either disputant can apply for the annulment of an award if one of a number of circumstances exist, including for instance, if the award requires a party to undertake an act prohibited by law. Under UK arbitration legislation, an arbitration agreement can be "set aside" if the court is satisfied that the agreement is "null and void", inoperable or incapable of being performed. Further, in the Netherlands, when the outcome of an arbitration or binding advice procedure is manifestly in conflict with public morals or public policy, its implementation will be affected.<sup>0</sup> Other specific legislative provisions exist in Czech Republic, France, Mexico, Poland, Switzerland, Turkey and the United States.

## II. PROCEDURAL SAFEGUARDS FOR ADR

In some Member countries there are legal provisions imposing certain procedural safeguards for a broad range of ADR programmes. Other countries have procedural safeguards only for a particular type of ADR or ADR for a particular type of dispute.

### A. Confidentiality

The United States cited specific legislation providing for confidentiality of ADR

proceedings or outcomes. The United States noted that there are some state-based regulations which ensure confidentiality. For example, Ohio's mediation confidentiality statute requires mediation communications to be confidential, subject to a number of exceptions.<sup>0</sup>

Confidentiality rules for government-run ADR schemes appear to vary. In Sweden the existing ADR body is a public authority such that all processes are usually public but a decision can be made confidential if it contains delicate personal or business information. A similar approach is taken in Poland where Court of Conciliation cases are public unless disclosure would be against public policy or would reveal state/business secrets. Similarly, in Denmark, Finland, and Korea, legislation aimed at ensuring public access to public processes applies to government run ADR bodies to override any agreement as to confidentiality. For example, in Denmark, the Open Administration Act would apply such that information regarding the proceeding of an ADR or an ADR outcome can be given to a third party on demand.

Conversely, in Switzerland, arbitration procedures in state-run bodies are usually confidential but if a party appeals against a decision, the appellate authority is entitled to all relevant information on the ADR process.

Australia, France and Japan referred to safeguards applicable to ADR in the judicial context (or court-annexed ADR). For example, in France there are safeguards imported in the procedures of conciliation undertaken by judicial conciliators and mediation proceedings conducted by court appointed mediators. These safeguards notably guarantee the confidentiality of the proceedings. Further, in Japan, conciliation cases, under the Law of Conciliation of Civil Affairs, are confidential but the parties and the persons interested in the case can request perusal or copying of the record of the case unless it would obstruct the keeping of the record or the functions of the court. Legislation in some countries actually deems information arising from an ADR process as inadmissible as evidence. For example, in Australia the Federal Court Act provides that evidence of anything said, or of any admission made at a court-annexed mediation session, is inadmissible in any court or proceedings.

However, several Member countries indicated that, in practice, parties may be compelled under some circumstances to disclose information in relation to an ADR proceeding, regardless of whether the parties have agreed to keep the proceedings confidential. Australia, Canada, France, Italy, Mexico, Netherlands, New Zealand, Switzerland and the United Kingdom outlined this approach. For example, Mexico noted

that, under the Federal Consumer Protection Law, authorities, ADR providers and consumers must provide PROFECO, the Consumer Protection Attorney, with any information needed for legal procedures. Also, Australia and Canada noted that ADR practitioners (mediators, etc.) are ethically obliged to disclose certain information if that were necessary to prevent serious harm. Australia and Canada noted further that courts appear to have a general discretion in this context: they may respect confidentiality on the grounds of public interest but, equally, may decide that public interest considerations override the confidentiality agreement.

## **B. Qualifications/neutral it-v of APR provider**

Most Member countries indicated that there are legal provisions that specifically regulate the qualifications and neutrality of ADR practitioners in court-annexed/court-referred ADR. Countries referring to such regulation include Australia, Canada, France, Japan, the Netherlands and the United States. For example, in France, the Code of Civil Procedure lays down requirements for judicial conciliators and mediators, including for example that conciliators must have at least three years' experience in law, but there are no mandatory general conditions for non-judicial services. Further, in the United States, some state courts or legislatures impose training or experience standards on mediators who practice in state or court-funded mediation programmes.

Austria, Denmark, Finland, Germany, Hungary, Italy, Japan, Korea, Mexico, Poland, Slovak Republic, Spain, Sweden, Switzerland and the United Kingdom cited provisions regulating the qualifications and neutrality of ADR practitioners in statutory ADR bodies. For instance, in Denmark, the legislation establishing the Consumer Complaints Board has provisions that detail how the board is to be composed (and therefore who can act as an intermediary).

There also appear to be some rules on qualifications and neutrality of general ADR services in some Member countries. Australia referred to state territory legislation that deals with accreditation of mediators. Japan reported that competent ministers must certify organisations that intend to settle privacy/personal information disputes. Japan also reported that people who engage in ADR "for profit" must be qualified as lawyers in principle. In the United States, ADR providers are largely unregulated. In most states, a person can offer private mediation services without taking a class, passing a test or having a special license or certification. In practice, however, most independent mediation programmes and mediation membership organisations impose their own training or

experience standards on mediators. Finally, New Zealand noted that practising lawyers usually provide ADR and are subject to ethical requirements and disciplinary procedures. Czech Republic and Mexico also cited provisions applying in the context of arbitration. For example, in Mexico, the Federal Consumer Protection Law contains regulations for registration of independent arbitrators in consumer disputes.

### **C. Other procedural safeguards**

Canada, Czech Republic [only business-to-business (B2B)], Japan, Mexico (only B2B), Netherlands, New Zealand, the United Kingdom and the United States stated that certain procedural safeguards applied to arbitration. For example, in New Zealand, the Arbitration Act 1996 contains a number of procedural requirements and provides that agreements may be set aside if the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present that party's case.

Australia, Austria, Denmark, Finland, Italy, Korea, Mexico, Netherlands, Poland, Spain, Sweden and Switzerland indicated that public authorities and bodies conducting national or state ADR schemes must observe certain safeguards. For instance, in Korea, legal provisions outline some procedural safeguards that apply to the ADR processes conducted by the Consumer Dispute Settlement Committee, such as composition of the Committee, term of its members, quorum for decisions, and deadlines for reaching a decision.

In terms of general regulation of ADR processes, the United States cited some specific provisions governing procedures for B2C disputes over warranties. The Magnuson Moss Warranties Act requires the US Federal Trade Commission to establish minimum requirements for dispute resolution procedures. As such, any consumer dispute resolution mechanism under the Act must, *inter alia*, be able to settle disputes independently, without influence from the parties involved; follow written procedures; and provide each party an opportunity to present its side, to submit supporting materials and to rebut points made by the other party. There are also some state-based regulations which uphold the right to representation in mediation negotiations. For example, Alaska and North Dakota statutes prohibit mediators from excluding an attorney from the mediation table.

Aside from legal provisions, some other regulatory initiatives that seek to import safeguards into ADR were noted. Both the EU Commission Recommendation on the Principles Applicable to the Bodies Responsible for Out-of-Court Settlement of Consumer

Disputes and Benchmarks for Industry-Based Dispute Resolution (a co-regulatory initiative) in Australia were cited in this context.

New Zealand and the United Kingdom also noted that some procedural safeguards may be introduced into ADR processes in a *de facto* sense, given that mediators, conciliators and other third party neutrals are often required to adhere to professional codes of conduct. For instance, in New Zealand most ADR is undertaken by lawyers who are subject to ethical requirements and disciplinary procedures which may serve to introduce some procedural safeguards, particularly around independence, impartiality and transparency.

Finally, the United States mentioned the existence of voluntary guidelines for ADR providers conducting B2C disputes.

### **III. THE PATCHWORK OF EXISTING ADR MECHANISMS**

No Member country reported the existence of an overarching regulatory framework for B2C ADR. However, many countries described provisions that apply to B2C disputes in specific contexts. Rules have been developed for different types of ADR depending on the subject matter of the dispute (e.g privacy) or the underlying transaction (e.g insurance, telecommunications) the size, value and complexity of the dispute; whether arbitration or mediation is involved, etc.

Most countries offer some sort of government-established, funded or run programme to resolve certain B2C disputes. These programmes can be split into two categories: mixed public-private ADR and government-established, funded or run ADR.

#### **A. Mixed public-private ADR**

Some countries have developed ADR schemes that result from a mix of public sector-private sector initiatives. For example, Australia has legislation through which industry-developed codes of conduct (which often incorporate ADR provisions) can be made mandatory. For example, an Australian franchising code of conduct provides for the referral of franchising disputes to the Office of the Mediation Adviser. Australia also has a mix of public-private sector initiatives in the privacy area, which provide that if the consumer and business are unable to resolve privacy disputes between themselves, the consumer can request that an independent person investigate the complaint. Where the business concerned is subject to an approved privacy code that includes a mechanism for handling complaints, the independent investigator will be an adjudicator nominated under



the code. Where the business is not subject to an approved privacy code, the Federal Privacy Commissioner will handle the complaint. In Austria, in the area of telecommunications, an independent industry body *sen-es, inter a/ia*, as a conciliation office, and telecommunication providers are obliged to participate in the procedure.

The Slovak Republic reported legislation that entitles nongovernmental consumer associations to mediate disputes arising between consumers and business. There are two umbrella consumer associations operating in the whole of the country as well as several regional organisations. Slovak distance and doorstep selling legislation also entitles consumer associations to mediate disputes in that sector.

## **B. Government-established, funded or run APR**

### ***General consumer complaint bodies***

Member countries have established a variety of consumer complaint bodies to deal generally with B2C ADR. Denmark and Finland have established consumer complaints boards, and Australia, Germany, Hungary, Japan, Korea, Mexico, New Zealand, Spain, Sweden, Switzerland and Turkey have established a variety of other related mechanisms. In addition, Poland described an ADR scheme which is a more formal or “court-like” ADR body, the Court of Conciliation. This ADR body was established by the Act on Trade Inspection and involves a formal process commenced by filing a motion before the court. The parties submit it to the court processes voluntarily, but once the authority and procedures of the court are accepted, its decisions are binding equally to the verdicts of common courts and there is no right of appeal. In contrast to this formal procedure, the United States reported that many state attorney general’s offices or consumer protection agencies offer voluntary informal dispute resolution programmes to resolve B2C disputes.

### ***Complaint mechanisms for specific industry sectors or specific types of disputes***

A number of Member countries also have established government-run B2C ADR schemes or bodies that deal only with consumer complaints from a particular industry or sector or particular kinds of disputes.

Australia, Austria, Canada, Finland, Germany, Italy, Korea, Mexico, Netherlands, Spain, Sweden, and Switzerland reported such government-run schemes. For example, in Mexico the National Commission for Medical Arbitration has been established to deal with the arbitration of disputes related to the provision of medical services. Mexico also reported legislation that mandates presentation of claims in the financial services area

before the National Commission for the Defence of Financial Services Users.<sup>a</sup> In Canada, the Financial Services Commission of Ontario has been established with a mandate to resolve motor vehicle insurance disputes through mediation and arbitration. In Italy, the law provides for arbitration and conciliation committees to be set up to resolve B2B as well as B2C disputes in respect of the provision of tourism services.

Canada, Korea and New Zealand mentioned government-run or funded schemes in the privacy area. In Korea, the law provides that any person who wants a dispute over his/her personal information mediated can file an application with the Dispute Mediation Committee that investigates the case and proposes a draft mediation to the parties within a 60-day period. In Canada, legal provisions provide that the Privacy Commissioner may either encourage complainants to try to settle privacy complaints directly with the organisation, or initiate his/her own investigations. The Commissioner can make recommendations to an organisation, make public any information about the personal privacy practices of an organisation, or take a complaint to the federal court of Canada. In New Zealand, the law requires the Privacy Commissioner to use his best endeavours to secure a settlement. The method of ADR is not prescribed. In practice, the Privacy Commissioner's complaints process mostly utilises assisted negotiation in conjunction with an inquisitorial process. Where appropriate, the Commissioner will use mediation.

In addition, Australia, Austria, France, Netherlands, and Sweden described special requirements for tenancy disputes. In the Netherlands, the Act on Rental of Public Housing gives tenants the option of bringing their complaint before one of the Tenants Complaints Boards. The parties are deemed to have reached an agreement, as laid down in the decision of the Board, if none of them resorts to the court in the same matter within two months.

### ***Court-annexed ADR***

As regards court-annexed or court-referred ADR, Australia, Canada, France, Germany, Italy, Japan, the United Kingdom and the United States described programmes through which courts could refer disputes to ADR. As an example, France mentioned a scheme that provides for judicial conciliation under which a judge may designate a conciliator to assist in amicable dispute resolution if the parties agree. The conciliator must hear the submissions of the parties and at the end of the procedure, inform the judge of the outcome of the process. If an agreement is reached, it is submitted to the judge for formal approval; otherwise, the case continues before the court.

### C. Regulation of ADR outside the B2C realm

Although not a key focus of this research, some Member countries briefly discussed regulation outside the B2C realm and referred to specific provisions applying to the ADR of B2B, consumer-to-consumer (C2C), B2G, and consumer-to-government (C2G) disputes.

In particular, Australia, France, Italy, Korea, and Switzerland reported government-run ADR schemes for disputes involving government. For example, Australian provisions\* prescribe conferences (conciliation) and mediation with respect to administrative decisions by the Commonwealth that may involve business, or consumer, or government matters (for example, taxation), or for the conciliation of consumer complaints against government agencies (for example, disability access, racial discrimination). In Switzerland, some Cantons (regional administrations) have established ombudsman systems for resolution of C2G disputes and disputes between government employees and superiors. Further in Korea, the Environment Dispute Resolution Committee and the Administrative Appeals Committee have been established to manage a range of disputes involving B2G and C2G disputes in the environmental area.

## CONCLUSION

The results of the questionnaire highlight that there is not a single set of rules governing ADR. Different rules have developed in different contexts. In a number of areas the existing legal framework provides guidance to potential parties to an ADR procedure at the national level. For example, many countries regulate the provision of arbitration services. However, there are fewer regulations that would generally govern the provision of less formal types of B2C ADR. Where regulation there is typically addresses the provision of ADR through mechanisms established, funded or run by governments.

The OECD has focussed on flexible and informal ADR mechanisms designed for the online world. Here, no Member country reported the existence of specific legal provisions although most expressed an interest in promoting fair and effective online ADR as a way to resolve small value B2C disputes, particularly cross-border disputes. Looking more specifically at the cross-border context, there do appear to be national differences as to the validity of agreements to submit to ADR, the procedural principles for use during an ADR, confidentiality and security of proceedings, validity of settlement agreements arising out of an ADR, and the availability of enforcement mechanisms.

The OECD Guidelines for Consumer Protection in the Context of Electronic Commerce suggest that ADR may provide a means for addressing consumer concerns in

the electronic marketplace. National differences in existing legal frameworks on ADR may affect the operability of ADR in the cross-border context. Member countries, businesses and consumers need to be aware of what kinds of ADR programmes are offered in different countries and what rules they operate under. This document provides an important tool to facilitate such awareness.

## 註釋

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- The main legal instrument targeting online ADR is the EU Directive (2000/31 /EC) on electronic commerce. This instrument encourages online ADR but does not impose any legal requirements on it.
- In addition, OECD Member countries have adopted guidelines related to the protection of consumers online that call for meaningful access to fair and timely ADR without undue cost or burden
- Article 17, Act of 6 July 1989 concerning leases of dwelling houses.
- Maine Rules of Civil Procedure, Rule 16B
- Article 615 of the Federal Civil Procedures Code.
- The Alternative Dispute Resolution Act states that courts cannot refer parties to ADR after Litigation has been filed if the dispute is based on constitutional rights, concerns equal rights protection and voting or the relief sought consists of money damages of an amount greater than USD 150 000.
- Article 9 of the Decree of 20 March 1978.
- 5cc for arbitration procedures, Code of Civil Procedure art I 065 I e and for binding advice procedures, Civil Codebook 7 art 902
- In addition. ADR experts in the United States are working on a Draft Uniform Mediation Act, which sets forth a general requirement for confidentiality of mediations and enumerates several specific exceptions. These exceptions include: waiver; communications relating to the ongoing or future commission of a crime, record of a signed agreement; meeting and records open by law and public policy mediations: evidence of child abuse and neglect; evidence of professional misconduct or malpractice by the mediator; evidence of professional misconduct; or malpractice by a party or representative of a party.
- In New Zealand, the Arbitration Act 1996 prohibits the disclosure of information

- revealed during an arbitration unless the parties agree.
- cf Draft Uniform Mediation Act mentioned above.
- See for the United States: [www.adr.org](http://www.adr.org); [www.arh-forum.com](http://www.arh-forum.com)  
[www.jamsadr.com/arbitrationaude.asn](http://www.jamsadr.com/arbitrationaude.asn).
- See Law for the Protection and Defection of the Financial Services Use,:
- Act n580 of the 29/12/1993.
- Act on the promotion of information and communications network utilisation and information protection (last amendment on 16 January 2001).
- Established under the Ministry of Information and Communication.
- Privacy Act, 1993.
- The Privacy Commissioner is government funded, but is structurally an independent Crown entity.
- The Commonwealth Administrative Appeals Tribunal Act 1975 and human rights legislation.

## ANNEX

### QUESTIONNAIRE ON LEGAL PROVISIONS RELATED TO BUSINESS-TO-CONSUMER ALTERNATIVE DISPUTE RESOLUTION IN RELATION TO PRIVACY AND CONSUMER PROTECTION

For governments, please answer the questions with regard to any legal provisions – any domestic laws or regulations, including court decisions (case law), or conventions, treaties or other international legal instruments to which your country is party.

For non-government stakeholders, please answer with regard to any legal provisions – any domestic laws or regulations, including court decisions (case law), or conventions, treaties or other international legal instruments of which you are aware.

#### Questions

*When answering the questions below, please:*

- Focus on business-to-consumer (B2C) alternative dispute resolution (ADR).

However, where informative for the B2C environment, answers may discuss other forms of ADR, such as business-to-business, consumer-to-consumer, business-to-government or consumer-to-government ADR.

- Focus on any legal provisions, but as they particularly apply to privacy and consumer protection.
- Focus on informal B2C ADR mechanisms (such as assisted negotiation and mediation). However, where appropriate, answers may discuss B2C arbitration.
- Distinguish, where appropriate, among: legal provisions addressing B2C ADR generally; legal provisions addressing B2C ADR on a sectoral basis; and legal provisions that may not mention ADR, but that could nonetheless impact ADR (for privacy and consumer protection disputes, in particular).
- Indicate any differences between use of B2C ADR for disputes arising in a domestic context as opposed to those with a cross-border element.

*In addition, please recall that we use the term “illegal provisions” in a generic, general and inclusive sense.*

#### **A. Specific ADR provisions**

1. Are there legal provisions that specifically address B2C ADR (either addressing B2C ADR generally or addressing B2C ADR on a sectoral basis) ? If yes, please describe the provisions.

2. Are there legal provisions that specifically address other forms of ADR (either generally or on a sectoral basis), such as business-to-business, consumer-to-consumer, business-to-government or consumer-to-government ADR? If yes, please describe the provisions.

#### **B. Recourse to ADR**

3. Are there legal provisions that would prevent or inhibit recourse to ADR for certain types or categories of disputes? If so, please explain the provisions and their application.

4. Are there provisions that would require or encourage recourse to ADR for certain types or categories of disputes? If so, please explain the provisions and their application.

#### **C Exhaustion of remedies through ADR**

5. Would a contractual agreement by the parties (such as a business and a consumer)

to exhaust recourse through ADR before they can seek redress through courts be against any legal provisions? If so, please reference the provisions.

6. Are there legal provisions that would require or encourage parties to exhaust recourse to ADR before seeking redress in courts? If so, please reference the provisions.

#### **D. Contractually binding ADR**

7. Are there legal provisions that would prevent or inhibit a contractual agreement by parties (such as by a business and a consumer) to be bound by the outcome of ADR, if agreement to the contract came:

- a. Prior to a dispute arising?
- b. After a dispute arose, but before an ADR process had begun?
- c. At the end of the ADR process (transaction)?

8. Are there legal provisions that would encourage or explicitly permit a contractual agreement by parties (such as by a business and a consumer) to be bound by the outcome of ADR, if agreement to the contract came:

- a. Prior to a dispute arising?
- b. After a dispute arose, but before an ADR process had begun?
- c. At the end of the ADR process (transaction)?

9. If the parties can agree to be bound, are there legal provisions that could prevent or inhibit, totally or partially, implementation of the ADR outcome? Please state under which circumstances this could be so.

#### **E. Judicial enforcement**

10. Can an ADR outcome be judicially enforced? Under which circumstances?

#### **F. Procedure**

Are there legal provisions that would require certain procedural safeguards to be in place during an ADR process?

- a. In general?
- b. Any special, or particular, rights for consumers or users?
- c. Any special, or particular, rights for businesses?

#### **G. Confidentiality**

12. If the parties and ADR provider agree to keep information on an ADR proceeding

and or outcome confidential, are there legal provisions that would require disclosure under any circumstances? If so, which circumstances?

#### **H. ADR services**

13. Are there any legal provisions that address who can offer B2C ADR services?

14. Are there any legal provisions that address who can serve as a neutral in an ADR proceeding?

15. Are there any other legal provisions relating to the activity of ADR providers, including the cost of ADR for either users and consumers or businesses?

#### **I. Other**

16. Are there any other legal requirements or restrictions applicable to ADR that have not been addressed above?



OECD Global Forum on knowledge Economy - The Digital Economy

## OECD-APEC GLOBAL FORUM: POLICY FRAMEWORKS FOR THE DIGITAL ECONOMY

The Sheraton Waikiki, Honolulu, HI, United States,

14-17 January 2003

CCNM/GF/KE/DE(2 002)3

1 6-Sep-2002

This note provides information on the preparation of the OECD/APEC Global Forum: Policy Frameworks for the Digital Economy which will take place at the Sheraton Waikiki, Honolulu, HI, U.S., 14-17 January 2003. The main Forum will take place on 15-16 January with connected events on 14 and 17 January. Please note that the draft Programme is provided for illustrative purposes only and requires extensive consultation with many partners. These include the OECD Member countries, in many committees and within the OECD Secretariat, APEC and its Member economies, business and other non-governmental entities. Input is welcomed. The Forum is being organised by the Directorate for Science, Technology and Industry.

The OECD Global Forum on the Digital Economy is one of eight "Global Forums" managed by the OECD's Centre for Cooperation with Non-Members ([www.oecd.org/ccnm](http://www.oecd.org/ccnm)). Their objective is to deepen and extend relations with non-OECD economies in fields where the OECD has particular expertise and where global dialogue is important. The Global Forum on the Digital Economy will highlight policy directions for the future development of the global digital economy and information society.

Information is also available at the Forum page on the OECD web site at [www.oecd.org/sti](http://www.oecd.org/sti). Contacts: John Dryden ([j.henderson@oecd.org](mailto:j.henderson@oecd.org)) Tel +33 1 4524 9373; Fax +33 1 4430 6256; Asako Takahashi ([asakotakahashi@oecd.org](mailto:asakotakahashi@oecd.org)) Tel +33 1 4524 9951; Fax +33 1 4430 6259.

# OECD-APEC GLOBAL FORUM: POLICY FRAMEWORKS FOR THE DIGITAL ECONOMY

THE SHERATON WAIKIKI, HONOLULU, HI, U.S., 14-17 JANUARY 2003

## Introduction

1. This Forum, a joint initiative of the OECD and APEC, follows the series of major international conferences organised by the OECD on the theme of electronic commerce, the global digital economy and information society. The United States Government, as hosts of the Forum, designated the City and County of Honolulu as host city and the Pacific International Center For High Technology Research (PICHT) as the organising institution. The OECD Global Forum on the Digital Economy is one of eight "Global Forums" managed by the OECD's Centre for Co-operation with Non-Members. Their objective is to deepen and extend relations with non-OECD economies in fields where the OECD has particular expertise and where global dialogue is important.

2. The Global Forum is intended to highlight policy directions for the future development of the global digital economy and information society and to stress the importance of the coherence and consistency of those policy frameworks. The issues selected for particularly close attention in the Forum are of high priority and interest for both the OECD and APEC but are nevertheless important on a global basis.

## Co-operation between APEC and the OECD

3. From the OECD's perspective, these conferences are some of the most visible external signs of the Organisation's multidisciplinary activities on these issues. The OECD's work, coming from almost every committee and every directorate of the Organisation, ranges from statistics and quantitative work to policy analysis, guidelines and recommendations on best practices. In recent years the four-part "Blueprint" for electronic commerce of access, trust, regulatory framework and "maximising and sharing the benefits" has been the guide. More recently efforts have been made to bring this work into a broader goal of an inclusive digital, knowledge-based economy and information society. Work is carried out in co-ordination with other stakeholder groups, from global business groups, labour and civil society organisations to the many other international organisations active in this field. The conferences bring together these stakeholders to promote policy coherence and to discuss appropriate policy directions and frameworks for co-ordinated action. From APEC's perspective it marks a further step in international

co-operation in recognition of the many priority issues in common with the OECD. Digital economy matters are discussed intensively in APEC in many of its working groups and fora, and have been drawn together in the e-APEC Strategy that has the goals of developing 1) market structures to promote greater use of IT, 2) the legal and regulatory regime needed to promote e-business and investment in infrastructure, and 3) the training and investment needed to assure that all APEC citizens can access the Internet and use it to better their lives.

4. Apart from having seven countries in common, APEC and the OECD have a long history of cooperation in the domain of the digital economy and share many objectives. APEC economies participate in various programmes of the OECD's Centre for Co-operation with Non-Members (CCNM), in particular on matters relating to the digital economy. APEC economies have participated throughout the whole series of major conferences on electronic commerce and all APEC economies have been invited to each event since 1999. The present event is, however, the second joint conference of the two entities and represents a return to closer co-operation in the first global conference on the Information Infrastructure that was a joint effort by the OECD, APEC and PECC0, in Vancouver, February 1995.

### **Previous OECD Conferences on Electronic Commerce**

The first OECD Conference "Dismantling the Barriers to Global Electronic Commerce" took place in Turku, Finland in 1997. The second, at Ministerial level, "A Borderless World: Realising the Potential of Global Electronic Commerce" in Ottawa in 1998, produced several Ministerial Declarations in key areas, an Action Plan for the OECD and reviewed self-regulatory actions undertaken by the business community. The third, the "OECD Forum on Electronic Commerce" at the OECD in Paris in late 1999, took stock of the first year's progress after Ottawa and highlighted the areas where much remained to be accomplished.

Among the emerging themes at that meeting was the recognition of the issue of differences in access between and within economies (what came to be known as the "digital divide") and the need for the OECD to build upon its outreach to non-member economies and to all stakeholder communities. In addition, the "regulation versus self-regulation" debate changed. An integrated effort to develop an effective mix of the two approaches was considered to be more appropriate, and the policy formulation process should be more inclusive. The fourth, "The OECD Emerging Market Economies Forum on

Electronic Commerce<sup>ii</sup>. took place in January 2001 in Dubai, LZA, E+ and was the first of its kind to be held outside the OECD's own membership. This event served to share long-term visions for electronic commerce as a platform for future prosperity and full participation in the global electronic marketplace and explored the commonality of, and differences between, policy priorities of the OECD and the non-member economies. Drawing together the OECD's work on economic growth with international initiatives such as the DOT Force, the Forum highlighted the importance of the coherence of policies for electronic commerce within the broader framework of economic, social and development policies.

### **Pre- and post-Forum events**

5. The OECD-APEC Global Forum: Policy Frameworks for the Digital Economy<sup>iii</sup> will take place on 15-16 January 2003. It will be preceded on 14 January by two parallel events: the Public Voice Conference, organised by civil society groups, and a Business Forum, organised by the business community. On 17 January, there will be a so special half-day meeting focussed on major international initiatives on ICTs for development. It will permit follow up of the work of the DOT Force Implementation Teams<sup>iv</sup>, the UN-ICT Task Force<sup>v</sup> and preparation for the World Summit on the Information Society<sup>vi</sup>. The programmes for these meetings will be developed respectively by a consortium of civil society bodies led by EPI, the business community (notably the ICC) under the aegis of BIAC<sup>vii</sup>, and responsible persons associated with the international groups named.

### **Rationale for the Forum**

6. The focus of the Conference is the need for coherent policy frameworks for the global digital economy. The OECD's work has repeatedly stressed (in the Growth Study, work on the Knowledge Based Economy and, the experience gained from work on electronic commerce) that ICT policies need to be expressed in a coherent manner in parallel to other policy elements. These other elements can be articulated in different ways. One OECD approach is to consider "seizing the benefits of ICTs" as complementary to "harnessing innovation and technology diffusion", "enhancing human capital", and "fostering firm creation and entrepreneurship" the whole in a context of "getting the fundamentals right" (i.e. macro-economic, governance, market function and social conditions). However, there is now a need to re-examine policymaking in the light of the

need to develop the foundations of ICT-based economic growth and social development (a "digital economy" and an "information society"). The foundations must be strong, dynamic and innovative but also soundly based and inclusive of all stakeholders, both within and outside the OECD membership. Building on preceding work, the conference will therefore seek to capture new ideas and continue the process of widening the exchange of policy relevant information on strategies for the digital economy. This will mean both a broader focus and more inclusive audience than previous events, which were targeted to electronic commerce policies and strategy.

### **What is new?**

7, The situation has changed since the OECD Ministerial Conference in Ottawa in 1998. Economic slowdown and crisis in the industry from 2000 and the terrorist outrages of September 2001 have spurred a rethink. What is "new" and why are these themes appropriate for the OECD to discuss at this time? Is there a need for new directions, statements, and consensus regarding policy principles?

- The strong economic growth in many OECD countries throughout the 1990s was partly credited to productivity gains associated with ICTs. The work of the OECD has demonstrated that there certainly is a "New Economy" - in some respects and that ICTs and electronic commerce are now key elements of growth and productivity. They are credited with driving the "long boom" of the 1990s, but also blamed for the current slowdown. Inevitably, policymakers are looking to ICTs to restart growth. The digital economy has "emerged" and it is time to look at its place in the overall (knowledge-based) economy.
- There is also a new awareness of role of ICTs in linking economic and sustainability (i.e. environmental and social) objectives. Indeed, ICTs have a new unfamiliar role - as a new platform for growth and development - but also for globalisation and interdependence. ICT and e-commerce policies have a new place in overall policy framework for economic and social goals. Thus, policy coherence is the watchword for the new framework for knowledge-based economics.
- We have a new risk environment. This can mean vulnerability due to the growing dependence of economies and societies on the availability and functionality of information and communications technologies and infrastructures. It can also mean looking "beyond the hype" to draw lessons from the over-exuberant behaviour of financial and securities markets in the late 1990s.

- The new security challenges posed by the pervasive nature of information systems and networks are at the very heart of the digital economy and information society. These were accentuated by the terrorist attacks of 11 September 2001. How can one achieve security, while preserving important societal values such as privacy and individual freedom? What, from an economic standpoint, do security, trust and confidence mean and how can one measure them and their costs? How can one instil a new culture of security for the digital world in which all actors play their appropriate part?
- The anticipated coming phase of innovation-led growth will be accompanied by the rollout of some new technologies including a number of alternative broadband infrastructures and third generation mobile technologies. The scope and extent of the services and content that will be enabled by the new possibilities offered are as yet unclear. Common reflection on the policy challenges and opportunities for meeting business, economic and social goals is needed.
- It may be time, as well, to look at the new policies for governments. Does the current economic context call for reexamination of the consensus regarding the roles of government, business and civil society? Is it still premature for government to be pro-active?
- In fact there are new partners among the stakeholders. The global information and communication technologies are relentless drivers of globalisation. Civil society has joined international business as an indispensable interlocutor in most policy formulation processes. New platforms for public-private co-operation may help achieve policy goals and exploit the technological and market opportunities created by the digital economy.
- We have new players on the scene. These include the emerging market economies. Together, China, Brazil and India together make up half the population of the world. Compared to the OECD countries they currently have relatively low connectivity in terms of the main indicators of teledensity and Internet penetration. However, they may be approaching a phase of rapid growth in take-up and implementation of ICTs. Lower-income developing countries, too, as well as emerging market economies can benefit from implementing national e-strategies. The digital divide, of course, has both within-country and between-country dimensions and both aspects need attention. Broadening and deepening the global electronic marketplace and global information society holds

benefits for developed and developing countries alike Subjects such as ICT, poverty reduction and development, initiatives such as the DOT Force. the UN-ICT Task Force and the World Summit on the Information Society (WSIS) would not have attracted much attention only five years ago.

- A consequence of these trends is the need for new approaches and new co-operative links by global and regional international organisations-particularly concerning digital divide and digital opportunity.

### **Themes of the Forum**

8. The Forum has three themes. Each of them are urgent and of great importance on a global scale and of particularly high priority for OECD and APEC economies. The choice of themes has been made consistent with the agenda priorities of several top-level gatherings in 2002, including the OECD Council at ministerial level in May 2002 and of the 0-8 Kananaskis Summit in June 2002. The themes are:

- The economy - creating the policy environment that promotes the role of JCTs and electronic commerce in economic recovery, growth, productivity and job creation over the coming decade.
- Security and trust - creating a culture of security; from cyber terrorism and cyber crime to consumer and user trust, authentication, etc.
- Global participation - creating an inclusive global information society. e-government and ICTs for development.

### **Objectives**

9. The objectives of the Honolulu Forum are to:

- Gain understanding of the policy implications of the challenges and opportunities raised by the next decade of development of the global digital economy and information society and enrich the debate on new and upcoming policy issues.
- Encourage the coherence of policies for "e-issues" within the broader framework of economic, social and development policies and promote consensus on broad principles of policy strategies to ensure greatest participation in global information society and to maximise and widely share the benefits of the global digital economy.
- Clarify the roles of the various stakeholders (governments, business, civil society, international bodies) notably the evolving role of governments in the electronic



environment.

- Highlight the potential requirements for international cooperation, including the longer term strategic role of entities such as the OECD and APEC,
- Work on e-commerce since 1997 has aimed at creating greater policy consensus, bringing international organisations together and iteratively clarifying roles of different stakeholders. This forum should move the policy agenda further.

### **Participation**

10. About 300-500 participants are envisaged, in line with previous OECD events in this series. In addition to the OECD and APEC members (44 economies in all) about 25 other economies will be invited to include both emerging market and developing economies from all geographical zones. Business and civil society organisations will play a significant role in the main Forum as well as being invited to organise the Business Forum and Public Voice Conference which have been a successful feature of previous gatherings. Invitations will also go to a wide range of international organisations. These range from intergovernmental bodies from the UN family and other global organisations, to regional bodies

### **Status of the discussions and Forum outputs**

11. The Honolulu Forum is pitched at high working level and is informal. All participants, without exception, do so in their personal capacity. This convention, which is normal practice for events in the OECD's programme of co-operation with non-members, is adopted to encourage open and frank debate. In addition, the working sessions are structured so as to leave adequate opportunity for open discussion between the speakers and the floor. The Forum will not yield formal decisions, agreements or declarations. Statements, including summing-up and concluding statements by the Chair, the moderators, the Rapporteur and the representatives of the OECD and APEC are made in good faith but do not engage the other participants, the OECD, APEC or their Member economies. However, it is intended that the discussions will help to crystallise ideas, clarify issues and influence the actions taken in other appropriate fora.

### **Preparatory Documentation**

12. Preparatory documentation prepared by the OECD Secretariat will include the Programme, Practical Information and an Issues Paper. In addition there will be a report on

the Current and Projected International Activities in the domain of the Digital Economy of the various stakeholders, notably the international and regional bodies, including the OECD. The OECD Secretariat and other participants will provide other documents that refer to individual sessions. These documents, along with presentation materials will be posted, with the permission of the authors, on the Forum web site.

## Outputs

13. The main outputs (i.e. deliverables) emerging from the conference will be presented in a Closing Statement. This will be prepared by the two organisations, amended as necessary during the course of the Conference and delivered by a main speaker, tentatively intended to be the OECD Secretary General or Deputy Secretary General. This document would be submitted to the various APEC and OECD groups, committees, etc., for whatever action these groups see fit to implement; and a Rapporteur's report, a factual summary account of the presentations and discussions of the various sessions.

14. In addition, drawing on the proceedings of the Conference, the group may wish to offer a contribution for transmission to other entities or landmark events such as the World Summit on the Information Society. The latter will take place in Geneva on 10- 12 December 2003.

## 註釋

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○ <http://www.oecd.org> Organisation for Economic Co-operation and Development

○ <http://www.apecsec.org> Asia-Pacific Economic Co-operation

○ <http://www.uit.no> Pacific International Center For High Technology Research

○ <http://www.oecd.org/ccnm> OECD Centre for Co-operation with Non- Members

○ <http://www.pecc.net> Pacific Economic Cooperation Council

○ <http://www.doffforce.org> Digital Opportunity Taskforce

○ <http://unictaskforce.org/> United Nations Information and Communication Technologies Task Force

○ <http://www.itu.int/wsis/> World Summit on the information Society

○ <http://www.epic.org/> Electronic Privacy Information Center

○ <http://www.iccwbo.org> International Chamber of Commerce

○ <http://www.biaac.org> Business and Industry Advisory Committee to the OECD

CONSUMERS IN THE ONLINE MARKETPLACE: THE GUIDELINES THREE  
YEARS LATER

Draft Report to the OECD Council on the  
Guidelines for Consumer Protection in the Context of  
Electronic Commerce

DSTI/CP(2002)4

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## **ANNEX: SELECTED MEMBER COUNTRY IMPLEMENTATION ACTIVITIES**

## I. introduction

1. The OECD Guidelines for Consumer Protection in the Context of Electronic Commerce (the Guidelines) set out the core characteristics for effective consumer protection for online business-to-consumer (B2C) transactions. Developed by the Committee on Consumer Policy (CCP), and approved by the OECD Council on 9 December 1999, the Guidelines aim to ensure that consumers are no less protected online than when they buy from their local store or order from a catalogue. They also aim to encourage consumers to take advantage of all tools available to strengthen their position as buyers. In approving the Guidelines, the Council instructed the CCP to exchange information on progress and experiences in implementing the Guidelines and report to the Council in 2002. This report summarises the results of implementation activities in OECD countries and includes in an Annex a table with selected activities organised on a country-by-country basis. The report also touches on the emerging role of consumers in the digital economy, describes a number of initiatives through which the CCP has itself continued to address issues raised in the Guidelines, and identifies several areas that the Committee has singled out for future attention.

### *Consumers in the global digital economy*

2. The three years that have elapsed since the release of the Guidelines have seen a gradual evolution in the B2C online marketplace. Much attention has been focussed on the dramatic rise and fall of market valuations for Internet firms and, in the aftermath of the "dot-com" crash, it would be easy to overlook the consistently upward pattern of growth in online retail sales. For example, official second quarter 2002 figures for retail e-commerce in the United States are up 24% compared to the same period in 2001 and the 2001 figures were 30% higher than those for 2000.<sup>0</sup> Retail Internet sales for 2001 in Norway are up 155% from 2000, and Canada reported a yearly increase of 67% for 2001.<sup>1</sup> Unofficial estimates of European consumer spending online suggest a growth rate of 48% in 2001 and 70% in 2000.

3. Nevertheless, much of the potential for B2C e-commerce has yet to be realised. There may be a number of reasons for this, but an important factor appears to be consumers' continued concerns about shopping online.<sup>0</sup> In January 2002, Consumer WebWatch reported that only three in ten consumers trust Web sites that sell products or services. A July 2001 survey by the Markle Foundation reports that only 36% of

individuals believe that they have the same rights and protections when they are on the Internet as when they are not.<sup>0</sup> Research conducted by Consumers International suggests that these concerns are not without foundation.

4. The concerns identified in opinion surveys have been accompanied by increases in consumer complaints to government agencies about Internet problems. In 2001, consumer complaints about online problems accounted for 41 % of all fraud complaints received by Consumer Sentinel, a joint US-Canadian complaint database. The percentage of Internet-related complaints in Consumer Sentinel has risen steadily from 11% in 1998, to 26% in 1999, to 31% in 2000, to 41% in 2001.

5. Available data shows the confidence deficit to be exacerbated in the cross-border context. A recent Eurobarometer report showed that only 32% of European consumers feel well protected in a cross-border dispute as compared with 56% when the dispute is domestic.<sup>0</sup> A survey of UK consumers revealed that more than 60% would not engage in cross-border e-commerce with a company they did not already know. Problem areas identified in the consumer complaints filed with econsumer.gov include a new inter-governmental initiative for handling cross-border e-commerce complaints include merchandise never received, misrepresentations about the product or service, and inability to contact the merchant.<sup>0</sup> The volume of cross-border complaints is also increasing. About 13% of complaints logged in Consumer Sentinel in 2001 had a cross-border element, up from only 1% in 1995. The 15000 cross-border Consumer Sentinel complaints in 2001 reported some USD 30 million in consumer losses.<sup>0</sup>

6. Of course, economic data, opinion surveys, and consumer complaints do not provide a complete picture of the impact of e-commerce on the consumer marketplace. Consumers have been exposed to the power of the Internet to provide easier access to more complete product information than is typically available offline. The opportunity to purchase at a distance vastly expands the variety of goods and services potentially available. The convenience of shopping from home is complemented by round-the-clock opening hours. The particular characteristics of the online medium permit consumers to experience individually tailored and personalised treatment from businesses. Some online businesses have responded with mass customisation service (e.g. i\$built to order<sup>ii</sup> computers from dell.com), others offer personally tailored advice about what to buy (e.g.

personalised recommendations" from amazon .com). while still others permit direct consumer input into the price charged (e.g. "name your own price" service from priceline.com).

7. the result has been a gradual shift in consumer expectations and an increasingly bottom-up (consumer-demand driven) online marketplace. The changing nature of consumer expectation online should spill over into other aspects of the economy. The new consumer imperative will push businesses online and offline to react more quickly to changing consumer demands, encouraging competition. and rewarding companies that are most successful in meeting these challenges. Taking full advantage of the promises of the digital marketplace, however, requires a high level of consumer trust, and more successful businesses will be those that demonstrate a greater concern for bolstering consumer confidence. The OECD and the CCI have been engaged since the early days of e-commerce in promoting policies aimed at helping to build that trust. The trust- building imperative, particularly in cross-border context, is no less compelling today than in those early days. More broadly, the recent economic slowdown in OECD economies serves to illustrate the continued importance of consumer spending-and therefore consumer confidence-to a healthy economy.

### *OECD work on e-commerce and consumer policy*

8. The OECD's Action Plan for Electronic Commerce [SC EC (98) 9/FINAL] was endorsed by Ministers in Ottawa in 1998. and revolves around three themes: building trust for users and consumers: establishing ground rules for the digital marketplace: and enhancing the information infrastructure for electronic commerce. With respect to the first of these themes. Ministers stated their intention to "ensure that consumers who participate in electronic commerce are afforded a transparent and effective level of protection for electronic transactions" through a Declaration on Consumer Protection in the Context of Electronic Commerce (Ottawa Declaration) [DSTI/CP (98) 12/FINAL] . Recognising that the inherently international nature of the electronic marketplace requires a global approach to consumer protection, the Ottawa Declaration noted the work of the CCP in this area and urged the OECD to produce a set of guidelines to address these issues.

9. Since 1969, the Committee on Consumer Policy has brought together consumer policy officials from member country capitals to set international agenda for addressing the

policy challenges arising out of an increasingly global consumer marketplace. The Committee has a mandate to develop principles for an efficient, transparent, and fair global marketplace for consumers<sup>1</sup> and mechanisms<sup>2</sup> for the implementation of these principles and for the effective enforcement of consumers laws in an age of global electronic commerce.<sup>3</sup> The CCP remains the only inter-governmental forum that meets regularly to address consumer policy concerns, and there is no comparable venue for addressing the core consumer policy issues that are shaping the global marketplace.<sup>4</sup> The Committee's prior efforts to build consumer trust in the global marketplace and its inclusive working methods (side by side with business and consumer groups) equipped it well for the task of developing guidelines for consumer protection online.<sup>5</sup>

### *Development of the Guidelines*

10. Building on the Ottawa Declaration, the Committee developed Guidelines for Consumer Protection in the Context of Electronic Commerce. Agreement emerged after 18 months of discussion and negotiation, and the results were adopted by the Council in December 1999 [C (99) 184/FINAL]. The result has been a major success: international consensus on the core characteristics of effective consumer protection for e-commerce. The Guidelines were published in booklet form by the OECD in English, French, and German and translations are available on the OECD Web site in 17 languages. A set of Frequently Asked Questions was prepared to accompany the release of the Guidelines, which generated press around the world.<sup>6</sup>

11. The Guidelines reflect existing legal protection available to consumers in more traditional forms of commerce: encourage private sector initiatives that include participation by consumer representatives; and emphasise the need for co-operation among governments, businesses and consumers. They aim to encourage: fair business, advertising and marketing practices; clear information about an online business's identity, the goods or services it offers and the terms and conditions of any transaction; a transparent process for the confirmation of transactions; secure payment mechanisms; fair, timely and affordable dispute resolution and redress; privacy protection; and consumer and business education. The Guidelines conclude with sections on implementation and global co-operation.

## **II. Implementation of the Guidelines**

12. Since the release of the Guidelines, the Committee has been working to ensure



their successful implementation and assess their effectiveness. The Guidelines were greeted with praise by all stakeholders, from business and consumer group alike partly a tribute to the inclusive process through which they were negotiated. More importantly, they have proved influential in member countries. The majority of member countries have developed consumer or business education materials based on the Guidelines. In many countries, the Guidelines have served as a basis for the development of B2C codes of conduct, trustmark, and self-regulatory programmes. Many countries have also been reviewing their laws and regulations to ensure that consumers are protected online, as is recommended in the Guidelines. The European Commission has embarked on numerous initiatives that parallel and reinforce elements of the Guidelines. Outside the OECD, consumer protection work in the Asia-Pacific Co-operation (APEC) and the Free Trade Area of the Americas (FTAA) has also taken account of the Guidelines. APEC's Electronic Commerce Steering Group is now developing its own recommendation for consumer protection online that appears to incorporate many elements of its OECD counterpart.

13. To celebrate the first anniversary of the Guidelines, the CCP held a workshop in Berlin, bringing together more than 120 representatives from government, business and consumer organisations in member countries and non-member economies to exchange views on implementation efforts and share ideas about the next steps. A report on the proceedings was prepared that includes a summary of the main points that emerged from the discussions. In conjunction with the workshop, the Committee also released a report describing the various efforts undertaken in member countries to implement the Guidelines. That report has been updated periodically, and the discussion below provides a flavour of the types of implementation activities undertaken to date. A country-by country grouping of selected activities is attached as an Annex.

### *Global co-operation*

14. Global co-operation is an area of significant interest in implementing the Guidelines. One of the more ambitious examples is a joint project of a number of OECD countries developed through the International Marketing Supervision Network (IMSN). The launch of [econsumer.gov](http://econsumer.gov) in April 2001 marked a major step towards addressing a number of aspects of the Guidelines, particularly cross-border enforcement co-operation and consumer education and awareness. The project has two components: (I) a public Web site through which consumers can file cross-border e-commerce complaints, learn about

consumer protection in other countries, and obtain tips about shopping safely on line; and (ii) a password-protected government Web site where law enforcement agencies can access econsumer.gov complaints and communicate confidentially with agencies from other countries. With 17 countries now participating it is anticipated that the econsumer.gov will only increase in importance as additional consumers learn about it.

15. On the law enforcement front, there has been significant cooperation, including a number of bilateral and multilateral cooperation agreements. For example, the Ombudsmen of Denmark, Finland, Norway, and Sweden have established closer co-operation by agreeing to conduct lawsuits on behalf of each other and exchange information about marketing across national borders. Global cooperation of a different type is involved in Internet sweep days. Often co-ordinated through the IMSN, international sweeps have engaged over 150 different national consumer affairs enforcement bodies in at least 30 countries. In addition to serving law enforcement objectives, sweep days also provide educational information to businesses through the use of notices sent to the Web sites identified during a sweep.

### ***Public education and information initiatives***

16. Education and awareness are key elements of the Guidelines, as is evidenced by the multitude of stakeholder implementation efforts in this area. Upon their release, many countries issued press releases and distributed the Guidelines to small and large businesses, business associations and consumer groups. Some countries held workshops to educate businesses and consumers on the principles of the Guidelines. In Norway and Switzerland, the government expanded its education initiatives into the school systems in an effort to teach teenagers and children about their rights and responsibilities as consumers, including in the electronic marketplace.

17. The majority of member countries developed consumer and business information and education materials based on the Guidelines. Most of these materials are available on the respective country's Web sites and the OECD Web site. In several countries, special Web sites were developed that are dedicated to educating consumers and businesses on effective consumer protection, with links to other related information. Business associations, individual companies, and consumer groups also developed public education and information materials and campaigns, which included providing information through

traditional media sources, banner advertisements and links, and posting tips for consumers on their own company and consumer association Web sites.

18. In some countries, business and consumer groups worked together to develop joint education and information campaigns. For example, in the United States, MasterCard and the National Consumers League launched a joint education initiative, "Be c-Wise!" which included a printed and online brochure that presents the benefits and risks of online shopping, online shopping tips, and other resources for similar information. In other countries, the government and private sector have joined forces to provide education and information. In Finland, the Finnish Information Technology Development Center has in co-operation with Consumer Ombudsman developed both consumer and business information, which refers to the Guide/ines.

#### **Self-regulation, codes of conduct and trustmark programmes**

19. In many countries, the Guidelines served as a basis for governmental and private sector development of business-to-consumer codes of conduct, trustmark, and self-regulatory programmes. For example, in the United Kingdom, the government worked with the Electronic Business Alliance and Consumers Association to develop a non-profit organisation, TrustUK, to accredit codes of conduct for electronic commerce, which meet minimum standards and offer consumers good protection. Among the codes accredited to date is Webtrader, a program developed and administered by the consumers organisations of Belgium, France, Italy, the Netherlands, Portugal, Spain and the United Kingdom. In the United States, the Better Business Bureau's BBBOnline Reliability Seal programme allows companies to display the seal on their Web site once they have been evaluated and confirmed to meet programme requirements. International co-operation in the development of joint trustmark programmes and consumer complaint system is evident in agreements among associations like the BBBOnline, Eurochambre, Federation of European Direct Marketing, Japanese Direct Marketing Association, Japanese Chamber of Commerce and Industry, and the Korean Institute for Electronic Commerce. Numerous other code programmes have been put into existence, a number of which are evaluated in a recent European Commission study.

#### **Laws and regulations**

20 Beyond encouraging self-regulatory initiatives, the Guidelines also recognise the

need for member countries to review, and, if necessary, adopt and adapt laws to ensure that consumers are protected in the online environment. To this end, the European Union (EU) and its member states have reviewed and updated their laws to reflect elements of the Guidelines.<sup>0</sup> Likewise, in Canada, the national and provincial governments have been working towards harmonised consumer protection laws that reflect the Guidelines. Similar initiatives have been completed or are underway in other member countries.

### III. Follow-up work by the Committee on Consumer Policy

21. The release of the Guidelines was only a first step for the Committee in its efforts to help build consumer trust online. In addition to actively encouraging stakeholder implementation of the Guidelines, the CCP has undertaken its own efforts to examine in greater detail particular areas covered by the Guidelines. Particular emphasis has been placed in the areas of payment cardholder protections, alternative dispute resolution, and cross-border enforcement co-operation. Attention has also been devoted to educating stakeholders about various aspects of the Guidelines. Finally, the Committee has held discussion and exchanged information on emerging online issues like consumer-to-consumer (C2C) transactions via online auction sites, and online marketing and advertising to children.<sup>e</sup>

#### *Payment cardholder protections*

22. The Guidelines highlight the important role of payment cardholder protections in the development of the online marketplace. Opinion surveys consistently identify consumer fears about the safety of using payment cards online as an obstacle to greater online shopping. Policy makers around the world are taking these concerns seriously. Stakeholders have developed a number of initiatives aimed at combating payment card fraud, improving the security of online transactions, and boosting consumer protections for cardholders. The CCP has recognised the need to educate consumers about protections for payment cardholders and the safe use of payment cards online, which could serve to boost consumer confidence in e-commerce. In June 2002, the CCP issued a Report on Consumer Protections for Payment Cardholders [DSTI CP(2001)3/FINAL]. The Report represents a sustained effort by the Committee to analyse the protections available to users of payment cards and publicise the availability of such protections to consumers. In preparing the Report, the Committee conducted a survey of legal and other consumer protections for payment cardholders in member countries. It also held a roundtable meeting devoted to the

issue in Berlin in March 2001. The Report concludes with a section highlighting the importance of cardholder education and the Committee's own contribution to this issue: an educational piece entitled "Using Payment Cards Online: Frequently Asked Questions" -

### *Alternative dispute resolution*

23. The Guidelines stress the importance of developing effective redress mechanisms for problems arising out of cross-border disputes. Of particular interest is alternative dispute resolution (ADR), which consists of practical out-of-court methods involving a neutral third-party to resolve consumer disputes in a quick and inexpensive way. Working jointly with the OECD's Working Party on Information Security and Privacy, the CCP has completed several projects addressing the issues surrounding ADR. In December 2000, the OECD held a conference on online ADR organised with the International Chamber of Commerce (ICC) and the Hague Conference on Private International Law (HCOPIL) in The Hague. The focus of the discussions was 4-as small value B2C disputes, and a report on the proceedings summarises the discussion and main points.

24. The Conference in The Hague was followed up with a work programme focused on legal and educational aspects of ADR. The legal part of the programme aimed to generate an overview of national legal regimes applicable to B2C ADR in member countries, with a view to understanding if and how existing legal provisions impact recourse to ADR. A report was developed on the basis of member country responses to a survey on existing laws and regulations related to ADR. The educational aspect of the programme aimed to inform stakeholders about the availability of ADR and its potential benefits. A set of questions was produced that are designed to help consumers determine whether online ADR can help them resolve a dispute. Finally, the OECD helped to produce further information regarding the availability of ADR by assisting the ICC to produce an inventory of ADR programs world-wide. The resulting report and inventory are available on the ICC Web site.

### *Cross-border enforcement co-operation*

25. Part IV of the Guidelines emphasises the importance of global co-operation in general, and highlights in particular the need for enforcement co-operation to combat deceptive and unfair marketing practices that dilute consumer confidence in electronic commerce. In March 2000, the CCP held a Forum Session to explore the challenges and

possibilities associated with international co-operation. Taking the experiences of the United States and Canada as a practical experience, the session provided an overview of ongoing efforts to combat the growing problem of cross-border fraud and deception. Two years later the Committee held a follow-up Forum Session, during which it discussed the challenges identified in a preliminary report on this topic, along with the results of a survey on the authority of consumer protection enforcement agencies in member countries. Considerable attention at the session was also devoted to the IMSN Findings on Cross-border Remedies, a succinct statement of the enforcement challenges facing ISMN members. This is an area where close co-ordination between the CCP and the IMSN has and will continue to be essential.

### ***Education, awareness and outreach***

26. The Guidelines make clear that education and awareness are essential elements to building consumer trust online, and the Committee has embarked on a variety of initiatives in this regard. The Committee developed a set of examples to illustrate best practices under the Guidelines. This document helps provide practical and concrete information to educate businesses and consumers about the Guidelines. These best practice examples were released in July of 2002. To complement the Guidelines, the CCP prepared an Inventory of Public Sector Consumer Protection Laws, Policies and Practices Applied to Electronic Commerce.<sup>0</sup> This document has assisted stakeholders in reviewing public-sector laws and policies in connection with the Guidelines. In addition, the educational projects attached to the work on AD.R and payment cardholder protections provide a tangible reminder of the CCP commitment to education.

27. To help consumers, businesses, and governments gain more information about online consumer protection, the CCP developed two new sections for its Web site-[www.oecd.org/sti/consumer-policy](http://www.oecd.org/sti/consumer-policy). The first section contains an online catalogue of educational and information initiatives in member countries. The second section contains links to the consumer protection authorities of member countries. The Site also includes copies of presentations of the latest B2C statistics that are regularly presented and discussed at CCP meetings.

28. CCP outreach activities have also been an important aspect of its follow-up work. The Guidelines specifically call for member countries to consult, co-operate and facilitate

information sharing with non-members on consumer protection issues and invites non-member economies to take account of the Guidelines in reviewing their own consumer protection policies. The CCP has acted on this mandate by involving non-member economies in its public workshop on ADR and the Guidelines. It has also facilitated outreach to non-members through interaction with other international organisations like APEC, FTAA, United Nations Economic Commission for Europe (UNECE), the ISO Committee on Consumer Policy Committee (COPOLCO), and the Hague Conference on Private International Law (HCOPIL)

#### **IV. Future directions**

29. The number and variety of implementation initiatives launched during the three-year period since the Guidelines were completed suggests that the Guidelines have already made an important contribution to ensuring that online consumers are no less protected than those in the offline world. It is equally clear, however, that the project of building consumer trust in the online marketplace will require a long-term commitment by all stakeholders. Although there are now a number of international fora considering issues related to consumer protection online, the CCP will continue to have a crucial role in encouraging and reviewing implementation of the Guidelines. Moreover, in a number of areas the Committee is poised to make additional contributions itself. Highlights from the CCP work programme for 2003-2004 include work on consensus-building on core consumer protections, cross-border enforcement co-operation, and the impact of new technologies and emerging business models. In addition, the Committee will continue to assess the impact and effectiveness of Guidelines, in part by organising a public forum on the five-year anniversary of the release of the Guidelines.

30. One area for continued attention is consensus-building on core consumer protections, which can serve the important function of providing predictability to both consumers and businesses in conducting cross-border e-commerce. The Guidelines reflect high-level agreement among member countries about a number of important principles for consumer protection. There remain, however, differences in the manner in which member countries implement Guidelines, and differences in the substantive consumer laws in OECD countries. This fact reflected in the Guidelines recommendation in Part Four, which explicitly calls for member countries to work toward building consensus on core consumer protections. The CCP will focus first on the most promising area for building consensus:

domestic laws that aim to protect consumers from fraud and hardcore deception. It will attempt to build consensus in this area by developing a recommendation focussed on enforcement co-operation to combat such practices. The CCP will then work toward building consensus in broader area, such as laws aimed at combating deceptive and unfair commercial practices generally.

31. An important area of current and future attention is cross-border law enforcement co-operation. Member country bodies charged with enforcing consumer protection laws were set up for a largely domestic marketplace. The increasingly cross-border B2C marketplace poses significant challenges to the existing enforcement structures. Part Four of the Guidelines emphasises the importance of cross-border co-operation in general, and highlights in particular the need for co-operation to prevent deceptive and unfair marketing practices that dilute consumer confidence in e-commerce. More specifically, a number of issues have emerged from recent Committee work in this area, including the need for: increased information sharing among jurisdictions; broader authority to protect domestic consumers from foreign businesses engaged in fraud and hard-core deception; broader authority to protect foreign consumers from domestic businesses engaged in fraud and hard-core deception; better ability to halt such conduct; and better ability to obtain monetary redress for consumer victims. Addressing these challenges is a priority for the CCP and work is underway on a recommendation designed to enhance the effectiveness of enforcement efforts to stop and prevent cross-border fraud and hard-core deception. It is intended that this recommendation will be submitted to the OECD Council for approval in the coming months, and will prove to be an important contribution in this area.

32. New technologies and emerging business models provide exciting opportunities for businesses and consumers alike. For example, mobile commerce offers the promise of providing services to consumers where and when they want them, while increased access to broadband paves the way for innovative service offerings. However, such developments can also present novel consumer protection issues that, if not addressed, can undermine consumer confidence and impede their success. By obtaining timely information about consumer protection concerns raised by technological developments and emerging business models, the CCP will position itself to contribute to the policy debate, and thereby to assist in bringing their full benefits to member country economies.



33. Finally, December 2004 will mark the five-year anniversary of the Guidelines for Consumer Protection in the Context of Electronic Commerce. an appropriate time to take stock of the effectiveness of the Guidelines. The first stock-taking exercise culminated in 2001 with a public conference in Berlin. As a follow-up, the CCP intends to evaluate and discuss the Guidelines in the context of developments in the online marketplace over the previous five years and issue a public report. A public conference will be held in late 2004 to assess the impact of the Guidelines. The conference will be preceded by a survey of implementation activities and followed by the publication of a report describing the effectiveness of efforts to implement the Guidelines.

#### 註釋

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- See [www.census.gov/mrts/www/current.html](http://www.census.gov/mrts/www/current.html).
- [co.ictdatabase.org](http://co.ictdatabase.org). August 2002
- See [www.nua.co.jp/surveys/analysis/graphs/charts/comparisons/consumer\\_spending\\_europe.html](http://www.nua.co.jp/surveys/analysis/graphs/charts/comparisons/consumer_spending_europe.html). Compared to the overall volume of retail sales, online sales remain small — often less than 1% of total retail sales. For example, for 2002, the online retail sales amounted to 1.04% of total retail sales in the United Kingdom, 0.9% in the United States, 0.4% in Canada, and 0.1% in France [OECD Information, Technology Outlook: ICTs and the Information Economy (2002), p.14?]. However, given that overall retail sales amount to more than half of total economic output, even a tiny percentage of overall retail sales is significant (e.g. USD 29 billion in retail e-commerce in 2000 in the United States. See [www.census.gov/eos/www/papers/estatextpdf](http://www.census.gov/eos/www/papers/estatextpdf)
- For example, according to Ernst & Young's "Global Online Retailing" report, released in January of 2001, high shipping costs are the biggest concern of online buyers around the world. See [www.ey.com/global\\_content.nsf/US/Media-Release-01-01-05-01DC](http://www.ey.com/global_content.nsf/US/Media-Release-01-01-05-01DC).
- Princeton Survey Research Associates (January 2002), "A Matter of Trust: What Users Want from Web Sites", p.1. available at [www.consumerwebwatch.org/news/abstract.htm](http://www.consumerwebwatch.org/news/abstract.htm).
- Markle Foundation (July 2002), "Toward a Framework for Internet Accountability", p.3. available at [www.markle.org/news/\\_news/\\_pressrelease/index.htm](http://www.markle.org/news/_news/_pressrelease/index.htm)
- 5cc Consumers International (September 2001). "Should I buy? Shopping online 2001: An International comparative study of electronic commerce", available at [www.5cc.org](http://www.5cc.org).

consumersinternational.org/CI\_Schoolhuypdf. This report followed up on a 1999 study "Consumersdshopping" . finding that, although there had been improvements since 1990, problems remained in areas like: the information provided consumers prior to placing an order, delivery of goods, and availability of refunds

- According to Survey of consumer protection agencies conducted by the National Association of Consumer Agency Administrators (NACAA) and the Consumer Federation of America (CFA), the average number of Internet complaints received in 2000 was up 62% from the prior year, following an increase of 38% in 1999, 39% in 1998, and 23% in 1997. The cumulative growth during this period was 382% See [www.nacaa.net/survey01.htm](http://www.nacaa.net/survey01.htm).
- "Flash Eurobarometer 117: Consumer Survey" (January 2002). available at [http://europa.eu.int/comm/policies/opinion/flash/flash\\_117\\_en.pdf](http://europa.eu.int/comm/policies/opinion/flash/flash_117_en.pdf)
- UK National Consumer Council (August 2000), "E-commerce and Consumer Protection" . available at [www.ncc.org.uk/pubs/pdf/ecommerce.pdf](http://www.ncc.org.uk/pubs/pdf/ecommerce.pdf).
- See [www.econsumergov](http://www.econsumergov)
- See "FTC Staff Comments on EU Green Paper" S, (6 February 2002) available at [http://europa.eu.int/comm/consumers/uo/developments/fair\\_trade\\_responses/other\\_governmental/us\\_trade.pdf](http://europa.eu.int/comm/consumers/uo/developments/fair_trade_responses/other_governmental/us_trade.pdf)
- At the end of 2001 the OECD Council considered the work of the CCP and renewed the mandate of the CCP through 2004 [C (2001) 239/REV1] The terms of reference of the new mandate highlight both the global importance of this work (putting increased emphasis on the importance of outreach to non-member economies) and its inter-relatedness with other aspects of economic policy (emphasising cross-linkages with other work within the OECD) See <http://www.oecd.org/pdf/M00017000/M00017725.pdf> at p.27.
- There are regional organisations that take up consumer policy issues. For example the work of the European Commission's Health and Consumer Protection Directorate-General often parallels and reinforces Committee efforts. See [http://europa.eu.int/comm/consumers/index\\_en.html](http://europa.eu.int/comm/consumers/index_en.html). The Free Trade Area of the Asia-Pacific Economic Co-operation (APEC) - [www.apec.org/td/industry/ecommerce](http://www.apec.org/td/industry/ecommerce) - and a working group of the Free Trade Area of the Americas (FTAA) - [www.ftaamca.org/SPCOMM/COMMEC/Trade/P](http://www.ftaamca.org/SPCOMM/COMMEC/Trade/P) - also address e-commerce related consumer policy issues. Ann particular projects of the other organisations with wider international representation sometimes touch on consumer issues. For example, a draft Convention

being negotiated under the auspices of the Hague Conference on Private International Law (HCOPIL) contains a provision on consumer contracts: [www.hech.net/workpro2jdarn.html](http://www.hech.net/workpro2jdarn.html). The United Nations Economic Commission for Europe (UNECE) has been considering issues related to online dispute resolution for consumer disputes, [www.unece.org/press/pr2002/O2opaO9e.htm](http://www.unece.org/press/pr2002/O2opaO9e.htm). Other fora include bodies that do work on standards like the ISO Committee on Consumer Policy Committee (COPOLCO), [www.iso.ch/iso/en/aboutiso/isostructureCOPOLCO.htm](http://www.iso.ch/iso/en/aboutiso/isostructureCOPOLCO.htm)

- Even prior to its work on electronic commerce and Guidelines, the CCP focused attention on the challenges relating to the increasingly global character of the consumer marketplace through projects on delivery logistics for consumer goods, consumer redress, electronic hand transfers, and mail order trading.
- The FAQs are available at [www.oecd.org/pdf/M000014000/M00014340.pdf](http://www.oecd.org/pdf/M000014000/M00014340.pdf).
- A draft is available at [www.ita.doc.gov/td/industry/otea/ecommerce/apec/meeting/022302/draft/consumerprotection/guidelinesO2O4O2.htm](http://www.ita.doc.gov/td/industry/otea/ecommerce/apec/meeting/022302/draft/consumerprotection/guidelinesO2O4O2.htm).
- Non-member economies represented included Argentina, China, Hong Kong, Malaysia, Slovenia, South Africa and Chinese Taipei.
- The Report of the Workshop [DSTI/CP (2001) 5] and other Workshop materials are available at [www.oecd.org/EN/document/OEN-document-44-1-no-20-1246-O,00.html](http://www.oecd.org/EN/document/OEN-document-44-1-no-20-1246-O,00.html).
- The agreement is available at [www.fs.dk/uklacts/misc/noraftaLhw](http://www.fs.dk/uklacts/misc/noraftaLhw). A copy of the press release describing the agreement is available at [www.fs.dk/uk/misc/pO10618o.htm](http://www.fs.dk/uk/misc/pO10618o.htm).
- Sweeps occur on a chosen date or over a particular time period when staff of an organisation spend the day (s) looking at Web sites and trying to find sites that appear to raise concerns or fail to meet identified principles- The sites identified are then sent educational e-mail messages that their sites fail to meet the identified principles or the site appears to be engaged in an activity that may be regulated. Where a possible violation of a law may be at issue, the e-mail message also refers the site to the regulatory body to obtain information on how to comply with the appropriate laws or regulations.
- In co-operation with the National Centre for Teaching Aids/School-net (<http://skolenettnet.nls.no>) the Norwegian Consumer Council introduced consumer information related to the Internet into the school systems. School-net is targeted to teachers and students in the compulsory primary and secondary school (ten-year) as well as secondary education schools at advanced level. Consumer education is treated as a separate subject within Economics and Information Processing.

- See <http://www.oecd.org/EN1countrylist>. 0.EN-countzylst-44- I-no-no- 106- 0. 00.html.
- See [www.nclnet.org/BeEWISEbroch.html](http://www.nclnet.org/BeEWISEbroch.html).
- Information from the Centre is available at [www.tieke.tikaunnalaaninen](http://www.tieke.tikaunnalaaninen) and [www.tieke.fi/dauppwindexhtm](http://www.tieke.fi/dauppwindexhtm). Information from the Consumer Agency and Ombudsman is available at [wa.kiiluuajavirastofi](http://wa.kiiluuajavirastofi).
- See [www.trustuk.org.uk](http://www.trustuk.org.uk) -
- See [www.which.netwyhtrader](http://www.which.netwyhtrader).
- See [.honline.com/about%20press/2002/022702asp](http://.honline.com/about%20press/2002/022702asp),
- European Commission Joint Research Centre, “E-commerce and Consumer Protection: A survey of Codes of Practice and Certification Processes” (2001)
- Official transposition notifications are listed at <http://europa.eu.int/celex/htni/cclexen.htm>. European Union Directives related to consumer protection in electronic commerce, include the Electronic Commerce Directive (2000/31/EC). Misleading Advertising Directive (97/55/EC). Directive on Unfair Contract Terms (93/13/EC), and the Distance Selling Directive (97/7/EC).
- The discussion of online auctions was held in September of 2000 on the basis of a background document that provided an overview of the legal and policy issues related to online C2C transactions [DSTI/CP (2000) 11] A follow-up paper was prepared for CCP discussion in February 2001 by the Delegation of Norway [DSTI CP. RD (2001) 1]. The examination of online advertising and marketing directed to children resulted in a public report. [DSTI/CP (99) 1 final]. available at [www.oecd.org/olis/1999doc.nsf/LinkTo/DSTI-CP\(99\)1-FINAL](http://www.oecd.org/olis/1999doc.nsf/LinkTo/DSTI-CP(99)1-FINAL) A follow-up paper was prepared for CCP discussion in February 2001 by the Delegation of Norway [DSTI. CP’ RD (2001)2]
- The report is available at [www.oecd.org/olis/2001doc.nsf/linkto/dsti-cp\(2001\)3-final](http://www.oecd.org/olis/2001doc.nsf/linkto/dsti-cp(2001)3-final).
- The Report and other materials from the Conference are available at [www.oecd.org](http://www.oecd.org) ENdocument 0.EN-document-44-1-no-20- I 300-000.html.
- The Report, “Legal Provisions Related to Business-to-Consumer ADR in Relation to Privacy and Consumer Protection” [DSTI/TCCP REG CP 2002) 1/FINAL] is available at [www.oecd.org/olis/2002doc.nsf/linkto/dsti-iccp-reg-co\(2002\)1-final](http://www.oecd.org/olis/2002doc.nsf/linkto/dsti-iccp-reg-co(2002)1-final).
- See “Resolving E-commerce Disputes Online: Asking the Right Questions about ADR” [DSTI/ICCP REG/CP (2002) 2/FINAL] . available at [www.oecd.org/olis/2002doc.nsf/linkto/dsti-iccn-reg-cp\(2002\)2-FINAL](http://www.oecd.org/olis/2002doc.nsf/linkto/dsti-iccn-reg-cp(2002)2-FINAL).
- See [www.iccwho.org/home/ADRinventorvhorne.asp](http://www.iccwho.org/home/ADRinventorvhorne.asp). The ICC press and a Report on

- the Survey are available at [www.iccwbo.org/home/news/archives/2002/stories/adr.asp](http://www.iccwbo.org/home/news/archives/2002/stories/adr.asp).
- A report on the proceedings is compiled in DSTI/CP (2000) 6/FINAL and is available at [www.ois.pecd.org/ois/2000doc.nsf/LinkTo/DSTI-CP \(2000\) 6- FINAL](http://www.ois.pecd.org/ois/2000doc.nsf/LinkTo/DSTI-CP(2000)6-FINAL).
  - Preliminary Report from the Cross-border Remedies Working Group [DSTI/CP (2001) 7].
  - The IMIS Findings are available at [www.imisnricc.org/imisn/crossborder.findings.htm](http://www.imisnricc.org/imisn/crossborder/findings.htm).  
 “Best Practice Examples Under the OECD Guidelines on Consumer  
 Protection in the Context of Electronic Commerce” [DSTI/CP (2002)2/FINAL]  
 -available at [www.ois.oecd.org/ohs/2002doc.nsf/LinkTo/dsti-cp\(2002\) 2-final](http://www.ois.oecd.org/ohs/2002doc.nsf/LinkTo/dsti-cp(2002)2-final).
  - [DSTI/CP (2000) 5 FINAL] Available at [www.ois.oecd.org/ohs/2000doc.nsf/LinkTo/DSTI-CP \(2000\) 5-FINAL](http://www.ois.oecd.org/ohs/2000doc.nsf/LinkTo/DSTI-CP(2000)5-FINAL).
  - Available at [www.oecd.org/EN/countrylist/0.. EN-countrylist-44-1-no-no- 1 06-0.0\(Y\).html](http://www.oecd.org/EN/countrylist/0..EN-countrylist-44-1-no-no-106-000(Y).html).
  - Available at [www.oecd.org/EN/countrylist/0.. EN-countrylist-44-1-no-no- 100-0,00.html](http://www.oecd.org/EN/countrylist/0..EN-countrylist-44-1-no-no-100-000.html).
  - Available at [www.oecd.org/EN/statistics/0.. EN-statistics-44-1-no-no- 0.00.html](http://www.oecd.org/EN/statistics/0..EN-statistics-44-1-no-no-000.html).

# DRAFT SUMMARY RECORD OF THE 62<sup>o</sup> SESSION OF THE COMMITTEE ON CONSUMER POLICY

DSTI/CP/M(2002)1

04-Apr-2002

## **ITEM1: ELECTION OF THE BUREAU**

- 1 .Mr. M. Thompson (United States) was elected Chair of the Committee on Consumer Policy.
- 2.M.r. M. Jenkin (Canada), Ms. B. LeTavernier (France). Mr. K.Nagamatsu (Japan) and Mr. M, Bond (United Kingdom) werere-elected as Vice-Chairs: and Ms. A, Peltonen (Finland) and Mr. H. W. Kang (Korea) were newly elected to the Bureau as Vice-Chairs.
- 3.On behalf of the committee, the Chair paid tribute to Ms. J. Olegaard (Denmark) for her exemplary contribution to thc work of the committee as Chair from 1996 to 2001. Mr. Thompson read a resolution expressing the committee' s gratitude for Ms. Olegaard' s contribution to the work of the committee (see Annex Ito the present record). The Committee adopted the Resolution and Ms. Olegaard expressed her thanks and best wishes to the Committee.

## **ITEM 2. ADOPTION OF THE AGENDA**

4. The Committee adopted the Draft Agenda.

## **ITEM 3:APPROVAL OF THE SUMMARY RECORD OF THE 61ST SESSION OF CCP**

5. The Committee approved the Summary Record of its 61st session.

## **ITEM 4: STATEMENT BY THE SECRETARIAT**

- 6-The statement by the Director for Science, Technology and Industry can be found in Annex IT to the present record.

## **ITEM 5: WORK PROGRAMME FOR 2003-2004**

- 7.Following presentations by the Secretariat (Deputy Director. Mr. Dryden, and Mr. Donohue), the Committee:
  - i) Discussed the Secretariat's initial proposals for the Committee's 2003-2004 Programme of Work outlined in document DSTI/CP (2002)1.
  - ii) Noted the perliminary priorities given by a number of Member countries to the proposed activities (compiled as a room document), which accorded nearly

equal priority to work under Activities 1-4, and slightly lessor priority to work under Activity 5.

iii) Invited Delegations to submit their final priorities for the proposed activities by 26 April 2002.

iv) Noted that the final programme would depend on the level of available resources as decided by the Council as well as on additional resources to be provided by voluntary contributions, and considered that the resources allocated to the various activities should take into account the priorities of the Committee.

## **ITEM 6:ASSESSING THE IMPACT OF THE GUIDELINE S**

### **a)Second Report: Member Country Implementation of the Guidelines for Consumer Protection in the Context of Electronic Commerce (Revised Draft)**

8.Following an introduction by the Secretariat (Mr Kaneko), the Committee:

i) Noted and expressed its support for the continued work on the Second Report on the Member Country Implementation of the Guidelines for Consumer Protection in the Context of Electronic Commerce (i§CP Guidelinesi”) presented in DSTI. CP (:2002) 3.

ii) Invited Delegations to submit updates with regard to their respective implementation activities to the Secretariat by 1 May 2002.

iii) Agreed that Member country updates and comments would be integrated into the Second Report.

iv) Agreed that the Second Report would form the basis for a more concise report to the OECD council, to be drafted by the Working Group on Guidelines Follow-up. The Working Group draft of the Report to Council would be presented to the Committee at its next (October) session for discussion and approval.

### **b) Update on educational initiatives**

9.Following an introduction by the Secretariat (Mr. Donohue), the Committee note a demonstration by the United States of an innovative tool for distributing the best practice eAamples under the CP Guidelines (a series of mock Web sites designen to educate users about the CP Guidelines that could be distriouted through a CD-ROM), The Commiitee discussed and expressed its support for this proposal



and noted the suggestions to disseminate the product to consumer and business organisations, as well as making it available via the Web.

10. The Committee also noted information provided by Korea on its Nation-wide Internet Sweep Days in 2001, which was tabled as a room document.

## **ITEM 7: STATISTICAL INFORMATION ON B2C TRANSACTIONS**

11. The Committee:

- i) Noted with interest a presentation by the Economic Analysis and Statistics Division of the Secretariat (Ms. Colecchia), on consumer Internet transactions, which were the first results of OECD efforts to develop internationally comparable indicators. Ms. Colecchia's presentation focused on the OECD's efforts to measure overall propensity to carry out Internet transactions, the relative size and nature of Internet transactions (B2C, domestic vs. international) and the perceived drivers and inhibitors. Ms. Colecchia's presentation was also tabled as a Room Document and is available on the OECD Web site at: <http://www.oecd.org/pdt/7M00027000/M00027669.pdf>. Additional information about the statistics is available on OLIS in a summary report posted as DSTI/ICCP RD (2002) 4.
- ii) Noted that the Working Party on Indicators for the Information Society (WPIIS) is currently working on a model questionnaire on ICT use in households [DSTI/ICCP 11S (2002) 1] and that CCP delegates are invited to provide comments on the questionnaire to the Secretariat by 19 April 2002.

## **ITEM 8: CONSENSUS BUILDING ON CORE CONSUMER PROTECTIONS**

**a) Common approaches to defining a deceptive or misleading practice: Update from the International Marketing Supervision Network (IMSN)**

12. The Committee noted an oral update by Mr. G Sutter, President of the International Marketing Supervision Network (IMSN), on the IMSN's activities and particularly its current project regarding best practices. Mr. Sutter explained that the IMSN had issued a questionnaire to its members in November 2001 regarding laws and practices related to fair trading and marketing, enforcement issues, and ideal legislation. The IMSN received 21 responses and Mr. Sutter

touched on some preliminary findings from the results. The Committee briefly discussed the IMSN efforts on this issue, noted the need for continued co-ordination with the IMSN on this topic, and thanked Mr. Sutter for his presentation.

**b) Best practice Examples under the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce**

13. Following an introduction by the Secretariat (Mr. Donohue), the committee:

- i) Noted and expressed support for the “Best Practice Examples under the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce” developed in DSTI CP (2002) 2.
- ii) Agreed to the written procedure for the declassification of the text viz, that comments on the current version should be sent to the Secretariat by 12 April 2002, and that a revised version of the text would be circulated on OLIS before the end of April. Once the revised text had been issued on OLIS, there would be a deadline of three weeks for comments by the CCP. In the absence of objections by that deadline, the text would be considered declassified.
- iii) Noted Member country suggestions that the instrument, once declassified, should be made available on consumer authority Web sites, that BIAC would issue the instrument to its members for information, and that the Committee will pursue further distribution options, including the CDROM proposal of the United States.

**ITEM 9: POLICY ISSUES FOR CROSS-BORDER ENFORCEMENT  
CO-OPERATION Forum Session on Cross - Border Remedies**

14. The Forum Session on Cross-Border Remedies continued the Committee's examination of the challenges of consumer protection law enforcement in a cross-border marketplace. An elaborated agenda for the session was tabled at the meeting as a Room Document. As Chair of the Working Group on Cross-Border Remedies, US delegate Mr. H. Stevenson introduced the issues to be addressed and presented recent data on cross-border complaint trends [DSTI CP/RD (2002) 3]. The Secretariat (Mr. Donohue) then provided an overview of the challenges identified in DSTI CP (2001) 7, followed by a presentation by Mr. Guido Sutter, President of the IMSN, on the issues identified by that organisation. The

introductory session was concluded with a presentation by the United States (Ms. M. Mithal) outlining the preliminary results from a survey on enforcement authority conducted by the Working Group.

15. Part II of the Forum Session focussed on case studies and was moderated by Australia (Mr. C. Buik). Interventions from Australia, Canada, Japan, New Zealand, United Kingdom, and the United States highlighted the (i) global reach of cross-border cases; (ii) issues about the effectiveness of conduct and monetary remedies and (iii) the challenge of information sharing.
16. Part III focused on approaches to cross-border enforcement challenges in other areas. The Secretariat (Mr. J. Clack from the Competition Division of the Directorate for Financial, Fiscal and Enterprise Affairs) outlined efforts to address these challenges from the perspective of enforcement of competition laws, including two OECD Council Recommendations that have been developed to facilitate co-operative enforcement efforts. Mr. R. Csonka, Deputy Head of Division for Economic Crime at the Council of Europe, described the recently completed CyberCrime Convention, a more formal instrument that contains a number of provisions designed to enhance cross-border enforcement co-operation in the area of cybercrime.
17. Part IV featured presentations on current efforts to address the challenges, beginning with a presentation [DSTI/CPIRD (2002)2] on the IMSN's econsumer.gov project (Ms. M. Mithal) which offers consumers an opportunity to file complaints regarding cross-border ecommerce transactions which can then be shared with enforcement officials. The Finnish delegation (Ms. A. Peltonen) provided an update on a new Nordic Consumer Ombudsman's Agreement. Canada (Ms. S. MacPhee) described a recent legislative initiative designed to address limitations faced by Canada's Competition Bureau in addressing cross-border issues. The European Commission (Mr. N. Fahy) described two initiatives to address these issues at the European level, the first being the Injunctions Directive and the second the more recent Green Paper on Consumer Protection. Finally, Ms. A. Schultz, First Secretary at the Permanent Bureau of the Hague Conference on Private International Law, provided information about the degree to which the

Hague judgments project could help address these issues.

18. The committee noted the presentations, and actively participated in the Forum Session, recognising that, although there have been many innovative efforts to address the cross-border challenges, there remains much work to be done to ensure that current mechanisms are adequate to enable government to cope with the difficulties of effectively enforcing consumer protection laws--and thereby build consumer trust--in the global marketplace. The Committee agreed that the Working Group on Cross-border Remedies should circulate concrete proposals for next steps to the Secretariat for dissemination to the Committee.

## ITEM 10: DISPUTE RESOLUTION FOR CROSS- BORDER CONSUMER TRANSACTIONS

### a) Alternative Dispute Resolution (Joint Work with the Working Party on Information Security and Privacy)

#### i) *Progress Report on ICTJ-OECD inventory*

19. The Committee noted an oral update by Ms. A. Hassan, Senior Policy Manager, International Chamber of Commerce (ICC) on the ICC-OECD questionnaire and inventory work. In particular, the Committee noted that the ICC had circulated a "Questionnaire on ADR Mechanisms" [see DSTL/ICP/REG/CPR.D (2002) 1] jointly elaborated by the ICC and the OECD via the ICC network in January 2002. The Committee noted that the answers to the questionnaire were due at the end of March 2002, after which the results would be compiled and analysed, with the intention of making the results available to the public as appropriate. It further noted the importance of ensuring that information on particular providers should not be provided to consumers in a manner suggesting that its accuracy had been verified by the Committee.

#### ii) *Legal Synthesis*

20. Following an introduction by the Secretariat (Ms. Carbianc), the Committee:

- i) Noted the main point arising from the "Draft Synthesis of Member Country Responses to the Questionnaire on Legal Provisions related to Business-to-Consumer Alternative Dispute Resolution (ADR) in relation to privacy and Consumer Protection" [DSTL/ICCP/REG/CP (2002) 1] and that the comments received from Member countries were being incorporated into a

revised synthesis.

- ii) Agreed to the written procedure for the declassification of the synthesis viz, that comments on the current version should be sent to the Secretariat by 26 April 2002, and that a revised version of the text would be circulated on OHS before the end of May. Once the revised text had been issued on OLIS, there would be a deadline of three weeks for comments by the CCP, WPISP and the WPISP's parent body, the Committee for Information, Computer and Communications Policy (ICCP). In the absence of objections during this three-week period, the text would be considered declassified.
- iii) Educational instrument

21. Following an introduction by the Secretariat (Mr. Donohue), the Committee:

- i) Noted and expressed its support for the draft ADR educational instrument, "Resolving Disputes On Line: Asking the Right Questions about ADR" as presented in DS/II/JICCP/REG/CP (2002) 2.
- ii) Agreed to the written procedure for the declassification of the educational instrument viz, that comments on the current version should be sent to the Secretariat by 26 April 2002, and that a revised version of the text would be circulated on OLIS before the end of May. Once the revised text had been issued on OLIS, there would be a deadline of three weeks for comments by the CCP, WPISP and the ICCP. In the absence of objections during this three-week period, the text would be considered declassified.
- iv) Update from the Working Party on Small and Medium-Sized Enterprises

22. The Committee noted an oral report by the Secretariat from the Industry Division (Ms. Estime) on the current activities of the Working Party on SMEs, including work on ADR for SMEs that will feature an educational instrument to complement the one developed jointly by the CCP and WPISR

#### **b) Report on Consumer Protections for Payment Cardholders with Frequently Asked Questions**

23. Following an introduction by Mr. M. Bond (United Kingdom) of the Working Group on Consumer Protections for Payment Cardholders, the Committee:

- i) Noted and expressed its support for the "Report on Consumer Protections

for Payment Cardholders” and the attached “Frequently Asked Questions” as presented in DSTIJCP (2001) 3/REV1.

- ii) Agreed to the written procedure for the declassification of the report viz, that comments on the current version should be sent to the secretariat by 12 April 2002, and that a revised version of the text would be circulated on OUS before the end of April. Once the revised text had been issued on OLIS, there would be a deadline of three weeks for comments by the CCP. In the absence of objections received by the deadline, the text would be considered declassified.

**c) Update on efforts in other fora to address jurisdiction and applicable law**

**i) *Judgment Project of the Hague Conference on Private International Law (HCOPIL)***

24. The Committee noted with interest an oral presentation by Ms. A. Schulz, First Secretary at the Permanent Bureau of the Hague Conference on Private International Law, on the Hague Judgments project, with particular attention drawn to the challenges posed with regard to drafting the provisions governing jurisdiction for cases arising out of B2C transactions. The Committee noted that work is continuing on this project. The Committee thanked Ms. Schultz for her presentation and expressed its interest in a continuing information exchange with the HCOPIL on these issues of mutual interest.

**ii) *Work of the OECD Centre for Tax Policy and Administration on jurisdiction in the context of B2C digital downloads***

25. The Committee noted an oral presentation by the Secretariat (Mr. D. Holmes, Head of the E-Commerce, Consumption Taxes and Tax Administration Division) on current work on the consumption tax aspects of electronic commerce, and more particularly issues related to jurisdiction verification of online consumers.

## **ITEM 11: HORIZONTAL CO-ORDINATION**

**a) Codes of Conduct**

26. Following an oral update by the Secretariat (Deputy Director, Mr. Dryden) on the ICCP project on codes of conduct, the Committee noted that commencement on the second phase of the project had been delayed due in order to accommodate the expedited schedule for review of the Guidelines on Information Security and Networks.

## **b) Environment and Sustainable Consumption**

27. The Committee noted an oral presentation by the Secretariat (Ms. A. Zacarias-Farah and Ms. Y. Serret of the Environment Directorate's Sustainable Consumption Branch) on their current work programme. In particular, the Committee noted that they plan to issue a "Synthesis Report: Towards Sustainable Household consumption? Trends and Policies in OECD Countries" at the Earth Summit 2002 in Johannesburg, South Africa (September). The Committee further noted that more information, including recent releases of the "Household Food consumption report and others could be found on the Environment Web site at <http://www.oecd.org/env/consumption>.

## **c) Management of the Internet Domain Names System: Policy issues arising from the OECD experience**

28. The Committee noted with interest a presentation by the Secretariat (Mr. D. H. Small, Director of Legal Affairs), and document DSTI/ICCP (2002) 8 on the problem recently met by the Organisation with regard to the cybersquatting of the [ocde.org](http://ocde.org) domain name, and on the general policy issues arising from this experience.

## **ITEM12: OUTREACH**

### **a) Non-member countries**

29. The Committee:

- i) Noted document DSTI/ICCP (2002) 9 and a statement by the Deputy Director, Mr. Dryden, on the preparation of the OECD Forum on the Global Digital Economy which is to be held at the beginning of 2003, probably in a Pacific Rim location, and which will be the next event in the series including the November 1997 Turku Conference, the October 1998 Ottawa Ministerial Conference, the October 1999 Paris Forum and the January 2001 Dubai EMEF.
- ii) Noted that this Forum, which the OECD hoped would be organised in collaboration with APEC would take place in the context of the preparation of the ITU World Summit on the Information Society to be held in Geneva on 10-11 December 2003, and was also relevant to the work of the DOT Force to which the OECD was also associated.

iii) Generally considered that the CLP could prepare one or more deliverables for the Forum, e.g. a wrap-up of the achievements of the Ottawa Declaration - including the development and implementation of the Guidelines for Consumer Protection in the Context of Electronic Commerce; and/or a forward-looking statement which might set out future directions for relevant consumer protection policy-related work. The Committee considered preparing one or more of these deliverables for discussion at its October 2002 session.

#### **b) Activities in other fora**

30. The committee noted with intent

- A presentation by the Delegation of New Zealand (Ms. S. Ickerkin) on APEC's (Asia-Pacific Economic Cooperation) recent activities, including the APEC's E-Commerce Steering Group's Fifth Meeting on 22-23 February 2002 and the Sixth Meeting scheduled for August 2002.
- A presentation by the Secretariat (Mr. Kaneko) on COPOLCO's (ISO Committee on Consumer Policy) recent activities, including mention of COPOLCO having recently formulated a new proposal on ADR and that its next meeting would take place in Trinidad in June 2002.
- A presentation by the Delegation of Mexico (Ms. P. Ruiz Velasco) on FTAA's (Free Trade Area of the Americas) recent activities, including its meeting on 13-15 February 2002 in Panama City. The meetings conducted thus far and have involved a wide analysis of matters related to ecommerce particularly issues including fraud/deception, privacy, jurisdiction and dispute resolution.
- A presentation by Mr. S. Cooper of Hewlett Packard on GBDe's (Global Business Dialogue on Electronic Commerce) recent activities, including GBDe work on ADR from which it has emerged that buy-in from consumers, consumer organisations and government authorities will be critical to finding any long-term solutions with regard to ADR.
- A presentation by Consumers International (Ms. O. Nicolas Etienne) on TACD's (Trans Atlantic Consumer Dialogue) recent activities, including discussions of privacy (implementation of the safe harbour agreement), the OECD Consumer Protection Guidelines, and broadband access to the Internet.
- A presentation by the Secretariat (Mr. Kaneko) on UNCTAD's (United Nations



Conference on Trade and Development) recent activities, including a meeting of the UNCTAD Expert Meeting on Consumer Interests, Competitiveness.

Competition and Development held in Geneva on 17-19 October 2001. UNCTAD's Intergovernmental Group of Expert on Competition Law and Policy will meet in Geneva on 3-5 July 2002.

- A presentation by the Secretariat (Mr. Donohue) on UN/ECE's (United Nations Economic Commission for Europe) recent activities, including recent work on Internet regulation and self-regulation, and ADR. Online KDR will be the topic of a workshop scheduled for 6-7 June 2002 in Geneva.

## **ITEM13: OTHER BUSINESS**

### **a) Annual reports**

31. The Committee was invited to submit its 2001 annual reports to the Secretariat as soon as possible and note that all of the reports would be posted on the OECD Web site (<http://www.oecd.org/ENdocuments/0,EN-documents441-no-11-no-0,FF.html>) by the end of April 2002. The Committee further noted the importance of timely submission of annual reports, which provide a valuable informational resource and attract a large number of visitors to the Web site.

### **b) Web site development**

32. The Committee noted with interest an oral presentation by the Secretariat (Ms. Harris) on the possible development of a password-protected CCP Web site and agreed to its development and deployment by the end of May 2002.

### **c) Dates of next session**

33. The Committee agreed that its 63rd Session will be held on 3- 4 October 2002 in Paris.

### **d) Reminders and deadlines**

Room Document

34. The Committee was invited to review and update its participation in CCP Working Groups (by contacting the Secretariat) and delegates were encouraged to join the Working Groups, resources permitting, which provide an integral contribution to the work of the Committee.

35, The Committee noted that a document setting that summarised the deadlines agreed during the course of the session was tabled at its conclusion (see Annex III).

## ANNEX I :

### RESOLUTION OF THE OECD COMMITTEE ON CONSUMER POLICY 62ND SESSION ON 13-14 MARCH 2002, PARIS, FRANCE

WHEREAS, Jytte Oelgaard serves as Head of Division at the Danish Consumer Agency; and

WHEREAS, Ms. Oelgaard has also served as Chair of the OECD Committee on Consumer Policy since 1996, and

WHEREAS, Ms. Oelgaard's service to the Committee has been exemplary, leading the Committee through:

- the development of the Guidelines for Consumer Protection in the Context of Electronic Commerce. and
- the development of important workshops and reports on topics such as
- payment Cardholder Protections
- Alternative Dispute Resolution
- Cross Border Law Enforcement
- and the establishment of a stable future for the Committee through securing renewed mandates and funding and 4

WHEREAS, all of Ms. Oelgaard's efforts have led to the enhanced stature and reputation of the Committee.

BE IT RESOLVED the OECD Committee on Consumer Policy expresses its gratitude for the contributions of Ms. Oelgaard to the work of the Committee and commends her for her six years of exemplary service.

## ANNEX II :

### DIRECTOR'S STATEMENT 62ND SESSION OF THE COMMITTEE ON CONSUMER POLICY

I welcome all delegates to this meeting.

1. First of all, I would like to thank and congratulate the new Chair (Mr. Mozelle Thompson) and Bureau members for agreeing to play an important role in this Committee. I would also like to express my sincere thanks and appreciation to the Committee's former Chair, Jytte Oelgaard, for her six years of service to the Committee. It was during her stewardship that the Committee developed the Guidelines on Consumer Protection for E-commerce making an essential contribution to the OECD's horizontal E-commerce project. I hope that both the Secretariat and the Committee will continue to benefit from the timely guidance of its Bureau members.

2. By way of introduction to the substantive discussion today and tomorrow, I would like to begin with the OECD Reform Process, which relates to the work programme, budget and future direction of the Committee.

#### **The OECD reform process**

3. As the Secretariat already informed all delegates, the Secretary-General submitted his proposal on "The OECD-Challenges and strategic Objectives" [C (2001) 240] to the Council in October 2001. Following discussions with the Heads of Delegation, it was recently agreed to set up three informal working groups.. These groups will review the priority setting exercise and budget process, in co-operation with the Budget Committee. They will review the evaluation and restructuring of Committees and working groups, and review the interaction of the OECD with its affiliated bodies, including as a priority question, the structure of the work on development.

- First Working Group which will review the priority setting exercise and budget process, in co-operation with the Budget Committee, will be chaired by Ambassador Forsyth (Australia). It is to submit its report by the end of April.
- Second Working Group, responsible for examining the evaluation and restructuring of Committees and working group will be chaired by Ambassador Hurtubise (Canada). It is to submit its report by the end of June.

- Third Working Group, to review the interaction of the OECD with its affiliated bodies, including as a priority question, the structure of the work on development, will be chaired by Ambassador Engering (Netherlands). It is to submit its report by the end of April.

4. The reports will then be submitted to the Council for discussion and action.

Whatever the outcome of this process may be, it is clear that all committees will be subject to close scrutiny by the Council.

5. Also to be taken into account are criteria which the Secretary-General listed in his document, such as the value of work in capitals, staff, or the frequency of meetings. Efficiency meetings, documentation, representation of delegates, effective priority setting, horizontal programmes and co-operation.

6. We are just at the beginning of a process of reflection by these Working Groups of the Heads of Delegation. We do not have any clear idea yet regarding the suggestions which will be put forward by these groups, but we have provided the Committee Delegates with the relevant information to enable them to contribute to this process of reflection through the appropriate channels in their capitals and Permanent Delegations. I would like to encourage you to discuss any relevant activities, priorities and issues in your capitals and with your Council members.

### **Renewal of CCP mandate**

7. With regard to the Council's decision last December to extend the Committee's Mandate, Member countries expressed unanimous support for the work of this Committee and also noted that the sunset clause for Committee mandates is part of the rigorous assessment of this overall review on the evaluation and restructuring of Committees by the Working Group. Therefore, the Council agreed that any decision in this respect would be immediately applicable to the Mandate of the Committee.

8. One item that was also emphasised during those discussions was the importance of co-ordinating the Committee's work with work ongoing elsewhere within the OECD and outside the Organisation. On this point, examples of such co-operation include: ADR and trust building with the WPTSP and the WP on SMEs; and cross-border enforcement

co-operation with the DAFFEs Competition Committee.

9. I have noted with interest that your Agenda includes presentations by representatives of the Council of Europe. The Hague Conference on Private International Law, the International Marketing Supervision Network, and the International Chamber of Commerce. as well as from Secretariat staff working in the areas of environment, competition policy, and taxation (not to mention from other areas in DST1).

10. In the Secretariat, teamwork will be intensified, and on the Committees/Working Parties side, co-operation will be further developed through such means as joint projects, wide circulation and discussion of document, joint meetings/workshops on specific themes of common interest, and as appropriate, joint Committee meetings.

### **Work programmes**

11. One important aspect of the reform process is the system for deciding on the overall OECD programme of work, priorities and budget. There is, therefore, some uncertainty on the way in which the Committee's programme of work for 2003-2004, which is one of the main items on the Agenda, will be integrated into the overall OECD programme.

12. in this regard, the Secretary-General submitted the Priority Setting Paper for 2003-2004 For the Council's endorsement two weeks ago. This paper will serve as a guide to committees as they prepare their draft programmes of work. The eight thematic areas established by Council in 2000 continue to provide a good representation of Member governments' present and on-going priorities. (e.g. the Committee on Consumer Policy will contribute, in particular to the themes "the best use of new technologies" and "economic, stability and structural adjustment").

13. The Secretary-General also highlights a number of new and emerging activities (Box 1) such as "International Terrorism" and reinforcing horizontal work and specific time-bound activities (Box 2) such as Sustainable Development, Health and the Post-Doha trade agenda as likely candidates at the moment.

### **Budget**

## **2002 budget**

14. With regard to the budget, the Council agreed on the budget for 2002 along zero-volume growth guidelines, with minor reductions in some activities, in order to make way for some horizontal activities. As far as this Committee is concerned, we have the same resource envelope as in the previous year. This envelope permits one regularly-funded A-level administrator post supporting the work of the Committee, along with the assistance of a B-level post that is shared with the privacy and security work in the WPISP. In addition, the Committee continues to benefit from the generosity of the Japanese government, which binds an additional project post at the A-level and much of the day-to-day operating funds for the secretariat support of the Committee's work.

## **2003 budget**

15. The first Reform Group will review the OECD budget process and recommend ways of improving the Organisation's capacity to allocate its resources effectively on the overall priorities, and of increasing the resources available to the Secretary-General to respond to emerging and unforeseen issues by end-April at the latest. Creating flexibility or freeing-up an important margin of the Organisation's resources, to respond to such emerging issues in an environment of zero-growth or declining resources is a challenge of this review. It is probable that at least a certain proportion of the overall budget of the OECD should be reviewed with a view to moving this amount to new high priority activities and important emerging issues, based on the Committee's priority setting.

16. Whatever the outcome of the reform process, it is clear that given the current resource situation of the OECD, the Committee's own priorities will be an important element in the final decision on the Organisation's programme. The priority voting exercise is therefore an important operation, and it is essential that all Delegates participate.

## **Strategic objectives and core-competencies: Work Programme 2003-2004**

17. I would now like to turn to the substance of the Committee's work.

18. In the work programme for 2003 and 2004, it is important that the Committee should focus on its core-competencies and on the horizontality of its work, keeping well in mind the limits of the resources currently at its disposal.

### **Against International terrorism: security and economic recovery**

19. An emerging OECD horizontal priority is the work addressing a wide range of issues posed by International Terrorism, that is, How to manage “Security” and how to “reinforce and speed economic recovery” within a longer-term knowledge-driven growth.

### **Consumer and user trust of the Net**

20. Here, I would like to reiterate that since consumers and users of the Net and not convinced of the safety and security of network transactions, the “Building trust for user and consumers” is a key element for enhancing B2C, E-business, use of ia and broadly ia and broadly Ia-driven growth and economic recovery.

### **Consumer Protection Guidelines and ADR**

21. Concerning full implementation of the Consumer Protection Guidelines and educating consumers and other stakeholders, one aspect of this effort is a report on enhancing protections for payment cardholders which is still the primary mechanism for online payments. This includes a “Frequently Asked Questions” section to help address consumer fears about online.

22. Second is a catalogue of “best practices examples” aimed at helping consumers and business understand how to apply the Guidelines in practice.

23. The third project aims to encourage development of effective ADR mechanisms, which can minimise the difficulty of resolving issues of jurisdiction and applicable law in the online context. Developing educational materials for consumers and SMEs to encourage use of effective ADR mechanism is part of the challenge.

24. The Committee is invited to discuss and to decide on any further direction for wrapping up the current work programme on ADR in co-operation with the WPISP, based on the legal synthesis and educational instrument.

### **Cross-border enforcement co-operation**

25. Tomorrow's Forum session will focus on the issue of cross-border remedies. The Working Group has already produced an initial report that highlights a number of issues to address these challenges such as effective policy framework and information sharing

restrictions. I think the Committee should strongly consider continued work in this area of this Guidelines' key principle ('online consumers should be afforded a level of protection that is no less than afforded consumers in more traditional forms of commerce').

26. This also relates to exploring enforcement policy issues raised by Internet governance and technological developments. Contact information for commercial domain name registrants, often available through a whois search, can be a useful consumer protection enforcement tool. But the recent OECD's cybersquatting experience [under Agenda Item II (c)] may raise the cross-cutting management issues on the Internet Domain Name System.

### **Impact of new technologies and emerging business models**

27. In this connection, we are now entering the Broadband Age where many new technologies and the convergence of communication infrastructures, services and technologies are creating new businesses and markets such as Internet telephone, third generation mobile Internet, digital and mobile household electric appliances and various digital content services.

28. Such developments can present new consumer protection issues. They include issues raised by mobile E-commerce, disclosure issues raised by the use of technology for protecting intellectual property rights, and dynamic pricing practices on line. The Committee is well positioned to contribute to the policy debate on these issues. Some work in this area would be undertaken in cooperation with the WPISPL

### **Security Guidelines**

29. For your information, during the meeting last week, the ICCP agreed to accelerate its work on the review of the 1992 OECD Security Guidelines, with expected completion before the 11th September 2002. The events of September 11 demonstrated the necessity to address the vulnerability of the Networked Society and threats to public and private sectors, and the importance of raising awareness of such risks and security safeguards that are available. Therefore, the key message of the revised Guidelines should likely be a stress on the importance of 'Culture of Security,' and in the implementing stage of the Guidelines, this Committee may have concerns of the implications to the consumers.



## **OECD Global Forum: Policy Framework for the Digital Economy**

30. I would also like to mention the next big event after the Ottawa Ministerial Conference of 1998, the "OECD Forum on the Global Digital Economy" at the beginning of 2003, which the ICCP agreed to organize last week. We hope to do this in co-operation with APEC, provided they agree. I see this event as a major shop-window for the OECD's deliverables, in particular for the CCP and ICCP Committee.

31. This could include the next procedure which involves taking stock of progress and syntheses of an integrated electronic commerce framework (e.g. assessing the impact of the Guidelines) since Ottawa and renewing the action plan including the forward-looking agenda in this area. In this regard, I would like to hear your views on the Agenda on this Forum, including deliverables.

### **Staff news**

32. As you know, John Dryden has been wearing two hats of late, continuing to act as Head of the ICCP Division while simultaneously taking up his new duties as Deputy Director. So, I know John will be particularly pleased to see the arrival in early May of our new Head of Division, Mr. Pekka Lindroos. He joins us from the Finnish Government, where he occupied the position of Chief Counsellor at the Ministry of Trade and Industry.

33. Also new to the our ICCP Division team is Julie Harris, who joined us in November, but is no stranger to the OECD having worked on tax and e-commerce issues in DAFNE. Her talents are shared between the CCP and the WPISP.

Thank you, Mr. Chair.

**WORKING GROUP DRAFT: RECOMMENDATION OF  
THE COUNCIL CONCERNING GUIDELINES FOR  
PROTECTING CONSUMERS FROM CROSS-BORDER  
FRAUD AND HARD-CORE DECEPTION**

DSTI/CP(2002)5

1 2-Sep-2002

## NOTE BY THE SECRETARIAT

1. This Draft Recommendation contains Guidelines developed by the Committee on Consumer Policy's (CCP) Working Group on Cross-border Remedies. It is intended to address a number of the cross-border enforcement challenges described in the preliminary report by the Working Group [DST1/CP (2001) 7] and discussed at the Forum Session held on 14 March 2002. The Guidelines have been styled as a recommendation of the OECD Council, with the expectation that, if the Committee can develop a consensus text, it will be forwarded to the Council for approval.

2. Prior drafts and informal comments from Working Group participants are posted on the CCP electronic discussion group. This latest draft has been assembled by the Secretariat and attempts to incorporate the last round of Working Group comments. Because it was not possible in all cases to reconcile Working Group comments, parts of the text are enclosed in square brackets to highlight areas where there are alternative suggestions. In addition, several suggestions regarding the format of the draft from the Secretariat have been included in footnotes.

3. Delegates are encouraged to circulate this document widely to appropriate government ministries so that the Committee can have a fully informed discussion at the October meeting. Delegates are invited to provide written comments to the Secretariat in advance of the CCP meeting. Comments received by 27 September 2002 will be compiled in a room document prepared for use during discussion of this item at the meeting.

## WORKING GROUP DRAFT: RECOMMENDATION OF THE COUNCIL CONCERNING GUIDELINES FOR PROTECTING CONSUMERS FROM CROSS-BORDER FRAUD AND HARD-CORE DECEPTION

THE COUNCIL,

Having regard to the convention on the Organisation for Economic Co-operation and Development of 14<sup>th</sup> December 1960, in particular, Article 5 N thereof:

Having regard to the Ministerial Declaration on Consumer Protection in the Context of Electronic Commerce of 8 October 1998[C (98) 177 (Annex2) J:

Having regard to the OECD Recommendation concerning Guidelines on Consumer Protection in the Context of Electronic Commerce, adopted by the Council on 9 December

1999[C (99) 184/FINAL], which states that member countries should, through their judicial, regulatory and law enforcement authorities co-operate at the international level, as appropriate, through information exchange, co-ordination, communication and joint action to combat cross-border fraudulent, misleading and unfair commercial conduct;

Having regard to the Decision of the Council on the OECD Guidelines for Multinational Enterprises of 27 June 2000[C (2000) 96/FINAL]

Having regard for the work done by the International Marketing Supervision Network (IMSN) to tackle cross-border fraud and hardcore deception, and in particular the IMSN Findings on Cross-Border Remedies, available at [www.irmsnrcc.org](http://www.irmsnrcc.org);

Recognising that the development of the Internet and improvements in telecommunications technologies, while facilitating the globalisation of markets through cross-border transactions, also provide unprecedented opportunities for businesses and individuals engaged in fraud and hard-core deception to harm consumers from a different jurisdiction and to evade enforcement authorities;

Recognising that there are areas where the collective ability of consumer protection agencies to protect consumers is limited, and that the growth of e-commerce in particular will make these limitations increasingly problematic;

Recognising that most existing laws and enforcement methods to address fraud and hard-core deception against consumers were developed at a time when such fraud and hard-core deception was predominantly domestic, and that such laws are therefore not always adequate to address the emerging problem of cross-border fraud and hard-core deception;

Recognising that businesses and individuals engaged in fraud or hard-core deception may seek to take advantage of limitations in cross-border application and enforcement of consumer protection laws by establishing their operations in one country and targeting consumers in others.

Recognising that fraud and hard-core deception undermines the integrity of both domestic and global markets to the detriment of all businesses and consumers, and undermines consumer confidence in those markets;

Recognising that closer co-operation among consumer protection agencies around the world is needed to combat fraud and hard-core deception that emanate from one country and harm consumers in others:

Recognising that, because those committing cross-border fraud and hard-core deception can quickly target large numbers of consumers and cause substantial consumer

injury, consumer protection agencies should find quick, efficient ways to co-operate in order to combat these schemes effectively:

Recognising that, although member countries have different consumer protection laws and enforcement processes, there can be a common framework for the development of closer co-operation among consumer protection agencies in combating fraud and hardcore deception; and

Recognising that closer co-operation in combating fraud and hard-core deception can lay the groundwork for enhanced cooperation on other consumer protection issues in the future;

## **RECOMMENDS:**

That consumer protection agencies in member countries, having a common interest in preventing fraud and hard-core deception, should co-operate with one another[, as appropriate,] in enforcing their laws against such practices.

That member countries should work to develop a framework for closer co-operation among consumer protection agencies that includes:

- [Establishing a domestic framework for combating cross-border fraud and hard-core deception;]
- Enhanced information sharing, and other investigative assistance, co-operation and consultation:
- [Broader authority][Better ability] to protect domestic consumers from foreign businesses engaged in fraud and hard-core deception;
- [Broader authority][Better ability] to protect foreign consumers from domestic businesses engaged in fraud and hard-core deception:
- [Better ability to obtain][Enhanced procedures for obtaining] monetary redress for affected consumers
- [Outreach to non-member economies; and]
- [Co-operation with the third parties where appropriate:]

That member countries should seek to implement these Recommendations, as set forth in greater detail in the Guidelines contained in the Annex thereto and of which in forms an integral part;

INSTRUCTS the Committee on Consumer Policy to exchange information on progress and experiences regarding the implementation of this Recommendation, review that information, and report to the Council within three years on this subject.

## ANNEX :

### GUIDELINES

#### I. Definitions

- A. For the purposes of this Recommendation, Traud and [hardcore] [serious] deception” means:
1. A pattern or practice of making misrepresentations of material fact; including implied factual misrepresentations, that cause or are likely to cause, (a) significant financial injury to consumers or (1,) a significant risk to consumer health or safety;
  2. Systematically failing to deliver products to consumers after they have been charged for such products; or
  3. Systematically charging consumers’ financial, telephone or other accounts for products or services without authorisation.
- B. For the purposes of this Recommendation, “consumer protection agency” means one or more [independent] national public bodies specifically responsible for [taking investigative or enforcement action to protect consumers][protecting consumers] from fraud and hard-core deception[, either alone or in conjunction with the authority to protect consumers form anti-competitive practices,] in member countries where such bodies exist; and in other member countries, organisations charged with[taking investigative or enforcement action to protect consumers] [protecting consumers] from fraud and hard-core deception in accordance with the criteria laid down by their national law

#### II. [Domestic] Framework for combating cross-border fraud and hard-core deception

- A. The consumer protection laws of member countries should be effective in halting and deterring fraud and hard-core deception [In particular,] such laws should provide for:
1. Effective sanctions, of a kind and at a level adequate to deter businesses and individuals from engaging in fraud and hard-core deception;
  2. Effective [procedures] [mechanisms] to stop wrongdoers engaged in fraud or hard-core deception; and

- 3 .Effective [procedures] [mechanisms] to obtain monetary redress for consumer victims of fraud and hard-core deception.
- B. Member countries should[,as appropriate,] seek to ensure that their consumer protection agencies have the authority to take rapid action, and to obtain whatever evidence is necessary to investigate and take action against fraud and hard-core deception affecting their jurisdiction, [Such evidence may include witness statements and relevant documents.]
- C. Member countries should develop [mechanisms] [procedures] for co-operation and information sharing[, as appropriate,] between and among their consumer protection agencies, police agencies, and other law enforcement authorities for the purpose of combating fraud and hard-core deception.
- D. Member countries should[review their laws][consider reviewing their laws] [seek] to identify barriers to effective co-operation in the enforcement of laws designed to protect consumers against fraud and hard-core deception and consider national legislation, as appropriate, to overcome these barriers.
- E. Member countries should educate consumers about fraud and hard-core deception. undertaking joint initiatives as appropriate. [Such initiatives could include initiatives with regional economic integration organisation such as the European Union]

### III. Principles for international co-operation

- A. Member countries should improve their ability to co-operate in combating cross-border fraud and hard-core deception. At the same time, co-operation on particular investigations or cases under this Recommendation is within the discretion of the consumer protection agency being asked to co-operate. A consumer protection agency may decline to co-operate, or limit or condition its co-operation on the ground that it considers compliance with the request to be inconsistent with its laws, interests or priorities including resource constraints, or the absence of mutual interest in the investigation or proceeding in question.
- B. [Member countries should take into account the effects of the conduct of their own consumer law enforcement activities on the important interests of other member countries.]
- C. [Consumer protection agencies] [Member countries] should consult with one another when disagreements as to cooperation arise.

- D. Member countries should[, as appropriate,] consider entering into bilateral or multilateral arrangements or other initiatives to implement this Recommendation. [Such arrangements can include arrangements with regional economic integration organisations such as the European Union.]
- E. The co-operation contemplated by this Recommendation is not intended to limit any other co-operation that may occur in accordance with prior Recommendations of the Council or existing co-operation agreements.<sup>0</sup>

#### IV. [Information sharing and co-operation] Notification, information sharing, confidentiality and legal assistance

- A. Member countries have a common interest in preventing cross-border fraud and hard-core deception, and should co-operate with each other in enforcing their laws against such practices through the sharing of relevant information[, as appropriate]
- B. Member countries recognise the importance of promptly[, systematically and efficiently] notifying consumer protection agencies in other member countries of enforcement actions that affect those countries. The goals of such notification are to simplify assistance and co-operation under this Recommendation; to avoid duplication of efforts; and to avoid potential disputes.
- C. [Many consumer protection agencies have limited ability to share information with foreign consumer protection agencies. The ability to share such information is essential to fighting cross-border fraud and hard-core deception.] Member countries should strive to improve the ability of consumer protection agencies to share information in matters involving fraud and hard-core deception, subject to [appropriate safeguards][section IV of these Guidelines]. In particular, member countries should work towards enabling their consumer protection agencies to share the following information with consumer protection agencies in other member countries [in appropriate instances]:
  1. Publicly available information.
  2. Information that the party providing the information has consented to share.
  3. Consumer complaints[, with the consent of the consumer].
  4. Information about addresses, telephones, internet domain registrations, business corporate data. and other information permitting the quick location of those engaged in fraud and hard-core deception; and
  5. Documents and witness statements, when available, obtained pursuant to



compulsory process[, subject to appropriate safeguards.]

- D. Member countries[should][shall] take appropriate steps to maintain confidentiality of information exchanged. [Certain safeguards are appropriate in sharing confidential business information and personal information.] Member countries[should][shall], [to the fullest extent possible consistent with that member's laws,] respect procedural safeguards requested by other member countries to protect confidential or personal information shared with them.
- E. To address the rapid rate at which those engaged in fraud and hard-core deception can target a large number of consumers, especially using the Internet, member countries should [find] [work towards finding] fast, efficient ways to share information. For example, they should build on existing OECD projects to share information, including consumer complaints and investigative information, through online databases. They should also explore new projects for online information sharing
- F. [Many consumer protection agencies have limited ability to provide investigative assistance to foreign consumer protection agencies.] Member countries should work toward authorising their consumer protection agencies, when appropriate, to obtain information, including documents and statements, and otherwise provide investigative assistance for foreign consumer protection agency investigations and actions, either directly or through appropriate [mechanisms authorised by judicial authorities] [legal procedures], and subject to appropriate safeguards
- G. [Consumer protection agencies and other law enforcement agencies typically need to be able to locate those engaged in fraud and hard-core deception in order to take effective action against them. Member countries acknowledge that accurate [domain name registration and e-mail routing information] [information about holders of domain names] is important in enabling the location of such businesses and their principals. Therefore, member countries should co-operate with one another and with domain name registrars and other relevant stakeholders in insuring the accuracy of such information.]
- H. [Member countries should consider how consumer protection agencies could use judicial orders obtained by a consumer protection agency in another country to expedite the ability to halt the same conduct in their own countries.]

## V. Jurisdiction to protect consumers

- A. Member countries acknowledge the importance of overcoming limits on the ability of some consumer protection agencies to take action against foreign businesses targeting domestic consumers. Therefore, member countries should work toward [giving their consumer protection agencies adequate authority][enabling their consumer protection agencies]to take action against foreign businesses engaged in fraud and hard-core deception against their own consumers.
- B. Member countries acknowledge the importance of overcoming limits on the ability of some consumer protection agencies to take action against their own businesses targeting foreign consumers. Therefore, member countries should work toward [giving their consumer protection agencies adequate authority] [enabling their consumer protection agencies] to take action against domestic businesses defrauding and deceiving foreign consumers.

## VI. Monetary remedies

- A. Member countries recognise that depriving fraudulent and hard-core deceptive businesses of their ill-gotten funds can be an important deterrent to fraud and hard-core deception and appreciate the importance of providing [for the return of those funds][redress] to consumer victims of fraud and hard-core deception where possible. This issue is especially important for cross-border transactions. Member countries should [consider] [study the feasibility of] providing consumer protection agencies with the authority to seek redress on behalf of defrauded consumers [or to support defrauded consumers seeking redress].
- B. Member countries should [consider] [study the feasibility of] allowing enforcement of judgements ordering redress across borders in appropriate fraud and hard-core deception cases.
- C. Member countries should study what might be feasible and effective safeguards against the use of payment systems to support cross-border fraud and hard-core deception and to impede cross-border enforcement of consumer protection laws.
- D. Member countries should [, as appropriate,] examine transnational legal structures that might be developed, either on a bilateral or multilateral basis, to improve and broaden existing procedures to effect timely cross-border freezes, including when appropriate on an emergency basis, of assets of businesses and individuals engaged in fraud and hard-core deception.
- E. Member countries should consider authorising their consumer protection agencies

to gather and share information about assets, in appropriate cases, in aid of a foreign consumer protection agency's action against fraud and hard-core deception.

## **VII. Private-sector co-operation**

Industry and consumer groups can be of valuable assistance in fighting cross-border fraud and hard-core deception. Member countries shouldp [, as appropriate,) encourage co-operation with industry and consumer groups in furthering the goals stated in this Recommendation. Such co-operation could include the referral of complaints. It could also include co-operation from such third parties as financial institutions and domain name registrars in halting fraud and hard-core deception across borders.

## **VIII. Outreach to non-member economies**

Member countries should invite non-member economies to associate themselves with this Recommendation and to implement it, with assistance where appropriate.0

## **註釋**

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- Secretariat note - References to the work of other international organisations are unusual in a Council recommendation. If it is decided to retain the reference to the I MSN, the Web site link might be moved to an explanatory report or other background document
- Secretariat note - it is unusual to refer explicitly to another international organisation in a Council recommendation.
- Secretariat note - in a non-binding recommendation this type of disclaimer may not be considered necessary. If retained, the disclaimer might be reformulated as a "recognising..." clause and included in the preamble.
- Secretariat note - the use of language that implies mandatory action may be confusing in a non-binding recommendation.
- Secretariat note - An invitation to non-member economies to associate themselves with a Council recommendation typically contemplates a formal process and considerable follow-up. More modest forms of outreach include making the Recommendation "available" to non-member economies, or inviting them to "take account of" the Recommendation. In addition, the language related to non-members is more commonly included in the "Recommendation" section, rather than as part of the annexed Guidelines.

**BEST PRACTICE EXAMPLES UNDER THE OECD  
GUIDELINES ON CONSUMER PROTECTION IN THE  
CONTEXT OF ELECTRONIC COMMERCE**

DSTI/CP(2 002)2/FINAL

17-May-2002

## FOREWORD

The OECD Guidelines for Consumer Protection in the Context of Electronic Commerce provide basic principles for consumers as they determine what fair business practices to expect and, for the private sector as it develops self-regulatory schemes, and for governments as they formulate and implement consumer protections for electronic commerce. Approved and adopted on 9 December 1999 by the OECD, they represent almost two years of drafting and consultation by consumer protection officials from Member governments, business groups and consumer organisations.

Given the inherently international nature of the digital networks and computer technologies that comprise the electronic marketplace, the Guidelines grew from recognition that a global approach to consumer protection is necessary to ensure that consumers are afforded a level of safeguards in the emerging electronic marketplace that are not less than those received in more traditional realms.

Upon the first year anniversary of the Guidelines, the Committee on Consumer Policy convened a workshop “Consumers in the Online Marketplace: OECD Workshop on the Guidelines - One Year Later” (the Workshop). Through this Workshop, the Committee sought to bring together many of the same representatives involved in the initial writing process, in addition to other representatives - especially from non-member countries. Gathering in Berlin on 13-14 March 2001, the task was to examine progress on implementation of the Guidelines and to facilitate discussion on what the appropriate next steps would be in the area of e-commerce consumer protection.

At the Workshop, the Committee found that the Guidelines have had a positive impact on business policies and government action, encouraging better consumer protection in the online arena. The impact is expected to continue in the years ahead as implementation activities continue.

From the Workshop and the 60th meeting of the Committee, which followed the Workshop, it was decided that while it is unnecessary to revise the text of the Guidelines themselves at this time, some elaboration on the principles may be useful in order to provide additional practical guidance to governments, businesses and consumers. To this end, it was decided that such further explanation could come in the form of best practice examples or a similar document that provides an elaboration for a few discrete areas of the Guidelines.

## BEST PRACTICE EXAMPLES UNDER THE OECD GUIDELINES ON

## CONSUMER PROTECTION IN THE CONTEXT OF ELECTRONIC COMMERCE

All of the examples that follow are hypothetical situations. Each example is meant to provide information on a discrete principle. Thus its success and failure as it relates to the Guidelines only refers to the specific principle at issue. The example is not meant to show a successful implementation of all principles in the Guidelines at the same time. The plus (+) and minus (-) that precede the examples indicate whether the business in the example implements or fails to implement the Guidelines.

### **Information about the business**

(+) A commercial Web site has a link on its home page that is also accessible from every other page on its site. The link provides information on the company including its legal name, which is also the name under which it trades, its principal geographic address where it accepts legal service of process, a telephone number, and an e-mail address for questions related to sales and service. This site implements principle lilA of the Guidelines (information about the business) because it provides the consumer with accurate, clear and easily accessible information about itself sufficient to allow identification of the business by both consumers and law enforcement.

(-) An online computer company carries a seal from a well-known and respected seal programme. The seal programme requires seal holders to implement a Variety of effective consumer policy principles. The online computer company posts the seal on its site and the seal can be viewed from anywhere on its site. If a consumer clicks on the seal however, it does not provide a link to the seal programme's site. Nowhere else on the computer company's site does it provide information on the seal programme. While the computer Company's site may implement many of the principles of the Guidelines because it is a member of an effective seal programme, it fails to implement principle lilA of the Guidelines (information about the business) because it neither provides consumers with appropriate contact details for the seal programme nor an easy method of verifying its membership in the programme.

### **Information about the goods or services**

(+) An online appliance store provides a three-dimensional picture of all of its products. When a consumer clicks on the picture the product rotates so that all sides can be viewed. The picture also allows a consumer to narrow the view to be able to read product

information on the item. Related warranty and safety information is provided via a link next to the picture as well as all information relating to the size, colour and energy requirements necessary to operate the product. This site implements principle IIIB of the Guidelines (information about the goods or services) because it provides the consumer with accurate and easily accessible information describing the goods offered.

(+) An online clothing store provides static pictures of all of its products, but includes fabric specifications, colour, and fit sizing charts. Because it provides the essential information about the goods in text form, this site implements principle IIIB of the Guidelines (information about the goods or services) even though it may not take full advantage of the latest technological resources.

(-) An online store sells an electronic doll that can wave its hand and say "hello". The site provides a description of the LOL Surprise! doll, its size, and notes that it is not a realistic doll. The site also mentions that it runs on batteries, but does not post the specific type. In fact, the doll requires a battery that can only be purchased in Japan and costs approximately \$1000. This site fails to implement principle IIIB of the Guidelines (information about the goods or services) because it does not provide the consumer with sufficient information to make an informed decision.

## **Information about the transaction**

### ***Currency***

(+) A Mexican-based Web site provides information on its goods and services in Spanish. The site explicitly specifies that its prices are in Mexican pesos. This site implements principle IIIC of the Guidelines (information about the transaction) because it clearly identifies the applicable currency. Moreover, it will not confuse or mislead a Spanish-speaking consumer who may hail from Spain rather than Mexico.

(-) A US-based Web site provides information on its goods and services in English. It only states that it accepts only USD, but does not explicitly specify any currency with its prices. This site fails to implement principle IIIC of the Guidelines (information about the transaction) because it does not clearly identify the currency of its goods and services. Moreover, it is possible that a consumer from the United Kingdom would visit the site and assume because the site is in English that the currency is British pounds.

### ***TIP:***

While the Guidelines call for a business to provide only the applicable currency when

offering cost information, technology now provides sites the opportunity to easily and efficiently link to currency converters. For Web sites marketing to foreign consumers, providing this kind of information via links or other technological means will help consumers to make an informed choice.

### *Costs*

(+) While a consumer is making a purchase from a Web site, the consumer has access to information via hyperlink, pop-up window, drop-down menu, etc. on the specific cost amounts associated with the various shipping options available, as well as general information on the applicable tax and/or duty rates. This site implements principle IJIC of the Guidelines (information about the transaction) because it provides the consumer with an itemisation of the specific costs collected and/or imposed by the business (e.g. shipping costs) and notice of the existence of costs not collected and/or imposed by the business (e.g. tax and/or duty rates).

(+) When the consumer is making his final checkout and is given the opportunity to review the items he is purchasing, the Web site also offers information that the consumer may be responsible for paying duty on the items to be purchased. The site does not, however, specify how much the duty will be. This site implements principle IJIC of the Guidelines (information about the transaction) because (the Guidelines call for sites only to itemise costs that are collected by the business

(-) Once a consumer has been given the opportunity to review the items in his shopping cart and provide payment information to the site, the site offers a statement that shipping will be additional. The site does not provide the specific cost information for such service. This site fails to implement principle IHC of the Guidelines (information about the transaction) for two reasons; the Guidelines call on businesses both to itemise this information and provide it at a time that will enable the consumer to make an informed decision on whether to make the purchase.

### *TIP:*

The rationale for not requesting that businesses provide information to consumers on costs that are not collected and or imposed by the business is that it would be too burdensome and next to impossible to provide the specific cost information for each transaction. Moreover, providing shipping delivery cost information may be impracticable until after the consumer has completed the "ship to" information (e.g. a consumer's



address and delivery option). Many sites, however, offer more than a simple notice of the existence of other routinely applicable costs; these sites provide links to national and state authorities that provide specific relevant information on these costs.

### **Information about the transaction (contd.)**

#### ***Payment process***

(+) An online food store provides a list of the types of payment cards it accepts. When a consumer places an order the site provides information on whether the item is in stock and informs the consumer that it will not charge the consumer until the item is shipped. The site also provides that there are no returns on perishable items but returns on non-perishable items will be credited back to the same card used for the purchase. This site implements principle IIIC of the Guidelines (information about the transaction) because it informs the consumer of the terms, conditions and methods of payment. (e.g. which cards it accepts, when the consumer will be charged and how refunds will be credited).

(-) A Web site accepts several forms of payment cards, but charges an additional service fee to those consumers who use payment cards rather than e-money. At the conclusion of the transaction, the itemisation of the transaction includes the surcharge for using the payment card. This site fails to implement principle HIC of the Guidelines (information about the transaction) because it does not, in accordance with the requirements of the e-commerce Directive, clearly indicate the surcharge.

#### ***Delivery terms***

(+) The online store clearly states the delivery terms and conditions. It provides information on the estimated delivery time, the location of the warehouse, and the delivery method. The site also provides information on the delivery charges and the conditions for returns. This site implements principle IIC of the Guidelines (information about the transaction) because it provides clear and accessible information on the delivery terms and conditions.

(-) An online shop promises a delivery time of one week. However, the shop does not provide any information on the delivery method, the location of the warehouse, or the conditions for returns. This site fails to implement principle IIC of the Guidelines (information about the transaction) because it does not provide clear and accessible information on the delivery terms and conditions.

in' bni ic corevmr abca: e4ey. Tirc. r' or tm a cr ½) :em aga et0" l s avalabie. 'e sho ei offe' a the corsu' ner tie aptio. h the ite' r -. i be de i' ered W4L1I' o days o wiL aC cwiig from the transaction without cost. This site fails to implement principle IIIC of the Guidelines (information about the transaction), even though it offered the consumer the opportunity to withdraw from the transaction, because it did not provide accurate information about the timing of the delivery (after it learned that it would not be able to meet its promised delivery date). Here, the need for accurate disclosures is supplemented by principle II of the Guidelines (fair business, advertising and marketing practices), which provides that businesses should comply with any representations they make regarding policies or practices relating to their transactions with consumers.

### ***Returns and warranties***

(+) An online automobile site provides information on its return policy, which is available from any point during the transaction, The policy permits returns but states that the consumer will be responsible for the costs incurred when returning the automobile to the business. The site implements principle IIIC of the Guidelines (information about the transaction) because it provides sufficient information about its return policy to enable consumers to make an informed decision about whether to enter into the transaction.

(-) An online bookstore states that i§Our return and exchange policies comply with the law of Germany,i" but provides no details about these policies. This site fails to implement principle ILIC of the Guidelines (information about the transaction) because it does not provide infonnation in a clear, accurate, and easily accessible manner.

### **Effective communication of information**

#### ***Language***

(+) All information (eg. price and currency. terms and conditions. etc.) on a Web site is provided only in Dutch. This site implements principle IIIC of the Guidelines (information about the transaction) because it only serves consumers who read Dutch.

(-) A Web site permits visitors to select Spanish or French as the language in which to review information about the goods or services offered on the site, but provides the terms and conditions of the transaction and/or the related warranty information only in French. This site fails to implement principle NIC of the Guidelines (information about the transaction) because it does not provide the consumer with sufficient information in each language to make an informed decision.

### ***Timing***

(+) A Web site provides a terms and conditions menu item, popup menu, or hyperlink on its site that allows a visitor to review the related information from any page on the site at any time. This site implements principle IIIC of the Guidelines (information about the transaction) because it provides the consumer with important information that can be accessed at any time prior to or during the transaction.

(-) Upon the conclusion of the transaction, a Web site provides the consumer with an address of where he or she can write for the terms and conditions related to the transaction and/or the warranty information related to the products or services. This site fails to implement principle IIIC of the Guidelines (information about the transaction) because it fails to provide the consumer with sufficient information at the time of the transaction to make an informed decision about such a transaction.

### ***Record maintenance***

(+) A Web site provides a date-stamped, printable and/or downloadable version of its terms and conditions. This site implements principle IIIC of the Guidelines (information about the transaction) because it offers the consumer the ability to maintain an adequate record of such information.

(-) A Web site provides its terms and conditions in a pop-up box, the contents of which cannot be printed or saved. This site, while implementing the provision that calls for providing access to the information, fails to implement principle IIIC of the Guidelines (information about the transaction) because it does not allow the consumer the opportunity to maintain an adequate record of such information.

### ***The confirmation process***

(+) A consumer is buying many items from an online department store. The site allows the consumer to click on an item to view the size, an... and a list of... 's an 'add to shopping cart' option. Any time during the sales process is also 'it at ILVLS s r 111), ..4St - L4.tLb nas' raw O?u1b I l..' thSS2ITc it sce:l.4t..c a e' ca n dflj is ides mot D; cCrg 01 tn4. r' ooL' y & con. "ci ac ..onsu' nr is 'sFecs.a p..g:e..arciisoat1/2/.. cfile :cerott nen.he sren o:a de a r o' ai '..ems in lie si' npi' g cart en4. ac totC COs ' . 'i tenz inc 1..dhh shporng and axe. tis SafIC SCftC' t&re is a mo&y' a.ao 'tancet' ii4. mu op ion too Thb Ate 'r' ienierts prczpe 'V he

Older? The seller's duty to proceed, cause: give the consumer an opportunity to  
cancel the purchase. To identify the error, correct it. The seller must express the  
and the consumer's consent to the purchase.

(-) 2. consumer; the seller's duty to provide a clear and accurate description of the  
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The seller must provide a clear and accurate description of the product and the  
consumer's duty to provide a clear and accurate description of the product.

### *Tip*

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# 外國消費者保護法規翻譯叢書索引

## (第一輯至第十一輯)

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日 本	東京都消費生活條例	第二輯	44-95
日 本	關於訪問販賣等之法律 訪問販賣沌關才乙法律	第二輯	96-131
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OECD	<p>經濟合作暨發展組織－亞太經濟合作會議全球論壇：數位化經濟政策立法架構</p> <p>OECD Global Forum on Knowledge Economy - The Digital OECD-APEC GLOBAL FORUM: POLICY FRAMEWORKS FOR THE DIGITAL ECONOMY</p> <p>The Sheraton Waikiki, Honolulu, HI, United States, 14-17 January 2003 CCNM/GF/KE/DE (2002) 3</p> <p>16-Sep-2002</p>	第十一輯	
OECD	<p>電子商務消費者保護準則施行三年後檢討報告</p> <p>CONSUMERS IN THE ONLINE MARKETPLACE: THE GUIDELINES THREE YEARS LATER</p> <p>Draft Report to the OECD Council on the Guidelines for Consumer Protection in the Context of Electronic Commerce</p> <p>DSTI/CP (2002) 4</p> <p>13-Sep-2002</p>	第十一輯	
OECD	<p>第 62 次消費者政策委員會會議記錄摘要草稿</p> <p>DRAFT SUMMARY RECORD OF THE 62nd SESSION OF THE COMMITTEE ON CONSUMER POLICY</p> <p>DSTI/CP/M (2002) 1</p> <p>04-Apr-2002</p>	第十一輯	
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	<p>例</p> <p>BEST PRACTICE EXAMPLES GUIDELINES ON CONSUMER PROTECTION IN THE CONTEXT OF ELECTRONIC COMMERCE</p> <p>DSTICP :2002: 2 FINAL</p> <p>1 7-May-2002</p>	輯	
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