

經濟合作發展組織保護消費者 避免跨境詐欺及不當商業行為 指導綱領¹

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前 言

「經濟合作發展組織保護消費者避免跨境詐欺及不當商業行為指導綱領」，係由美國聯邦貿易委員會委員 Mozelle Thompson，並兼任主席之 OECD 消費者政策委員會所制定，本綱領於 2003 年 6 月 11 日經 OECD 採認為委員會議建議書。

保護消費者避免跨境詐欺及不當商業行為指導綱領委員會議建議書

理事會²

依據經濟合作發展組織 1960 年 12 月 14 日第 5b 條召集大會；

依據 1998 年 10 月 8 日有關電子商務消費者保護之部長宣言之附錄二 [C(98)177(Annex 2)]；

委員會議於 1999 年 12 月 9 日採行之電子商務消費者保護綱領之建議書 [C(99)184/FINAL]，其中明確說明各會員國應透過”其司法、管理、及法律執行機關之國際合作，適當地進行資訊交換、共同合作、聯繫、及聯合行動，以打擊跨境詐欺、誤導、及不公平商業行為”，其中並進一步闡明，”政府、企業、消費者及其代表，應致力於發展有效的跨境賠償制度”；

認為，詐欺及不當商業行為不利於消費者，妨害國內及全球市場之健全發展，並對全體企業與消費者造成損害，更逐漸降低消費者對市場之信心；

認為，大部分現行法規及執行制度，主要是針對國內消費者，於遭受詐欺及不當商業行為時之用。因此，這些法規及執行制度對於目前新興的跨境詐欺與不當商業行為，並無法完全適用；

認為，儘管每個國家都有其各自不同的體系與法律以保護消費者，但仍有必要建立一個共識，那就是在消費者保護執行機關間建立緊密合作關係的架構，以因應跨境詐欺與不當商業行為；

認為，在打擊跨境詐欺與不當商業行為之緊密合作，可以作為以後各種消費者議題之國際合作的基礎。

建議：透過與其他會員於執法上之合作，以避免消費者遭詐欺及不當商業行為之侵害，是會員國之消費者保護執行機關之共同利益。

² 荷蘭棄權。

會員國將共同發展一個架構，以促進各消費者保護執行機關更緊密、快速、而有效的合作關係，包括以下措施：

- 於國內建立一個打擊詐欺及不當商業行為之體系，以保護消費者。
- 加強通報、資訊分享、及協助調查。
- 加強保護外國消費者，以避免國內企業進行詐欺及不當商業行為。
- 加強保護國內消費者，以避免外國企業進行詐欺及不當商業行為。
- 針對受害消費者，探討如何有效的進行消費損害賠償。
- 加強與相關民間團體之合作。

會員國若能確實履行本建議書，將是本案成功不可或缺的一部分，有關綱領詳如附件。

非會員經濟體可以在會員國協助下，受邀採行本建議書。

決定秘書處應建立各國消費者保護執行機關，或政策機關所指定擔任聯絡窗口之名單，如有變更應通知各會員國。

指示消費者政策委員會應交換有關本建議書之執行及相關經驗之資訊，並進行檢討，於三年內對委員會議提出有關採用情形及後續報告。

序言

保護消費者避免跨境詐欺及不當商業行為指導綱領（簡稱本綱領）目的為處理企業對消費者之詐欺及不當商業交易行為。這些不當行為對消費者產生重大之損害，亦逐漸侵害國內及全球市場，並對企業與消費者造成損害，亦降低消費者的信心。網際網路及電信科技之發展，無論在價格及選擇性方面均對消費者帶來顯著之利益，也透過跨境交易促進市場全球化。然而對企業及個人而言，這些詐欺及不當商業行為，得以逃避各國執行機關之司法管轄，因此對消費者產生空前的傷害。

跨境交易對消費者政策及執行機關共同保護消費者之工作造成新的挑戰，特別是電子商務的成長將使這些挑戰更形重要。絕大部分現有的法律及執行體系之設計，是以處理國內詐欺及不當商業行為為主，然而這些法律及體系，並不足以應付逐漸浮現的跨境詐欺及不當商業行為。更何況各會員國家皆有不同之消費者保護體制、法令、執行政程序、與司法機關角色，以及衍生之民法、刑法及行政法

等問題。

那些從事跨境詐欺及不當商業之行為，會快速針對大量消費者立即造成實質損害，他們也會利用部分國家之消費者保護法，對於跨境不當行為之適用與執行限制，傷害其他國家之消費者。

消費者保護法之所以會有很多執行限制，是因為那些違法的人、受害者、相關證人、文件、以及與交易有關之第三者，皆廣泛散佈在很多不同地方及國家領土所致。對一個國家的消費者保護執行機關及相關政府機構而言，確實很難獲得所有必須的資訊去發覺那些不當行為，並對國外的行為採取因應措施。此外，那些不肖的人所在位置很難判定，他們可能在一個以上的國家犯案，有組織的在不同國家活動，可以在不同國家使用不同的組織運作方式或行銷手法，他們可以在很多國家使用不同的手法，例如產品供應商、網路服務業者、快捷郵件服務、電話業者、網域名稱登錄、郵政信箱、網站主機服務、銀行、信用卡業者、電話服務中心、資料處理中心、廣告代理商、及客服中心等等。此外，跨境詐欺及不當商業行為之調查所需之證據，包含電腦資料等，經常稍縱即逝，這些資料在消費者保護執行機關調查之前往往已經消失殆盡。

為因應這些改變，目前的共識是在消費者保護執行機關間建立一個共通的架構，以發展更緊密、快速、而有效的合作關係，以對抗詐欺及不當商業行為。雖然目前已有司法及刑法之國際合作機制，然而這些機制並無法永遠適合消費者保護執行。因此，改善消費者保護機關間之直接合作關係顯然有其必要。

更緊密的合作以打擊詐欺及不當商業行為，是一個重要的開始，雖然這項國際合作無法完全因應各會員國消費者保護法對不當行為等議題之適用，但是它可以建立並拓展未來有關消費者保護議題之國際合作的基礎。

I. 範圍及定義

A、本綱領目的為促進國際合作，對抗詐騙及不當商業行為，各會員國均承諾改善其執法體系及相關法令，以提昇打擊不法行為之效率，尤其是在既有的法律架構下發生特殊案例時。本綱領主要目標為各會員國之全國性政府部門及其消費者保護執行機關，部份會員國牽涉很多權責單位，其中有些是地區性或地方性的單位，他們都可以採取或發起對抗詐欺及不當之商業行為。本綱

領亦認為，很多會員國之民間執行機構，可以在跨境交易等高標準的消費者保護中，扮演一個重要的互補角色。

- B、本綱領所稱「詐欺及不當商業行為」係指實際對消費者造成損害之詐欺及商業行為，或該行為如未及時預防，將立即造成損害威脅者。例如：
 - 1.對事實作不實之陳述或暗示等，以致誤導消費者並對其利益造成重大損害者。
 - 2.向消費者收取費用之後，無法依約定交付產品或服務者。
 - 3.未經消費者授權，而自消費者之銀行、電話或其他帳戶扣款收費之行為。
- C、本綱領所稱「消費者保護政策機關」，係指會員國內職掌規劃消費者保護政策，以保護消費者避免遭受詐欺、誤導、或不公平商業行為之全國性政府機關。
- D、本綱領所稱「消費者保護執行機關」，係指該機關之職掌為執行法令，以處理消費者遭詐欺、誤導、或不公平商業行為之全國性政府機關。並具有下列權力(a)指揮調查 (conduct investigations)；或(b)從事訴訟程序 (pursue enforcement proceedings)，或兩者兼具者；有些機關兼具執行機關及政策機關之角色。

II. 國內因應跨境詐欺及不當商業行為之架構

- A、會員國應推動並支持有效的法律架構、消費者保護執行機關、機構、規範、並聯合倡導有關措施，以減少詐欺及不當商業行為之發生，並進行下列措施：
 - 1.採取各種有效的方法及適當的標準，以嚇止企業及個人從事詐欺及不當商業行為。
 - 2.採行有效的機制，以進行有關詐欺及不當行為之調查、保存、取得及分享有關資訊與證據。
 - 3.採取有效的機制以阻止企業及個人從事詐欺及不當商業行為。
 - 4.針對詐欺及不當商業行為之受害者，提供有效的補償 (redress) 措施。
- B、各會員國應確保其消費者保護執行機關擁有必要之權力，可以取得足夠之證據去調查並及時採取行動，以對抗詐欺及不法商業行為，該項權力應包含可以獲得所有必要的資訊及相關文件的權力。
- C.會員國應採取適當的機制，允

許消費者保護執行機關結合司法及權責行政單位，提供適當的保護措施保存證據，特別是那些稍縱即逝的證據，直到調查完成為止。這個機制在消費者保護執行機關協助其他國家機關辦案時，同樣適用。

- D、會員國為達成打擊詐欺及不當商業行為之目的，應在消費者保護執行機關及執法機關間，建立合作及資訊分享的制度。
- E、會員國應檢討國內現行制度，以及消費者保護法令中妨礙跨境合作者，並考慮改善國內之執行架構，如果可以，應予採用或進行修法以排除這些障礙。
- F、會員國應教育消費者防範詐欺及不當商業行為的知識，並倡導適當的活動。
- G、會員國應針對一些適當的個案，思考並探討自己國內之消費者保護機關，如何運用自其他國家消保執行機關獲得之證據、判決、及可行之命令，以迅速阻止相同行為在其國內發生。

III. 國際合作的原則

- A、當會員國之消費者保護執行機關被要求合作時，應促進打擊跨境詐欺及不當商業行為之合作，並承諾合作調查，但仍可保有自由裁量權。該機關並得基於該調查或訴訟與現行法規不合、利益或優先次序、資源不足、或不符合互惠等理由，婉拒特定案件之調查或訴訟合作，或限制該項合作之範圍。
- B、消費者保護執行機關應統籌協調其調查及執法行動，以免對消保執行機關在其他國家進行調查與執法行動造成干擾。
- C、消費者保護執行機關應積極解決尚未達成共識之合作議題。
- D、會員國及其消費者保護執行機關應利用現有國際網絡，並參與適當的雙邊或多邊協議，提倡並執行本綱領。
- E、會員國之消費者保護政策機關應與執行機關進行諮商，並扮演領導角色，以建立打擊跨境詐欺及不當商業行為之架構
- F、會員國應在本綱領架構下，指定一個消費者保護執行機關或政策機關，擔任促進本案合作之窗口，其目的係用來輔助，而非取代其他的合作方法，該指定動作應知會 OECD 秘書處。

IV. 通報、資訊分享、協助調查及機密

- A、會員國及其消費者保護執行機關應建立快速、有系統、且有效的機制，將調查結果通報其他會員國之消費者保護執行機關，以便提醒他國可能之違法行為，使本綱領之合作與協助工作簡化，並避免事倍功半及可能之糾紛。
- B、會員國應依照以下第 F 段所提到之適當防衛措施（safeguards），於協助調查詐欺及不當商業行為之期間內，積極改善其消費者保護執行機關資訊分享之能力，並視為查緝詐欺及不當商業行為之優先項目。會員國應特別針對下列情況，授權（enabling）國內消費者保護執行機關與其他國家之消保機關分享有關資訊：
 - 1.可公開及其他非機密性資訊。
 - 2.消費爭議事件。
 - 3.有關地址、電話、網址註冊資訊、公司基本資料、以及其他可以供快速鎖定及識別詐欺與不當商業行為之相關資訊。
 - 4.專家意見，以及引發這些見解之原因等資訊。以及
 - 5.文件、第三者資訊、及其他依據司法審判或其他必要之訴訟程序（compulsory process）所獲得之證據。
- C、為避免詐欺與不當商業行為透過網路等方式，快速對大量消費者造成傷害，會員國應協力發展快速、有效的方法，以匯集並分享資訊。並應透過線上工具及資料庫，在現有計畫基礎上收集並分享消費爭議、待決調查及案件通知（notifications of pending investigations）等資訊。
- D、為因應相關證據分散在各個司法管轄區域問題，針對外國消費者保護執行機關之調查與訴訟，依據適當防衛措施條款，會員國應授權其消費者保護執行機關，直接或透過適當機制獲得司法或行政授權，可以獲得包括文件及供訴（statements）等相關資訊，並提供調查之協助。
- E、為定位及確認各種詐欺與不當商業行為，會員國及其消費者保護執行機關以及其他權責機關，應與網址登錄機構及相關人員相互合作，共同建立及採取可能之方法，以減少偽造人頭（false header）及連線資訊（routing information）、以及不實網域名稱所有人資訊。
- F、會員國應依據本綱領，以適當方法進行機密資訊之交換，特別是分享機密業

務或個人資料。會員國應在其法令允許之最大範圍內，尊重其他國家所提出之防衛措施條款，保護其所分享之機密業務或個人資料。

V. 消費者保護執行機關之職權

- A、任何消費者保護執行機關當其轄內遭受詐欺與不當商業行為時，在其固有領土範圍內，應有適當之權利進行調查及提出訴訟 (take action)。
- B、各會員國對於國內企業，涉及對外國消費者進行詐欺與不當商業行為時，應授權 (enabling) 允許其消費者保護執行機關提出訴訟。
- C、各會員國對於外國企業，涉及對國內消費者進行詐欺與不當商業行為時，應授權允許其消費者保護執行機關提出訴訟。
- D、各會員國認同以上所述有關權責機關之行動，得適當地尊重其他國家間之雙邊協議，以及其他地區性經濟組織之協議。

VI. 消費者救濟 (redress)

各會員國應共同研究，在進行消費詐欺及不當商業行為之問題時，消費者救濟之角色，並專心致力於發展有效的跨境救濟機制。研究之重點為：

- 消費者保護執行機關可以扮演各種協助消費者救濟的角色，包括代表被騙消費者尋求救濟、對於私人求償的支持，並且對希望獲得賠償之消費者給予適當的忠告。
- 有效強化現行跨境消費者救濟體系。
- 授權消費者保護執行機關在適當的案例中，協助外國消費者保護執行機關蒐集並分享有關資訊之可行性。
- 有關促進國際協議之方法，以便在特定的案例中，達到有效而適時地凍結其他國家企業之相關資產。
- 有關賠償判決與執行之案例，促進國際協議達成互相承認之方法。
- 發展其他防衛措施與方法，以對抗濫用付款體系，並對受害之消費者賠償。

VII. 民間合作

會員國應與公司、企業團體、消費者保護團體共同合作，並誘導他們積極投入與支持，以達成本綱領所提之目標。同時應特別與上述團體合作加強消費者教育，及鼓勵他們參採消費者之申訴意見。會員國並應積極與金融機構及網址登錄機構合作，以防杜跨境詐欺及不當商業行為。

OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders

Recommendation of the Council concerning Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders

THE COUNCIL,*

Having regard to the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960, in particular, Article 5 b) thereof;

Having regard to the Ministerial Declaration on Consumer Protection in the Context of Electronic Commerce of 8 October 1998 [C(98)177(Annex 2)];

Having regard to the Recommendation of the Council concerning Guidelines for Consumer Protection in the Context of Electronic Commerce, adopted 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," and which further states that "governments, businesses, consumers and their representatives should devote special attention to the development of effective cross-border redress systems";

* The Netherlands abstained.

Recognising that fraudulent and deceptive commercial practices against consumers undermine the integrity of both domestic and global markets to the detriment of all businesses and consumers, and undermine consumer confidence in those markets;

Recognising that most existing laws and enforcement systems designed to address fraudulent and deceptive commercial practices against consumers were developed at a time when such practices were predominantly domestic, and that such laws and systems are therefore not always adequate to address the emerging problem of cross-border fraudulent and deceptive commercial practices;

Recognising that, despite differing national systems and laws for the protection of consumers, a consensus exists on the need for a common framework to enable the further development of close co-operation among consumer protection enforcement agencies, to tackle cross-border fraudulent and deceptive commercial practices;

Recognising that closer co-operation in combating fraudulent and deceptive commercial practices can lay the groundwork for enhanced international co-operation on a larger number of consumer protection issues in the future;

RECOMMENDS:

That consumer protection enforcement agencies in Member countries, having a common interest in preventing fraudulent and deceptive commercial practices against consumers, co-operate with one another in enforcing their laws against such practices;

That Member countries work to develop a framework for closer, faster, and more efficient co-operation amongst their consumer protection enforcement agencies that includes where appropriate:

- Establishing a domestic system for combating cross-border fraudulent and deceptive commercial practices against consumers.
- Enhancing notification, information sharing, and investigative assistance.
- Improving the ability to protect foreign consumers from domestic businesses engaged in fraudulent and deceptive commercial practices.
- Improving the ability to protect domestic consumers from foreign businesses engaged in fraudulent and deceptive commercial practices.
- Considering how to ensure effective redress for victimised consumers. And
- Co-operating with relevant private sector entities.

That Member countries implement this Recommendation, as set forth in greater detail in the Guidelines contained in the Annex thereto and of which it forms an integral part;

That non member economies be invited to take account of this Recommendation, with appropriate implementation assistance from Member countries;

DECIDES that the Secretary-General shall keep a record of the consumer protection enforcement or policy agency designated as a contact point, and advise Member countries of modifications to this record; and

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 on this subject within three years of the adoption of this Recommendation and thereafter as appropriate.

Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders

Preface

These Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders (the "Guidelines") address fraudulent and deceptive commercial practices occurring in connection with business to consumer transactions. These practices result in significant consumer injury. They also undermine the integrity of both domestic and global markets to the detriment of all businesses and consumers, and undermine consumer confidence in those markets. The development of the Internet and improvements in telecommunications technologies have brought significant benefits to consumers in terms of price and choice and facilitated the globalisation of markets through cross-border transactions. They have also provided unprecedented opportunities for businesses and individuals engaged in fraudulent and deceptive commercial practices to harm consumers from different jurisdictions and to evade enforcement authorities.

Cross-border trade poses new challenges to the collective ability of consumer protection policy and enforcement agencies to protect consumers, and the growth of e commerce in particular will make these challenges even more important. Most existing laws and enforcement systems designed to address fraudulent and deceptive commercial practices against consumers were developed at a time when such practices were predominantly domestic, and such laws and systems are therefore not always adequate to address the emerging problem of cross-border fraudulent and deceptive commercial practices that harm consumers. Moreover, Member countries have diverse consumer protection systems, involving different laws, enforcement procedures, and roles for judicial authorities, and rely to varying extents on civil, criminal, and administrative law.

Those committing cross-border fraudulent and deceptive commercial practices against consumers can quickly target large numbers of consumers and quickly cause substantial harm. They can also take advantage of limitations in the cross-border application and enforcement of consumer protection laws by such actions as establishing operations in one or more countries and harming consumers in other countries.

Many limitations on the enforcement of consumer protection laws result from having wrongdoers, victims, other witnesses, documents, and third parties involved in the transaction widely dispersed in many different places and territories. This makes it difficult for consumer protection enforcement agencies and other relevant government entities in a single Member country to gather all the information necessary to detect injurious practices, and to reach conduct occurring beyond that country's borders. Furthermore, the location of wrongdoers can be difficult to determine. They can operate in concert from more than one territory. They can use corporate shells in various territories. They can move their operations or marketing to different territories over time. They can use facilities in a variety of territories, such as product suppliers, Internet service providers, express mail delivery services, telephone providers, domain name registries, post office boxes, web site hosting services, banks, credit card processors, call centres, data processing centres, advertising agencies, and answering services. Moreover, investigations of cross-border fraudulent and deceptive commercial practices depend on evidence that is often transient, including information from computer systems and networks. Such evidence can be lost before consumer protection enforcement agencies can examine it.

To address these challenges, there exists a consensus on the need for a common framework to develop closer, faster, and more efficient co-operation among consumer protection enforcement agencies in combating fraudulent and deceptive commercial practices. Although there exist certain international mechanisms for judicial co-operation and criminal law enforcement co-operation, these mechanisms are not always appropriate to consumer protection enforcement actions. There is thus a

significant need to improve the co-operation occurring directly between consumer protection enforcement agencies.

Closer co-operation in combating fraudulent and deceptive commercial practices is an important place to start. While such co-operation does not address all misconduct that is properly the subject of consumer protection laws in the Member countries, it can lay the groundwork for enhanced international co-operation on a broader range of consumer protection issues in the future.

I. Scope and definitions

- A. These Guidelines are intended to foster international co-operation against fraudulent and deceptive commercial practices. They reflect a commitment by the Member countries to improve their enforcement systems and laws to increase their effectiveness in combating such practices, while recognising that co-operation in particular instances will occur within the existing legal framework. The Guidelines are primarily aimed at national public bodies, as determined by each Member country, with enforcement authority for protecting consumers. They recognise that some Member countries have many competent bodies, some of which are regional or local, that can take or initiate action against fraudulent and deceptive commercial practices. The Guidelines also recognise that in some Member countries private enforcement bodies may play an important and complementary role in ensuring a high level of consumer protection, including in cross-border situations.
- B. For the purposes of these Guidelines, "fraudulent and deceptive commercial practices" refers to those fraudulent and deceptive commercial practices that cause actual harm to consumers, or that pose an imminent threat of such harm if not prevented, such as:
 - 1. A practice of making misrepresentations of material fact, including implied

factual misrepresentations, that cause significant detriment to the economic interests of misled consumers.

2. A practice of failing to deliver products or provide services to consumers after the consumers have been charged.
 3. A practice of charging or debiting consumers' financial, telephone or other accounts without authorisation.
- C. For the purposes of these Guidelines, "consumer protection policy agency" means any national public body, as determined by each Member country, that is specifically responsible for formulating policies to protect consumers from fraudulent, misleading, or unfair commercial practices.
- D. For the purposes of these Guidelines, "consumer protection enforcement agency" means any national public body, as determined by each Member country, that has as a principal mission implementing laws against fraudulent, misleading, or unfair commercial practices affecting consumers and has powers *(a)* to conduct investigations or *(b)* to pursue enforcement proceedings, or both. Some consumer protection enforcement agencies may also be consumer protection policy agencies.

II. Domestic frameworks for combating cross-border fraudulent and deceptive commercial practices

- A. Member countries should introduce and maintain an effective framework of laws, consumer protection enforcement agencies, institutions, practices, and joint initiatives designed to limit the incidence of fraudulent and deceptive commercial practices against consumers. In particular, Member countries should provide for:
1. Effective measures, of a kind and at a level adequate to deter businesses and individuals from engaging in fraudulent and deceptive commercial practices.
 2. Effective mechanisms to adequately investigate, preserve, obtain and share

- relevant information and evidence relating to occurrences of fraudulent and deceptive commercial practices.
3. Effective mechanisms to stop businesses and individuals engaged in fraudulent and deceptive commercial practices. And
 4. Effective mechanisms that provide redress for consumer victims of fraudulent and deceptive commercial practices.
- B. Member countries should ensure that their consumer protection enforcement agencies have the necessary authority to obtain evidence sufficient to investigate and take action in a timely manner against fraudulent and deceptive commercial practices. Such authority should include the ability to obtain necessary information and relevant documents.
- C. Member countries should provide an appropriate mechanism to permit consumer protection enforcement agencies, in conjunction with judicial or administrative authorities and subject to appropriate safeguards, to seek to preserve such evidence, particularly that of a transient nature, in particular investigations until it can be examined. Such a mechanism should also be available in appropriate cases where consumer protection enforcement agencies are assisting agencies in other countries.
- D. Member countries should develop mechanisms for co-operation and information sharing between and among their own consumer protection enforcement agencies and their other law enforcement authorities, for the purpose of combating fraudulent and deceptive commercial practices.
- E. Member countries should review their own domestic frameworks to identify obstacles to effective cross-border co-operation in the enforcement of laws designed to protect consumers against fraudulent and deceptive commercial practices, and should consider changing domestic frameworks, including, if appropriate, adopting or amending national legislation to overcome these barriers.
- F. Member countries should educate consumers about fraudulent and deceptive

commercial practices, undertaking joint initiatives as appropriate.

- G. Member countries should consider how, in appropriate cases, their own consumer protection enforcement agencies might use evidence, judgements, and enforceable orders obtained by a consumer protection enforcement agency in another country to improve their ability to expeditiously halt the same conduct in their own countries.

III. Principles for international co-operation

- A. Member countries should improve their ability to co-operate in combating cross-border fraudulent and deceptive commercial practices recognising that co-operation on particular investigations or cases under these Guidelines remains within the discretion of the consumer protection enforcement agency being asked to co-operate. This agency may decline to co-operate on particular investigations or proceedings, or limit or condition such co-operation, on the ground that it considers compliance with a request for co-operation to be inconsistent with its laws, interests or priorities, or resource constraints, or based on the absence of a mutual interest in the investigation or proceeding in question.
- B. Consumer protection enforcement agencies should co-ordinate their investigations and enforcement activity to avoid interference with the investigations and enforcement activity of consumer protection enforcement agencies taking place in other Member countries.
- C. Consumer protection enforcement agencies should make every effort to resolve disagreements as to co-operation that may arise.
- D. Member countries and their consumer protection enforcement agencies should make use of existing international networks and enter into appropriate bilateral or multilateral arrangements or other initiatives to implement these Guidelines.
- E. Member countries should enable their consumer protection policy agencies in consultation with consumer protection enforcement agencies to take a leading role in developing the framework for combating fraudulent and deceptive commercial

practices set forth in these Guidelines.

- F. Member countries should designate a consumer protection enforcement agency or a consumer protection policy agency to act as a contact point to facilitate co-operation under these Guidelines. These designations are intended to complement and not replace other means of co-operation. Such designations should be notified to the Secretary-General.

IV. Notification, information sharing, assistance with investigations, and confidentiality

- A. Member countries and their consumer protection enforcement agencies should develop ways to promptly, systematically and efficiently notify consumer protection enforcement agencies in other Member countries of investigations that affect those countries, so as to alert them of possible wrongdoing in their jurisdiction, simplify assistance and co-operation under these Guidelines and avoid duplication of efforts and potential disputes.
- B. Member countries should strive to improve the abilities of consumer protection enforcement agencies to share information within timeframes that facilitate investigations of matters involving fraudulent and deceptive commercial practices against consumers, subject to appropriate safeguards as set forth in paragraph F below. Improving such abilities should be treated as a priority for detecting and fighting cross-border fraudulent and deceptive commercial practices. In particular, Member countries should work towards enabling their consumer protection enforcement agencies to share the following information with consumer protection enforcement agencies in other Member countries in appropriate instances:
1. Publicly available and other non confidential information.
 2. Consumer complaints.
 3. Information about addresses, telephones, Internet domain registrations, basic

corporate data, and other information permitting the quick location and identification of those engaged in fraudulent and deceptive commercial practices.

4. Expert opinions, and the underlying information on which those opinions are based. And
 5. Documents, third party information, and other evidence obtained pursuant to judicial or other compulsory process.
- .C. To address the speed at which those engaged in fraudulent and deceptive commercial practices can victimise large numbers of consumers, for example, through the Internet, Member countries should work together to develop fast, efficient methods for gathering and sharing information. They should build on existing projects to gather and share information, including consumer complaints and notifications of pending investigations and cases, through online tools and databases.
- D. To address the dispersal of relevant evidence in multiple jurisdictions, Member countries should work toward authorising their consumer protection enforcement agencies, either directly or through appropriate mechanisms authorised by their judicial or administrative authorities, to obtain information, including documents and statements, and otherwise provide investigative assistance for foreign consumer protection enforcement agency investigations and actions, subject to appropriate safeguards.
- E. To address the need to locate and identify those engaged in fraudulent and deceptive commercial practices, Member countries and their consumer protection enforcement agencies and other competent authorities should, in co-operation with one another and with domain name registrars and other relevant stakeholders, work together to develop options for reducing the incidence of false header and routing information and inaccurate information about holders of domain names.
- F. Member countries should take appropriate steps to maintain the necessary

confidentiality of information exchanged under these Guidelines, in particular in sharing confidential business or personal information. Member countries should, to the fullest extent possible consistent with their own laws, respect safeguards requested by other Member countries to protect confidential business or personal information shared with them.

V. Authority of consumer protection enforcement agencies

- A. All consumer protection enforcement agencies whose territories are affected by fraudulent and deceptive commercial practices against consumers should have appropriate authority to investigate and take action within their own territory.
- B. Member countries should work toward enabling their consumer protection enforcement agencies to take action against domestic businesses engaged in fraudulent and deceptive commercial practices against foreign consumers.
- C. Member countries should work toward enabling their consumer protection enforcement agencies to take action against foreign businesses engaged in fraudulent and deceptive commercial practices against their own consumers.
- D. Member countries acknowledge that the exercise of the authority described above may properly be subject to other bilateral arrangements between countries, and subject to other arrangements within a regional economic integration organisation.

VI. Consumer redress

Member countries should jointly study the role of consumer redress in addressing the problem of fraudulent and deceptive commercial practices, devoting special attention to the development of effective cross-border redress systems. Such study should focus on:

- The possible roles that consumer protection enforcement agencies can play in facilitating consumer redress, including the pursuit of redress on behalf of defrauded consumers, support of private claims, and advice to consumers who wish to obtain redress.
- The effectiveness of existing cross-border consumer redress systems.
- The feasibility of authorising consumer protection enforcement agencies to gather and share information about assets to aid a foreign consumer protection enforcement agency in appropriate cases.
- Approaches to improving international arrangements for effecting timely freezes of business related assets located in another country in appropriate cases.
- Approaches to improving international arrangements for the mutual recognition and enforcement of judgements ordering redress in appropriate cases.

Approaches to developing additional safeguards against the abuse of payment systems and redress for consumer victims of such abuse.

VII. Private sector co-operation

Member countries should co-operate with businesses, industry groups, and consumer groups in furthering the goals stated in these Guidelines, and should solicit their input and support. Member countries should in particular co-operate with them on consumer education and encourage their referral of relevant complaints to consumer protection enforcement agencies. Member countries should also encourage co-operation by such third parties as financial institutions and domain name registrars in halting fraudulent and deceptive commercial practices across borders.

