

# REPORT ON THE IMPLEMENTATION OF THE 2003 OECD GUIDELINES ON CROSS-BORDER FRAUD

## EXECUTIVE SUMMARY

### Introduction

The *Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders* were adopted by the OECD Council in June 2003. The Guidelines establish a common framework to combat cross-border fraud occurring online and offline through closer, faster, and more efficient co-operation between consumer protection enforcement agencies.

### Background

The Guidelines were drawn up against a backdrop of developments in trade, mobility and information technology, which have given consumers unprecedented access to new products and enabled business to easily access a worldwide customer base.

The resulting benefits of a globalised market place are obvious. However, there has also been a parallel increase in cross-border fraud. While new technologies have provided consumers with the tools and education to buy goods more quickly, it is now easier for rogue traders to use virtual borders to evade regulations by setting up in one country and targeting consumers in another. These scams, which harm both consumer confidence and competition among legitimate business, include:

- Pyramid and lottery schemes.
- Travel and credit-related ploys.
- Modem and web page hijacking.
- Telemarketing.

The Guidelines seek to address these fraudulent practices by establishing principles that OECD Member countries and non-Member countries can follow to facilitate the cross-border enforcement of existing consumer protection laws and programmes. In particular, the Guidelines suggest that Member countries should introduce and maintain effective domestic frameworks to limit the incidence of fraud through information sharing between their own consumer protection enforcement agencies and other domestic law enforcement authorities, private-public sector co-operation, and consumer education. The Guidelines also set out important principles for international co-operation, recommending Member countries to co-ordinate their enforcement activities under simplified procedures, share information, and assist each other with investigations.

### Tackling the Problem

Three years on, significant progress in implementing the Guidelines has been made through continued and combined efforts by OECD Member countries and the Committee on Consumer Policy (“CCP”).

OECD Member countries have strengthened their domestic frameworks and enforcement agencies. They have enhanced national co-ordination between government bodies and with the private sector. Moreover, they have worked to inform and educate consumers about the challenges of cross-border fraud.

Furthermore, OECD Member countries are increasingly active, exchanging information and best practices at the international level and establishing new agreements on notification, information sharing, and investigative assistance. As a result of these efforts, an increased number of complaints have been handled by OECD Member country consumer protection enforcement authorities, leading in some cases to landmark cross-border fraud court decisions.

### **OECD Member country implementation actions at national level**

#### *a. New and more effective consumer enforcement agencies*

- The Netherlands has established a new public consumer protection enforcement body to handle cross-border fraud cases. Austria and Germany will vest their existing public bodies with the enforcement powers foreseen in the EU/EEA Regulation on Consumer Protection Co-operation. Belgium, Greece, and Ireland have reorganised their existing consumer protection enforcement agency structure to better co-operate with their foreign counterparts.
- Some OECD Member countries have adopted or proposed new regulations to facilitate information sharing. The Korean Ministry of Finance and Economy is elaborating guidelines on the resolution of cross-border consumer disputes, which will integrate the Guidelines recommendations on information sharing.
- Some Member countries have increased penalties. In Mexico, further to recent legislative amendments, penalties imposed on fraudsters have been significantly raised and will be subject to review on an annual basis. In Japan, Anti-Spam legislation was strengthened in 2005 with the introduction of substantial penalties on spammers using false identity and email addresses.

#### *b. Enhancing national co-ordination between relevant government bodies and the private sector*

Co-operative actions with other government bodies dealing with consumer protection issues and the private sector have further enhanced the impact of information campaigns and have helped achieve multi-jurisdictional investigations.

- In the United Kingdom, a Memorandum of Understanding is being negotiated to allow co-ordinated actions between various British authorities.
- In Canada, the Competition Bureau co-operates, within the framework of the Fraud Prevention Campaign, with a group of 30 private sector, non-profit consumer, and law enforcement organisations to help Canadians protect themselves from fraud.
- In Norway, a Forum fighting against online fraud, to which 33 private and public sector entities participate (including the banking sector, internet service providers, and the police), was set up by the Norwegian Consumer Ombudsman.
- Many companies or financial institutions are members of trade associations or subscriber bodies which operate their own codes of practice helping resolve business-to-consumer disputes and protect consumers from rogue traders.

#### *c. Organising information campaigns to alert and educate consumers*

- In Japan, the 2005 “*Antiphishing Japan*” campaign was launched to protect consumers against fraudsters using a fake website to get credit card details.

- Similarly, in the fall of 2005, the US FTC and public and private sector partners launched “OnGuard Online,” a multimedia, and interactive consumer education campaign to help consumers stay safe online. The comprehensive website of the campaign, available in both English and Spanish, uses straightforward, plain-language materials to help computer users be on guard against Internet fraud, secure their computers, and protect their personal information.
- In Austria, videos have been shown in 2004 on info screens in underground stations to inform consumers about the Internet, indebtedness, and prize draws.

### **OECD Member country implementation actions at international level**

#### *a. Exchanging information and best practices through informal co-operation networks*

Member countries have relied on existing and new international co-operation frameworks including:

- The International Consumer Protection Enforcement Network (ICPEN).
- The London Action Plan (LAP).
- The European Consumer Centres Network (ECC-Net).

#### *b. The conclusion of a variety of international arrangements*

These international arrangements aim to implement the Guidelines’ principles for international notification, information sharing, and assistance with investigations.

- Chief among these arrangements were the March 2004 Information Sharing Protocols respectively signed between Competition Bureau Canada, and the UK Office of Fair Trading (“UK OFT”), and between Competition Bureau Canada and the Australian Competition and Consumer Commission (“the ACCC”).
- Likewise, the 2004 Free Trade Agreement between the Australian and United States governments recognises the importance of the Guidelines for enforcement co-operation on consumer protection.
- In 2005, the US FTC and Mexico’s *Procuraduria Federal del Consumidor* (“PROFECO”) signed a Memorandum of Understanding on mutual assistance in consumer protection matters.
- Finally, the Australasian Consumer Fraud Taskforce (“ACFT”), in which 18 regulatory agencies and departments of the state, territory and Australian and New Zealand governments participate, was established in March 2005 to notably allow the sharing of information and generate greater interest in research on consumer frauds and scams.

#### *c. The European Union / European Economic Area specific co-operation framework*

At the European Union / European Economic Area level, a Regulation on Consumer Protection Co-operation was adopted in 2004. Responding to the development of the Euro, e-commerce, and the last EU enlargement, the new Regulation calls on EU Member States to institute a minimum level of common investigation, enforcement, and co-operation powers among consumer protection enforcement bodies. As such, the Regulation mirrors and expands the principles of international enforcement co-operation set out in the Guidelines.

*d. Landmark cross-border fraud court decisions*

As a result of national and international implementation activities, consumer protection enforcement authorities have handled an increased number of consumer complaints, leading in some cases to landmark cross-border court decisions.

- Referring explicitly to the principles for international law enforcement co-operation developed in the Guidelines, an Australian court granted the ACCC an injunction against an American resident operating a misleading website from the United States and targeting Australian consumers.
- In a case before a Belgian court, the UK OFT was granted an injunction against a Belgian company to prevent it from sending unsolicited mailings offering household goods to British consumers. Likewise, in a case initiated by the French consumer enforcement authority against the same company, a French court imposed substantial fines.

**CCP efforts to ensure successful implementation**

*a. OECD list of consumer protection enforcement contact points*

The OECD maintains two lists of consumer protection enforcement contact points in Member countries, and updates them on a regular basis. One is restricted to OECD Member countries and ICPEN members. The other is available to the public to enable all stakeholders to receive appropriate information on cross-border fraud and ways to file complaints.

*b. More effective cross-border consumer redress*

Through the CCP, Member countries have undertaken a study of consumer redress in the context of cross-border fraud. In April 2005, the CCP organised a public workshop hosted by the US FTC, which addressed this issue and recognised the importance of monetary remedies. It is currently developing a Recommendation to improve the effectiveness of cross-border consumer redress mechanisms.

*c. Contribution to enforcement co-operation in other areas*

CCP experience and expertise in cross-border fraud enforcement co-operation has directly informed the work by the OECD Spam Task Force. The OECD Council has recently approved a Recommendation which encourages Member countries to establish closer enforcement co-operation to fight against spam. CCP activities also serve as a reference for current OECD work on cross-border enforcement of privacy.

**Future challenges**

Although significant progress has been made, full and effective implementation of the Guidelines is in some cases constrained by legislative restrictions and in many others by a lack of resources, practical experience, and training of enforcement agencies' officials. The Committee on Consumer Policy will continue to contribute to these efforts and to build consumer trust in the global market place.