



**REPORT ON THE  
IMPLEMENTATION OF THE  
2003 OECD GUIDELINES FOR  
PROTECTING CONSUMERS  
FROM FRAUDULENT AND  
DECEPTIVE COMMERCIAL  
PRACTICES ACROSS BORDERS**

CONSUMER POLICY  
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2003 OECD GUIDELINES FOR PROTECTING CONSUMERS  
FROM FRAUDULENT AND DECEPTIVE COMMERCIAL PRACTICES  
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## FOREWORD

On 11 June 2003, the OECD Council adopted the *OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders* (“the Guidelines”), and instructed the Committee on Consumer Policy (“CCP”) to report to the Council on member country implementation of the Guidelines within three years.

Accordingly, the CCP prepared this report highlighting key member country achievements in implementing the Guidelines. The report is based on an analysis of member country responses to a two part implementation survey conducted in 2005, and supplemented by independent Secretariat research.

The CCP approved this report on 19 May 2006 for submission to the OECD Council. It was declassified by the Council on 13 July 2006.

The report was drafted by Brigitte Acoca of the OECD Secretariat.

## 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.

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## INTRODUCTION

In 2003, the OECD Council adopted the *Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices across Borders* (“the Guidelines”) (OECD, 2003). Developed by the Committee on Consumer Policy (“CCP”), the Guidelines are intended to foster international law enforcement co-operation in the fight against cross-border fraudulent and deceptive practices.

The Guidelines call on OECD Member countries to establish enhanced, quicker, and more effective domestic and international frameworks to combat all sorts of online and offline cross-border fraud. They were developed with the recognition that fraudulent and deceptive practices substantially undermine the integrity of domestic and international markets to the detriment of both businesses and consumers.

In order to ensure more effective consumer protection and, thus increased competitiveness, in the global marketplace, the Guidelines set out principles for improved international co-operation between member country enforcement agencies. Key mechanisms for information sharing, and mutual assistance with investigations are promoted, with a strong emphasis on a co-operation with the private sector to help educate stakeholders on the means to identify, and protect themselves from cross-border fraud.

### Background

The Guidelines have been drawn up against a backdrop of developments in trade, mobility, and information technology that have given consumers unprecedented access to new products and have provided business with the opportunity to easily access a worldwide customer base. The resulting benefits of these developments for business and consumers are obvious but are under threat from the parallel increase in cross-border fraudulent activities. While new technologies have provided consumers with quicker means for purchasing, and better education tools, they have also provided rogue traders with wider possibilities to use virtual borders to evade regulatory compliance by locating in one country and targeting consumers in another. Pyramid and lottery schemes, travel and credit-related ploys, modem and web page hijacking, and telemarketing scams are examples of frauds perpetrated across borders that victimise consumers, and harm legitimate competition in the global marketplace.

The OECD has long stressed the need for increased action against cross-border fraud in order to secure consumer trust in and growth of the global digital economy. In 1999, the *Guidelines for Consumer Protection in the context of Electronic Commerce* (“E-commerce Guidelines”) (OECD, 1999) called on OECD Member countries to combat cross-border fraud through increased “information exchange, coordination, communication and joint action” among “judicial, regulatory, and law enforcement authorities.”

Following the E-Commerce Guidelines, cross-border enforcement co-operation has been a key focus of CCP work. The CCP has undertaken a wide range of initiatives to design a tailored framework for international law enforcement co-operation. On 22 March 2000, the CCP held a half-day Forum Session intended to explore the challenges and possibilities associated with international co-operation, using the experience of the United States and Canada as a practical example. The Committee developed in 2001 a report exploring the adequacy of current enforcement cooperation mechanisms to enable governments to contribute to online consumer trust. It further conducted a survey in 2002 on enforcement authority,

building on similar efforts produced within the International Consumer Protection and Enforcement Network (“ICPEN”). The results of the survey were presented in a CCP Forum Session on Enforcement Co-operation in March 2002.

On the basis of this work, there was a shared view among Committee members that the emergence of consistent mechanisms to combat cross-border fraud could be paralysed by the diversity of consumer protection systems involving different laws, enforcement procedures, and roles for judicial authorities. There was recognition that most laws and frameworks in place were inadequate to combat new forms of cross-border fraudulent and deceptive commercial practices as they were developed at a time when such practices were predominantly domestic.

Concerned at the potential for these difficulties to erode consumer confidence in the global marketplace, Member countries agreed to build up an improved and more specific international co-operation enforcement framework, focusing on cross-border fraudulent and deceptive commercial practices. In this context, the CCP, under the chairmanship of the United States Federal Trade Commissioner Mozelle Thompson, elaborated the present Guidelines to establish more adequate means to face evolving cross-border challenges.<sup>1</sup>

### **The Implementation Report**

The CCP was instructed by the OECD Council to issue the present Implementation Report to measure the impact of the Guidelines three years after their release. At its 66<sup>th</sup> session in October 2003, the CCP agreed to prepare an OECD member country questionnaire to help determine the status of implementation of the Guidelines. The questionnaire was divided into two parts. The first part examined the extent to which OECD Member countries have put in place principles for effective international co-operation as set out in the Guidelines (Annex I).<sup>2</sup> The second part focused on member country practical experiences in bringing enforcement cases involving cross-border fraud (Annex II).<sup>3</sup>

On the basis of OECD member country answers to the questionnaire and additional Secretariat research, the present Implementation Report analyses the Guidelines’ impact on OECD member country enforcement co-operation in four sections.

Section I identifies OECD efforts to help implement the Guidelines. The CCP has maintained two lists of OECD member country consumer protection enforcement agency contact points to allow easy access to cross-border fraud information. The CCP has also undertaken substantial work to determine ways to ensure effective consumer redress across borders.

Section II analyses OECD member country amendments to domestic legislation, enabling them to adequately handle international forms of fraudulent activities. These amendments have in general led to structural reforms of domestic consumer protection enforcement bodies which have in some cases gained new and stronger enforcement powers. As an additional response to counter a continuing increase of cross-border fraud complaints and consumer losses in recent years, domestic consumer protection enforcement authorities and other government agencies have promoted more sophisticated consumer education and awareness campaigns, and have developed in-depth co-operation schemes with the private sector.

Section III of the report investigates OECD member country efforts to build up an effective international enforcement framework as a necessary complement to improved domestic schemes. Consumer protection enforcement authorities have actively participated in informal international networks, and have entered into a number of international and regional agreements enhancing notifications, information sharing, and assistance with investigations among themselves. The section also draws lessons from other existing international co-operation frameworks governing different policy regimes, in the

competition and investments and securities law areas, to suggest ways to improve the consumer protection enforcement co-operation scheme.

Section IV examines the practical results of both domestic and international improvements by focusing on cross-border cases handled by OECD member country consumer protection enforcement authorities. In most cases, these consumer protection enforcement bodies have successfully managed to stop or prevent rogue traders from engaging in cross-border fraudulent and deceptive commercial practices through well co-ordinated investigations in different countries and landmark court decisions.

### **Measuring the impact of the Guidelines**

The present Implementation Report demonstrates that the principles set out in the Guidelines have already proved influential in many respects. Ongoing progress in their promotion and implementation has been noted over the past three years.

The Guidelines have been well recognised at the international level as an effective means to capture rogue traders abusing consumer confidence. For example, the Free Trade Agreement (“AUSFTA”) signed between Australia and the United States, which entered into force in January 2005, explicitly recognises the Guidelines as an existing mechanism for enforcement co-operation in relation to consumer protection.<sup>4</sup>

The Guidelines call on Member countries to improve procedures for sharing information on cross-border fraud investigations. Several consumer protection enforcement agencies in OECD Member countries have implemented informal arrangements to improve such information sharing.

For example, in 2005, the United States Federal Trade Commission (“US FTC”) and Mexico’s PROFECO signed an informal information-sharing Memorandum of Understanding. The signing of Information Sharing Protocols between the Competition Bureau Canada, the US FTC, the ACCC, and the United Kingdom Office of Fair Trading (“UK OFT”), between 2003 and 2004, is further evidence of progress in the implementation of the Guidelines with the development of efficient information-sharing procedures between consumer protection enforcement agencies to stop cross-border fraudulent and deceptive practices.

The Guidelines have also had a significant influence in the field of spam. Following up on suggestions emerging from the February 2004 OECD Workshop on Spam, Member countries have been examining opportunities for increased consumer protection enforcement co-operation in this area. The OECD Council recently approved a Recommendation<sup>5</sup> to encourage OECD Member countries to establish closer enforcement co-operation to combat spam. The Recommendation (OECD, 2006) specifically references the importance of the Guidelines, stating that “in some instances, ... [the Guidelines] may apply directly to cross-border spam enforcement co-operation and that even where this is not the case, many of the principles expressed in these Guidelines can be usefully tailored to develop appropriate national frameworks and facilitate international co-operation to enforce laws against spam.”

At the European Union (“EU”) level, the European Commission has specifically recognised the Guidelines as an important step in addressing the issue of cross-border fraud at the international level (EC, 2004). This recognition is also reflected in the adoption of European Parliament and Council Regulation n°2006/2004 on Co-operation between National Authorities Responsible for the Enforcement of Consumer Protection Laws (“the European Regulation on Consumer Protection Co-operation”),<sup>6</sup> which aims to institute an integrated EU consumer protection enforcement network, and contains many similar principles as those established in the Guidelines. The Regulation is directly applicable and binding in the 25 EU Member States without the need for any national implementing legislation, and – following national implementation – in the EEA countries (Iceland, Liechtenstein, and Norway).<sup>7</sup>

Despite these successes, cross-border fraud remains a serious challenge today and further efforts will be needed to ensure effective co-operation among consumer protection enforcement agencies.

The need for additional financial resources, appropriate training sessions for insufficiently technically skilled staff, and language problems have prevented some consumer protection enforcement agencies from developing experience in cross-border fraud cases.

Available statistics indicate ever increasing numbers of cross-border complaints from consumers involving fraud. While, in a positive sense, such an increase reflects growing consumer awareness of how and where to file complaints, it also shows the magnitude of the problem still to be addressed through OECD Member country concerted action.

## **SECTION I. OECD IMPLEMENTATION EFFORTS**

Primary responsibility for implementing the Guidelines rests with OECD Member countries themselves as the Guidelines are mainly addressed to Member country “national public bodies, ..., with enforcement authority for protecting consumers” (Section I. D).

However, the implementation of the Guidelines’ principles for consumer protection enforcement co-operation has also been substantially promoted by the OECD itself. The Committee on Consumer Policy has played a key role in ensuring the successful implementation of the Guidelines. As specifically recommended by the Guidelines, it maintains a regularly updated list of OECD Member country enforcement agency contact points. In addition, the CCP is undertaking substantial work aimed to ensure effective consumer redress in the global marketplace.

### **A. Designation of Enforcement Co-operation Contact Points**

The Guidelines recommended that “Member countries designate a consumer protection enforcement agency or consumer protection policy agency to act as a contact point to facilitate cooperation under these Guidelines.” (Section III. F).

It also recommended that the Secretary-General should keep record of these contact points and make them available to other OECD Member countries. This information was recorded in two different lists:

- An OECD internal list contains contact details of 21 member country responsible officials, telephone numbers, and e-mail address. The list is available to CCP delegates through e-mail and through the CCP password-protected website. The CCP shares the internal list with the ICPEN Presidency.
- A second list, which contains 18 unidentifiable contact points, is available to the public and provides data which can be useful to non-member economies’ enforcement officials, consumers, and businesses. This list is published on the OECD website.<sup>8</sup>

Both lists are updated on a regular basis.

### **B. CCP Consumer Redress Work**

The Guidelines call on OECD Member countries to “jointly study the role of consumer redress in addressing the problem of fraudulent and deceptive commercial practices” and suggest that they focus on the effectiveness of existing cross-border consumer redress systems” (Section VI).

The CCP has already undertaken significant work in this area. In April 2005, the Committee organised a public Workshop on Consumer Dispute Resolution and Redress in the Global Marketplace, which was hosted by the United States government in Washington, DC.

One of the aims of the workshop was to consider the role of government bodies in obtaining monetary redress for consumers, and ways to improve the effectiveness of consumer remedies in cross-border cases, for example, through increased international judicial co-operation. As background for the workshop, the CCP prepared a report on *Consumer Dispute Resolution and Redress in the Global Market Place*, providing an overview of Member country existing frameworks for consumer dispute resolution and redress, and addressing the practical and legal impediments to obtaining and enforcing monetary judgments in cross-border cases (OECD, 2005b).<sup>9</sup>

Although not all OECD Member countries were represented at the workshop, it appeared from the discussions that a consensus was emerging about the importance of providing government agencies the authority to obtain monetary redress for consumers. It was noted that this ability can be an especially effective tool to compensate consumers who have been the victims of cross-border fraud where the legal and practical obstacles to private action are great. As governments have at their disposal investigative powers and other enforcement powers not available to private litigants, they are often in a unique position to tackle such cases and secure compensation for consumers.

During the workshop, the US FTC reported that between April 2004 and March 2005, it has obtained judgments ordering the return of more than USD 480 million in compensation to consumers, and that over the years it has provided redress funds to consumers in more than 100 countries.

It was noted, however, that in some Member countries, there may be difficulties in enforcing judgments obtained by government agencies awarding monetary redress to consumers as they may be regarded as penal or revenue in nature or raise other public policy concerns. Participants pointed to the AUSFTA as a potential model for overcoming such difficulties. This agreement contains a provision stating that a monetary judgment obtained by certain government authorities, including the US FTC and the ACCC, for the purposes of providing compensation to consumers, should not generally be disqualified from recognition and enforcement on the grounds that it is penal or revenue in nature.<sup>10</sup>

Building on the workshop discussions, the CCP is currently elaborating a Recommendation on the issue of dispute resolution and redress. The proposed Recommendation aims to set out the elements of an effective and comprehensive domestic system, and identifies ways to better address the challenges to obtaining and enforcing monetary remedies for consumers in cross-border cases.

## SECTION II. IMPROVED DOMESTIC ENFORCEMENT FRAMEWORKS

As recommended by the Guidelines (Section II. A), a number of OECD Member countries have introduced or are in the process of adopting new consumer protection enforcement legislation to appropriately face the ever evolving cross-border fraud challenges. (Annex III contains a list of new and envisaged legislation tackling cross-border fraud since June 2003).

As a result of these legislative reforms, new consumer protection enforcement bodies have been established, or existing ones reorganised. In addition, domestic co-ordination with other bodies working on consumer policies has been strengthened to help ensure a complete and fruitful exchange of information on cross-border fraudulent and deceptive commercial practices.

Following an increase in cross-border complaints and consumer losses in recent years, strong efforts to improve consumer education and awareness have been developed by OECD Member country consumer protection enforcement authorities and governments. Private sector entities have also participated in efforts to crack down rogue traders.

### A. Reorganised and Reinforced Consumer Protection Enforcement Agencies

As mentioned earlier, the Guidelines are mainly addressed to “national public bodies, ..., with enforcement authority for protecting consumers.” These public bodies may either formulate policies (“consumer protection policy agency”), or may have as a principal mission the implementation of laws (“consumer protection enforcement authorities”), (“CPEAs”). Some of these authorities may be in charge of both missions (Section I. A, C, and D).

#### *New or Restructured CPEAs*

Originally, consumer protection enforcement authorities were created to protect domestic consumers from the fraudulent practices of local or domestic wrongdoers. Since the release of the Guidelines, consumer protection enforcement authorities have been established or reorganised in six countries to provide enforcement authorities with the necessary tools to protect consumers in the cross-border context. In three other countries, proposals for reform are under consideration or new staff training measures have been put in place.

In the Netherlands, under the proposed consumer protection enforcement law (“*Wet handhaving consumentenbescherming, Whc*”), a public consumer protection enforcement agency (“ConsumerAuthority”) is being created and should be fully operational by January 2007.

In Austria, about six existing public bodies, including the Competition Authority and the Cartel Solicitor of the Ministry of Justice, will be vested with the enforcement powers foreseen in the EU/EEA Regulation on Consumer Protection Co-operation. In order to improve and intensify the contacts between domestic bodies involved in consumer protection in Austria, an Intranet has been established on the public website operated by the *Bundesministerium für Soziale Sicherheit Generationen und Konzumentenschutz* to share ideas, and experiences. Furthermore, a consumer forum has been established.<sup>11</sup>

In Germany, the *Federal Office of Consumer Protection and Food Safety* (“BVL”) will soon be designated as the single public liaison office for cross-border consumer disputes. It is expected that the BVL will either directly deal with cross-border fraud cases or will refer the case to another appropriate domestic consumer protection enforcement agency in specific cases. Under certain circumstances, BVL will have the possibility to give such a mandate to a domestic private consumer organisation, in line with the Guidelines which recognise the important complementary role of private consumer protection law enforcement agencies (Section I. A).

In May 2005, the *Irish National Consumer Agency* (“NCA”) was also designated as the single liaison office in cross-border cases. Among others, the NCA functions will include consumer advocacy, research, information, enforcement, education, and awareness.

In Belgium, an International Co-operation Unit has been integrated into the *Direction Générale Contrôle et Médiation* (“DGCM”). The Unit will serve as the contact point for its foreign counterparts in the context of cross-border fraud cases.

Finally, in Greece, cross-border fraud complaints are handled by the European Consumer Centre (which operates under the umbrella of the European Consumer Centres Network) since its integration in the Ministry of Development in January 2005.

Besides these newly created or reorganised consumer protection enforcement authorities, some OECD Member countries have become increasingly aware of the need to provide their consumer protection enforcement bodies with more adapted means and structures to adequately face cross-border fraud challenges.

The Australian government has created a working party to specifically review and report on the implementation of the OECD Guidelines (forthcoming). The working party is notably considering introducing changes to improve existing co-operation arrangements, particularly in relation to information sharing and methods to notify foreign consumer protection enforcement bodies on ongoing investigations.

In June 2005, the UK Department of Trade and Industry (“UK DTI”) introduced a proposal for a “Consumer Strategy” setting out the United Kingdom plans for consumer policy for the next few years. In order to strengthen the United Kingdom’s domestic framework, the UK government created the Local Better Regulation Office and has decided to expand the competences of the UK OFT.

In Mexico, PROFECO’s officials have participated in international training courses on how to identify, address, and stop cross-border fraudulent and deceptive commercial activities.

### ***CPEAs’ Enhanced Authority***

The Guidelines recommend that consumer protection enforcement bodies have appropriate authority for effective action in the cross-border context, including the authority to take action “against domestic business engaged in fraudulent and deceptive commercial practices against foreign consumers and foreign businesses engaged in fraudulent and deceptive commercial practices against their own consumers” (Section V).

In accordance with this provision, in some OECD member countries, consumer protection enforcement agencies have been granted new enforcement powers to help them handle cross-border fraud cases more appropriately.

For example in France, following the adoption of an order in September 2005, the *Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes* (“DGCCRF”) has been given

new powers to issue injunctions and cease-and-desist powers. In addition, French officials may request civil and administrative courts to order the elimination of unfair terms in consumer contracts and may obtain undertakings from fraudsters. The French order explicitly provides that DGCCRF staff may co-operate with non-EU Member States which are members of the OECD in order to prevent or put an end to fraudulent commercial cross-border practices. Such co-operation consists of the elaboration of contacts, and the sharing of publicly available information.

Some OECD Member countries have, however, reported obstacles to the recognition and enforcement of judgments in countries where wrongdoers operate or where consumers are harmed. As mentioned earlier (see para. 34), there may be particular difficulties in enforcing monetary judgements obtained by CPEAs for return to consumers as these judgements may be viewed as penal or revenue in nature. One positive development to address this issue is reflected in the AUSFTA which states that a monetary judgment obtained by certain government authorities, including the US FTC and the ACCC, for the purposes of providing compensation to consumers should not generally be disqualified from recognition and enforcement on the grounds that it is penal or revenue in nature.

Finland for instance stressed in its answers to Part II of the questionnaire that this problem may weaken consumer protection across borders, as in practice, injunction enforcement is rather difficult, if not impossible in cross-border fraud cases.

Likewise, the *Australian Competition and Consumer Commission* (“ACCC”) reported such a limit. While the agency has at its disposal a wide range of enforcement powers (it may seek injunctions to prevent a prohibited conduct, and may request court orders for payment of damages, rescinding, setting aside or varying contracts, probations orders, adverse publicity orders, or corrective advertising), it may encounter difficulties in the enforcement of orders abroad.

This problem is illustrated in the case of *ACCC v. Chen*. There, the ACCC sought an injunction against Chen, an American resident operating a misleading website targeting Australian consumers from the United States. The Australian court noted that the injunction could not be enforced against the defendant, as generally no mechanism for the registration or enforcement of a foreign court’s injunction is available in the field of private international law. Nonetheless, the Australian court granted the relief as a means to encourage foreign authorities to take action to protect Australian consumers from cross-border fraud.

#### *New and Envisaged Laws on Information Sharing*

Information sharing is a key component of a successful enforcement co-operation scheme under the Guidelines (Section IV. B). Some countries have recently adopted new legal bases to widen information sharing flows.

In France, following the adoption of the order in September 2005, the DGCCRF can exchange any information or documents obtained in the course of investigations (which are not covered by professional or instruction secrecy) with its foreign counterparts.

In Korea, the Ministry of Finance and Economy (“MOFE”) is currently working on a revision of the *Consumer Protection Act* that will include recommendations recalling principles set out in the Guidelines. As a complement to this revision, MOFE is elaborating guidelines on the resolution of cross-border consumer disputes which will provide specific rules on information sharing.

In 2005, the Australian Productivity Commission published a report recommending that Australia and New Zealand amend their legislation to enable their competition and consumer protection enforcement authorities to exchange confidential information. A Commerce Commission *Information Sharing and Fees*

Bill is now being drafted on this issue in New Zealand. The Australian Government will be amending the *Trade Practices Act 1974* to remove statutory restrictions that limit the extent to which the ACCC and the New Zealand Commerce Commission can exchange information gathered under compulsory powers on competition and consumer protection matters.

In 2005, the US FTC submitted a report to the US Congress (FTC, 2005b) recommending legislation, the *US SAFE WEB Act*, which would, among other things, allow the US FTC to share relevant information with and provide investigative assistance to its foreign counterparts in fraud investigations.

However, some countries still report their inability to receive information from their foreign counterparts which are bound by domestic legislative restrictions on information sharing.

#### *Investigations, Gathering, and Preservation of Evidence*

The Guidelines recommend that OECD Member countries assist and alert each other to ongoing investigations, and to simplify co-operation (Section IV. A). Full co-operation implies that consumer protection enforcement bodies should co-ordinate investigations affecting them in other countries and should make best efforts to obtain and preserve evidence in the course of their investigations (Section II. A.2).

This principle is similarly laid out in the new EU Regulation on Consumer Protection Co-operation. This Regulation provides that each competent consumer protection enforcement authority shall have investigation and enforcement powers such as the ability to conduct on-site inspections, to access to relevant documents, to request that the seller or the supplier cease their infringement, and to require the losing defendant to make payments into the public purse or to any beneficiary designated under national law when failing to comply with the decision. Each competent consumer protection enforcement body may exercise such powers either directly under their own authority or under the supervision of judicial authorities, or by application to courts competent to grant the necessary decision.

In the course of an investigation, a consumer protection enforcement authority will be able to request its counterpart in another EU Member State to issue an order of cessation within the framework of the mutual assistance network. The European Commission will store and process the information received from EU Member States in a database, such information being only used for the purposes of ensuring compliance with the laws that protect consumer interests.

Only two Member countries reported developments in this area. Under the new 2005 Order, the French DGCCRF has been given the possibility to investigate any place where fraud has been committed and to seize any kinds of documents, including business confidential information. As mentioned earlier, the US FTC has recommended that the US Congress enact the *US SAFE WEB Act*. This legislation would allow the US FTC to provide investigative assistance to foreign agencies.

#### *Increased Sanctions*

In at least two OECD Member countries, penalties have been increased. 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, the Anti-Spam legislation was strengthened in 2005 with the introduction of substantial penalties on spammers using false identity and email addresses. These fines may go up to JPN 1 million or a year imprisonment.

## **B. Enhanced Co-ordination with other Domestic Bodies**

In many countries, various authorities may deal with consumer protection issues. In order to prevent or remedy possible parallel or inconsistent initiatives in this area, co-ordinated actions and discussions have been set up through networks, specific consumer and criminal units, expert committees and a Memorandum of Understanding (“MoU”).

In Japan, a Network for Combating Cross-Border Consumer problems was created in May 2004 to enable various Japanese ministries and the Cabinet Office to discuss cross-border challenges including fraud. The “Liaison Council on Watching over Elder Consumers,” which aims to specifically protect elder citizens, held its first meeting in December 2005 in which various ministries, welfare organisations for elder citizens, and consumer associations shared information. Finally, in April 2004, a Cyber-crime Division was established by the National Police Agency with a view to strengthening cyber crime investigations.

The US FTC established a Criminal Liaison Unit which is responsible for identifying best placed enforcement agencies to deal with specific fraud cases. The Unit coordinates with other criminal authorities to help the US FTC prepare cases for referral and parallel prosecutions. In addition, the US FTC has set up a Federal/State Spam Task Force to strengthen co-operation with civil and criminal enforcers.

In Sweden, the creation of a Consumer Bureau focusing on telecommunication issues is currently envisaged. This new body will help stop fraudulent activities in this sector. In France, the DGCCRF, whose internal structure is being amended, collaborates with the tax, customs authorities, and the Police.

In Mexico, PROFECO has developed a dialogue with both the Ministry of Economy on digital economic issues and with the Federal Telecommunications Commission.

In May 2005 in Korea, the MOFE established an “Expert Committee on International Consumer Issues,” used as a co-operative channel between government offices and public bodies working on consumer protection issues to share trends and information on international consumer issues, and to consider related bilateral and regional co-operation.

In the United Kingdom, a MoU is being negotiated to allow co-ordinated actions and information sharing between various British authorities.<sup>12</sup>

In Canada, the Competition Bureau has been designated as the contact point to facilitate co-operation under the Guidelines. As a result, the Competition Bureau has established a mechanism to maintain regular contacts with provincial and territorial consumer protection authorities in order for the Bureau to be able to notify OECD Member countries of ongoing investigations in Canada that would affect them. Reciprocally, the system will allow communication to the provincial and territorial consumer protection authorities of relevant notifications from other OECD Member countries.

In Belgium, the DGCM has created an Information Society Network, within the framework of which information on Internet service providers’ fraudulent activities is exchanged with federal public services dealing with cross-border fraud such as the police, the public prosecutor office, and the Committee on the protection of privacy. In addition, within the framework of the Internet Complaints Processing System, the DGCM co-operates with the Computer Fraud Unit of the Federal Police, and the Committee on the protection of privacy to process any complaints relating to Internet websites.

Australia will shortly be commencing a review of its domestic frameworks established to facilitate a co-ordinated response to consumer affairs issues. The Ministerial Council on Consumer Affairs meets regularly to discuss consumer affairs matters and contains representatives from each Australian state and

territory, as well as the Australian and New Zealand governments. The Ministerial Council on Consumer Affairs is supported by officials through the Standing Committee of Officials of Consumer Affairs, which in turn is supported by specific advisory committees. The Australian Government has recently announced that the independent Government research organisation, the Productivity Commission, will be undertaking a review of Australia's consumer policy framework, including ways to improve the efficiency and effectiveness of the domestic arrangements.

### **C. OECD Member Country Consumer Education and Awareness**

Education is an effective weapon in preventing consumers from becoming victims. The Guidelines recommend that "Member countries should educate consumers about fraudulent and deceptive commercial practices, undertaking joint initiatives as appropriate" (Section II. F).

In accordance with the above provision, most OECD Member countries have made use of a wide range of mechanisms to educate consumers, informing them of the ever more sophisticated infringements of their rights. Consumer education has been significantly advanced through information campaigns and government promotional websites.

Most OECD Member countries recognise that much has still to be done to ensure more appropriate consumer information. The continuing growth of cross-border complaints and injuries reflects the need for more ambitious responses to fraud. However, at the same time, such a growth underscores the positive impact of education and awareness campaigns that inform consumers of how to recognise fraud, of how and where to report it, and of which kind of actions consumer protection enforcement authorities can take to enforce their rights.

#### ***Consumer Information Campaigns***

The Guidelines provide, as a principle for international co-operation, that consumer protection enforcement agencies should co-ordinate their actions at the international level to avoid interference with investigations and enforcement activities taking place in other OECD Member countries (Section III. B). As a result of these co-ordinated efforts, consumer education was widely developed in the form of consumer information campaigns.

At its meeting in London in October 2004, ICPEN endorsed a new education tool, the Fraud Prevention Month ("FPM"). Originally based on a Canadian awareness campaign aimed at educating consumers on how to recognise, report or stop fraud such as telemarketing, prize pitches and identity theft (so-called "*Recognise It. Report It. Stop It.*" campaign), the FPM is a joint initiative of ICPEN members aimed at better educating consumers about fraud through various events and activities held in participating Member countries during a designed month.

In Canada, the Competition Bureau chairs the Fraud Prevention Forum ("FPF"), a group of private sector firms, consumer and volunteer groups, government agencies, and law enforcement organisations committed to fighting fraud aimed at consumers and businesses. Its mandate is to prevent Canadians from becoming victims of fraud through awareness and education, as well as to increase reporting when it occurs.<sup>13</sup>

ICPEN has pointed out that the FPM initiative was developed specifically as a means to implement the Guidelines' recommendations on the promotion of consumer education. The international initiative has so far been successful and resulted in consumer awareness campaigns in a number of Member countries where brochures, posters, and inserts were distributed. While the first FPM, which took place in February 2005, involved a total of 17 countries, 25 ICPEN Member countries participated in the 2006 FPM.

In March 2006, the CCP and ICPEN held a joint meeting where public education and awareness were discussed. Drawing on case studies in different countries, participants examined possible best practices for organising and running such campaigns.

At the domestic level, Member countries have produced a variety of sophisticated tools to inform consumers of examples of cross-border frauds and their harmful consequences.

In the United Kingdom, the UK OFT launched the *Scams Awareness Month*, a publicity campaign alerting consumers to deceptive and fraudulent mass-marketing scams. The aim of the campaign was twofold: educating consumers in how to recognise scams; and showing that the United Kingdom is working in an international partnership to combat fraudulent activities.<sup>14</sup>

Similarly, in the fall of 2005, the US FTC and public and private sector partners launched a multimedia, and interactive consumer education campaign called “OnGuard Online,”<sup>15</sup> aimed to help consumers stay safe online. The campaign uses straightforward, plain-language materials to help computer users be on guard against Internet fraud, secure their computers, and protect their personal information. The US FTC encourages any organisation interested in computer security to link to [www.OnGuardOnline.gov](http://www.OnGuardOnline.gov), wherever they are located in the world. In addition, the US FTC encourages any entity to take the information on OnGuardOnline, make it their own, translate it if necessary, and disseminate it in ways that reach the most people and suit their own education purposes.

Another US FTC initiative is the National Consumer Protection Week (“NCPW”) in February, which highlights consumer protection and education efforts across the country. During the week, federal, state, local agencies and national advocacy organisations committed to consumer protection hold events, and workshops to raise awareness of scams and teach consumers how to protect themselves. During the 2006 campaign, the US FTC released both a consumer fraud prevention DVD entitled “Nowhere to run” and the “Grand Scam Challenge,” a series of interactive online consumer awareness games.<sup>16</sup> It also entered into a partnership with representatives of the United States Postal Inspection Service, the Postal Service’s Consumer Advocate, the Royal Canadian Mounted Police, PhoneBusters and Canada’s Competition Bureau to address scams targeting consumers of both countries.

In Japan, the “*Antiphishing Japan*” campaign was launched in April 2005 to protect consumers against wrongdoers luring consumers to a fake website pretending it was sent from a bank or a credit card company to get consumers’ credit card details.<sup>17</sup> In addition, the Cabinet Office and other relevant ministries and agencies have developed the Japanese edition of the *econsumer.gov* website (a joint initiative of 20 ICPEN members devoted to handling cross-border complaints) to collect and share data with foreign consumer protection enforcement bodies.

Most OECD Member countries have dedicated specific websites to educate and warn consumers about cross-border fraudulent and deceptive commercial practices. In some countries, these websites are particularly well publicised and also help consumers resolve both their domestic or cross-border disputes.

For example, via the US web site *consumer.gov*, consumers are given information on US consumer rules sector by sector (product safety, food, transportation, health). The website maintains a “do not call” database where consumers may register to prevent telemarketers from calling them at home, and provides alerts on scams, and ID theft. It also contains a link to *Consumer Sentinel*,<sup>18</sup> a secure online complaint database, which is maintained by the US FTC, and where more than 300 000 consumer complaints are collected per year in the field of telemarketing, direct mail, and Internet fraud. It further contains a link to ICPEN’s *econsumer.gov* website.<sup>19</sup>

In addition, the US FTC has launched a teaser web site reaching consumers using the Internet to find business opportunities. Using common buzz words and making claims frequently used by fraudulent business opportunity promoters, the teaser site at first glance looks like a pitch for a “can’t miss” business opportunity for “Sundae Station,” an ice cream sundae vending machine. The site contains typical claims of fast money with minimal effort. Once consumers click on any of the links, they learn the ad is in fact a consumer education piece posted by the US FTC to warn them about business opportunity rip-offs.<sup>20</sup>

Likewise, the UK OFT Consumer Regulation Website provides consumers with information on legislative and enforcement actions, helping consumers to get quicker dispute resolution. Under its Consumer Strategy,<sup>21</sup> the UK DTI has also developed “*Consumer Direct*,” a telephone and Internet advice service targeting consumers.

The Norwegian Post and Telecommunications Authority has, in co-operation with other authorities, consumer and business representatives, established a website<sup>22</sup> with the purpose of providing consumers, employees and small companies with information and advice about a safe use of the Internet and on how to avoid fraudulent practices communicated via e-mail such as the so-called “Nigerian letters,” lotteries, and phishing.

In Australia, the Australasian Consumer Fraud Taskforce (“ACFT”), which was established in March 2005, is working to create a yearly co-ordinated information campaign for consumers. The ACFT, which comprises 18 government regulatory agencies and departments who have a remit for consumer protection in relation to frauds and scams, has facilitated a co-ordinated approach across all areas of government to work together to deal with frauds and scams targeting Australian consumers. The information campaign is to be timed to coincide with Global Consumer Fraud Prevention Month, to involve the private sector in that initiative, and to share information and generate greater interest in research on consumer frauds and scams.

### ***Impact of Consumer Information Campaigns***

In 2005, the CCP issued a Report on Consumer Information Campaigns concerning Scams (OECD, 2005). The report concludes that little has been done so far to measure the impact of anti-scams campaigns on consumer behaviour. The report references two research projects on awareness of telephone fraud carried out by the Competition Bureau Canada in 2003 and 2005 which noted a “tendency to [consumer] inertia in not reporting or complaining about scams remains a formidable hurdle.” It also cites a 2005 survey which revealed that while “76% of consumers felt very or fairly confident that they knew enough to avoid being taken in scams, ..., only 34% felt there was a lot of information to help avoid scams.”

As can be seen from the table below, statistics collected by Member countries reveal that the number of cross-border consumer complaints continues to increase:

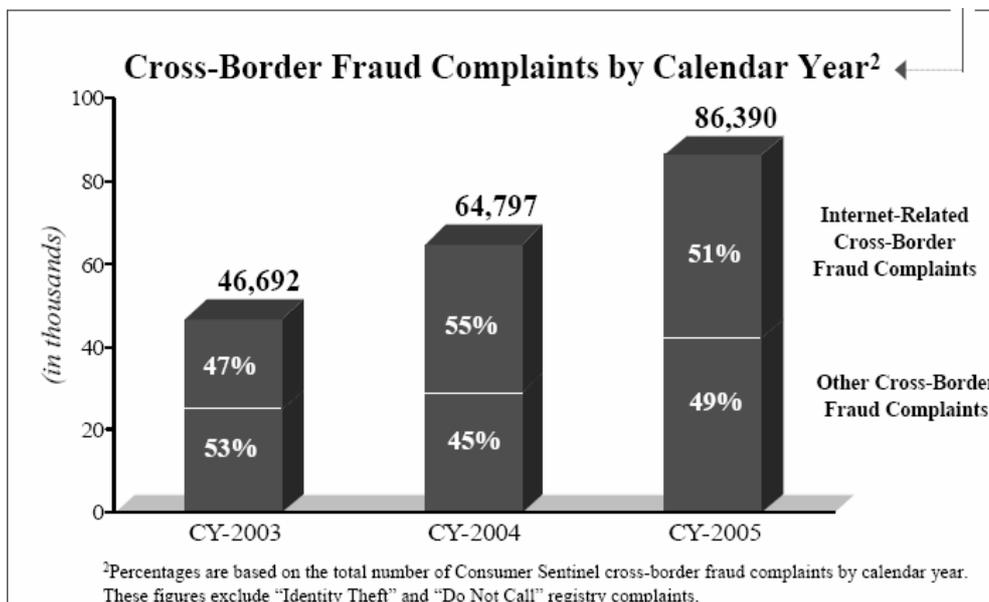
**Figure 1. Cross-Border Complaints received by some Member countries**

CPEAs	Cross-Border Complaints	
	2004	2005
KCPB	113	85
US FTC	64 797	86 390

Source: OECD, 2006.

The 2006 Report on *Cross-border Fraud Trends* released by the US FTC notes that Internet related cross-border fraud complaints have grown more rapidly than other fraud complaints between 2002 and 2004 (FTC, 2006). The report is based on complaints included in *Consumer Sentinel*, the secure automated complaint database developed by the US FTC and international law enforcement partners:

**Figure 2. Cross-Border Fraud Complaints by Calendar Year**



Source: US FTC 2006 Report on *Consumer Fraud and Identity Theft Complaint Data*.

In addition to an increase in the volume of complaints, an increase in the value of monetary injuries is reported in 2005. Complaints contained in *Consumer Sentinel* revealed more than USD 680 million of consumer losses from fraud (up from USD 565 million in 2004).

Certainly, the number of cross-border consumer complaints vastly underestimates the amount of cross-border fraud in OECD Member countries. In many instances, consumers do not know that their complaints are against foreign entities. For example, a consumer might not be aware of where a spam e-mail comes from. Indeed, consumers might think they are dealing with a domestic entity, while they are in fact dealing with a foreign entity disguising its location. Even if a local defendant defrauds a local consumer, the defendant may be using a foreign third party, such as an Internet Service Provider, domain registrar, or bank, to shield information and assets from law enforcers.

In any event, the rise in consumer complaints must be considered in the context of an overall rise in cross-border transactions by consumers in an ever more global economy. The increase reflects two positive results of education campaigns. Consumers are more aware of the importance of registering their complaints so that enforcement action can be taken.

In addition, they are more confident that CPEAs have the capacity to crack down rogue traders also explains the rise in consumer complaints. CPEAs' efforts to ensure effective consumer redress have helped reinforce such consumer confidence. As mentioned earlier, improving consumer redress was recommended by the Guidelines requesting OECD Member countries to "jointly study the role of consumer redress in addressing the problem of fraudulent and deceptive commercial practices" (Section VI).

In November 2004, cross-border co-operation between Canadian and United States law enforcers was expected to provide approximately USD 1.5 million in redress for victims of four international lottery scams operated by telemarketers based in Canada that targeted consumers in the United States. Similarly, the Australian Securities and Investments Commission ("ASIC"), through its enforcement activities, has been successful in recovering AUD 119 million of consumer losses (this amount includes costs, compensation and fines), and has been responsible for the freezing of more than AUD 5 million in assets (ASIC, 2005).

Successful enforcement efforts such as these increase consumer confidence that effective enforcement action will result from their complaints.

#### **D. Private Sector Co-operation**

The Guidelines strongly recommend OECD Member countries to ensure both effective business-to-consumer education tools and international co-operation with businesses, industry, and consumer groups (Section VII). Such co-operation has proved effective through regular contacts among consumer protection enforcement agencies, governments, and business working groups, as well as through business' participation in investigations, and business' own consumer education tools. All but two countries reported some co-operation with the private sector.

##### ***Public-Private Collaboration***

Most consumer protection enforcement agencies have encouraged business' involvement in discussions and actions aiming to enhance consumer education.

For example in Belgium, under the impulse of the DGCM, a Code of Conduct was formalised between telecom companies and Internet service providers with a view to developing systems aimed to avoid or put an end to fraudulent and deceptive commercial practices in this sector.

In Mexico, PROFECO holds regular meetings with the private sector to find means to improve the quality of services provided to consumers.

In Korea, a working session on *Cross-Border Consumer Issues* was organised by the MOFE in April 2004 in which private entities participated.

In Canada, the Fraud Prevention Campaign, led by the Competition Bureau, in co-operation with 30 private sector, not-for-profit consumer organisations and law enforcement authorities, was put in place to help Canadians protect themselves from fraud.<sup>23</sup> Following the campaign mentioned earlier “*Recognise It. Report It. Stop It.*” these organisations engaged in the disclosure of public service announcements on both radio, and television and in the distribution of ads in newspapers in the name of fraud education and prevention.

In January 2006, the Norwegian Consumer Ombudsman established a forum to combat online fraudulent activities. To date, 33 private and public sector entities participate in this forum, including the banking sector, Internet service providers, and the police. Working groups on spam, and payments solutions have been set up and related information is provided to the public. The forum will focus particularly on credit card fraud, phishing, Internet auctions, lotteries, investment scams, and marketing of slimming products and other “miracle” products.

In France, the *Conseil National de la Consommation* (a consultative body under the umbrella of the ministry in charge of consumer protection) is a forum where business, providers of public and private services, and consumer associations can negotiate agreements on specific issues. In addition, “CyberConso,” the Permanent Observatory of Cyber Consuming composed of public authority representatives, business, and lawyers was created in 2004.<sup>24</sup>

In its answers to Part I of the implementation questionnaire, the US FTC reported that reservations have been expressed by private entities on the possibility for them to share certain information with the agency about suspected wrongdoers. To alleviate these concerns, the proposed 2005 *US SAFE WEB Act*<sup>25</sup> includes a provision which would exempt certain private sector entities, financial institutions, and Internet Service Providers from liability for the voluntary sharing of information about spam, spyware, and fraud with consumer protection enforcement authorities.

### ***Business assistance with investigations***

Business assistance with investigations benefits to both governments and businesses themselves. Businesses have an interest in ensuring that consumers are sufficiently protected against fraud to benefit from effective competitiveness on the marketplace. In addition, governments encourage such assistance as business information may be crucial to deter perpetrators of fraud.

In the United States, co-operation between the New-York Attorney General’s Office and the Microsoft Corporation led to the arrest in December 2003 of the world’s biggest spam companies who were sending junk emails to consumers while hiding behind fake identities, forged email addresses, and a worldwide network of more than 500 compromised computers.<sup>26</sup> On the basis of evidence gathered through Microsoft’s Hotmail e-mail service, the companies concerned were charged with sending around 250 million e-mail messages per day, many containing fraudulent statements such as faked sender identifications and transmission paths. A settlement was finally concluded with one of the companies while the others are still under prosecution.

To detect and stop payment card fraud, the Australian Crime Commission (which is under the authority of the Ministry of Justice and Customs) launched the National Card Skimming Database. The aim of this scheme is to detect and stop payment card fraud by storing and making available to business and enforcement authorities details of skimmed cards and how and where cards are being skimmed. The

database was developed in partnership with a number of financial institutions (including Visa, and American Express, among others).

### ***Education tools provided by Business***

Businesses have been pro-active in developing their own independent tools to fight against cross-border fraud.

For instance, E-Bay has devoted many efforts to build consumer confidence through its “Trust Community” Programme. The company, which has a presence in nearly 60 countries, emphasises the need for more consumer information transparency, education, and financial protection. Through its “Paypal” scheme, E-Bay protects customers from unauthorised online payment means.

Many companies or financial institutions are members of trade associations or subscriber bodies which operate their own codes of practice, helping resolving business-to-consumers disputes, and protecting consumers from rogue traders.

### SECTION III. BUILDING AN INTERNATIONAL CONSUMER PROTECTION ENFORCEMENT CO-OPERATION FRAMEWORK

Besides reinforcing their domestic consumer protection enforcement frameworks, OECD Member countries have used existing international and regional networks, and have entered into various multilateral and regional arrangements to facilitate global enforcement, as recommended by the Guidelines (Section V. D).

#### A. International and Regional Co-operation Networks

OECD Member countries have strengthened their enforcement co-operation through international and regional networks to complement their actions at domestic level. Most consumer protection enforcement bodies participate in information sharing initiatives like ICPEN, or the London Action Plan. At the EU/EEA level, CPEAs also gather information on cross-border fraud experiences through the European Consumer Centre Network.

These three networks co-operate with one another to serve complementary goals. They maintain links to each other's websites and regularly receive informal updates on each other's activities.

#### *ICPEN*

ICPEN<sup>27</sup> is an informal network where domestic enforcement authorities join forces to enhance international consumer protection enforcement. It consists of ICPEN Global, which includes authorities from 34 countries<sup>28</sup> plus four observers (the OECD, the European Commission, Azerbaijan, and China) and ICPEN Europe, which includes all EU Member States and the European Commission as an observer. The presidency of both structures is made on a 12 months rotating basis during which time two international meetings are organised in the President's country.

ICPEN is mainly used as a platform of collaboration where member country enforcement bodies exchange information on fraud cases affecting consumers from their jurisdiction. Information between its members is shared through monthly teleconferences, national reports reflecting consumer protection enforcement bodies' practical experiences, and the *econsumer.gov* website.<sup>29</sup>

Through ICPEN, consumer protection enforcement authorities also establish direct contact with their foreign counterparts in relation to fraud cases. For instance, in 2003, the ACCC gathered information from ICPEN members to prove misleading and deceptive selling of Sydney Opera tickets from an imitation site operated overseas and affecting Europe customers. On the basis of evidence gathered, including a declaration submitted by a US FTC employee, the Australian Federal Court granted the ACCC an injunction against the operator of the website.

Every year, ICPEN enforcement bodies conduct a "Sweep day" during which action is taken simultaneously in different countries to identify those websites misleading consumers. The Sweep Day topic and date are decided annually by ICPEN and the event is co-ordinated and guided by the ACCC in Australia. As such, the Sweep day is an exercise that contributes to the awareness of consumers, and internet users in general, and notably improves the exchange of information between enforcement

authorities in various countries. As examined earlier, ICPEN has also created Fraud Prevention Month to better educate consumers about fraud and raise awareness of scams.<sup>30</sup>

### ***The London Action Plan***

The London Action Plan (“LAP”) has been set up by a global co-operation network of 34 agencies and 24 private sector representatives from over 24 countries responsible for the enforcement of spam legislation with a view to expanding international anti-spam efforts led by the OECD. The plan was developed by the US FTC and the UK OFT to curb the activities of international spammers. Its members met for the first time in London in October 2004 to discuss international spam enforcement co-operation.

The LAP builds relationships between these entities based on a short document that sets forth a basic work plan for improving international enforcement and education co-operation against illegal spam. This document is non-binding, asking participants only to use best efforts to move the work plan forward.

Key elements of the LAP include designating a point of contact for further enforcement communications, exchanging effective investigative techniques and enforcement strategies, discussing consumer/business education, and completing the OECD questionnaire on Cross-border Enforcement of Anti-Spam laws.

In a summit held in November 2005, the LAP and the European Contact Network of Spam Enforcement Authorities (“CNSEA”), over 60 public and private sector agencies from over 27 countries, promoted cross-border co-operation on spam problems. On that occasion, the UK OFT reported that cross-border collaboration enforcement remains essential as over 80% of spam received by British Internet users originates from overseas. The LAP and CNSEA also developed a template for referring spam investigations.

### ***The ECC-net***

The European Consumer Centres Network (“ECC-Net”) is a network of information centres aiming at promoting consumer confidence throughout Europe. The ECC-net was established in January 2005, following the merger of the European Consumer Centres, (the “*Euroguichets*”), which provided information and assistance on cross-border issues, and the European Extra-Judicial Network (the “EEJ-Net”), which helped resolve consumer disputes through alternative dispute resolution schemes.<sup>31</sup>

With a presence in 23 EU Member States,<sup>32</sup> Norway and Iceland, each European Consumer Centre, used as a single point of contact, provides advice to EU, Norwegian and Icelandic consumers on their rights, informs them on how to formulate a complaint,<sup>33</sup> and assists them to get easy access to extra-judicial redress,<sup>34</sup> particularly in cross-border cases. In their answers to Part I and II of the CCP questionnaire, two Member countries mentioned that they may rely on the ECC-net as a way to combat cross-border fraud, although the ECC-net does not have any enforcement powers.<sup>35</sup>

## **B. International Co-operation Arrangements<sup>36</sup>**

The strong impact of the Guidelines has been reflected in recent years by an increase of international enforcement co-operation agreements to fight against cross-border fraud (Annex IV to the present Implementation Report).

Special enhanced co-operation between consumer protection enforcement agencies in Belgium, France, and Hungary has been set out in bilateral protocols. The French *Direction Régionale de la Concurrence, de la Consommation et de la Répression des Fraudes* (“DRCCRF”) in Montpellier and the consumer protection enforcement agency in Spain have signed a convention on the exchange of their

officials. The DGCCRF and the consumer protection enforcement authority in Italy have also signed a bilateral co-operation protocol.

It should be noted that the above protocols and convention constitute “best endeavours” type arrangements with no extra legal force. They aim to facilitate the exchange of both strategic information, and of officials of each enforcement body.

A further reinforced co-ordination scheme has been established among Nordic Consumer Ombudsmen through a Co-operation Agreement<sup>37</sup> enabling them to initiate lawsuits on behalf of each other and to share information about marketing practices across borders (subject to national rules on secrecy and a request to treat the information in confidence).

In September 2004, the first “Consultative Meeting on Consumer Policy among China, Japan, and Korea” gathered policy makers from the three countries that endeavoured to meet biennially in order to develop a framework for communication.

In 2005, the US FTC signed two MoUs respectively with PROFECO in Mexico<sup>38</sup> and with law enforcement agencies in Canada, including Competition Bureau Canada, to form the Atlantic Partnership<sup>39</sup> to combat cross-border fraud. This Partnership aims to effectively identify, investigate, prosecute, and reduce deceptive marketing practices and fraudulent criminal activities originating from the Atlantic region and targeting American consumers, or from the United States and targeting Atlantic Canadians.

Similarly, the US FTC, Competition Bureau Canada, and other agencies created the Alberta and Vancouver Partnerships respectively in 2003 and 2004. In September 2005, on the basis of assistance received from the Alberta Partnership, the US FTC took an action for injunctive relief against Canadian-based defendants engaged in unsolicited telemarketing calls targeting US consumers and falsely offering them pre-approved credit cards for an advance fee of USD 249.<sup>40</sup>

In the field of spam, the US FTC signed two MoUs respectively with agencies in Spain in 2005, and with the United Kingdom, and Australia in 2004, to share information; to co-operate in detecting and investigating spam violations, and in tracking spammers; to exchange evidence, to facilitate law enforcement against spam violators, and to co-ordinate enforcement against cross-border spam violations.<sup>41</sup>

All these agreements have set the path for the elaboration of specific arrangements containing principles on notification, information sharing and assistance with investigations among domestic enforcement bodies, as set out in the Guidelines (Section IV).

### ***Notification***

As a way to maximise the deterrence of wrongdoers, the Guidelines recommend that OECD Member country enforcement bodies alert each other of possible fraudulent ongoing activities in their jurisdiction. Some Member countries have instituted such a warning system under various co-operation agreements and treaties.

For example, the ACCC may notify another foreign enforcement body about ongoing investigations in Australia when other jurisdiction’s interests are affected by such investigation or when the ACCC makes enquiries of a person located in that foreign country. Similarly, the Norwegian Consumer Ombudsman has sent information about fraud to its counterparts in other countries in around 10 cases including fake lotteries via fraudulent emails and mail shots from the Netherlands and Spain, clairvoyant scam from Canada, deceptive spam from Switzerland, and deceptive practices and inertia selling from Swedish companies.

However, in their responses to the CCP questionnaire, most OECD Member countries recognised that their notification mechanisms remain informal. In addition, a few countries reported to have engaged in investigations affecting foreign countries without notifying the relevant foreign counterpart in that country.

### *Information sharing*

The building of information sharing capacity among enforcement bodies is regarded as a key priority under the Guidelines (Section IV. B). Member countries are encouraged to share publicly available information on consumer complaints, identities and details of perpetrators of fraud via a database containing their addresses, telephone numbers used to perpetrate fraud, Internet domain registrations, and corporate records. In practice, Member countries recognise that due to an increase in cross-border fraud cases, close co-operation via information sharing among consumer protection enforcement authorities is becoming increasingly important.

Many OECD Member countries have thus entered into multilateral and bilateral arrangements to serve as a specific basis for information sharing.

For example, Canada entered into various Information Sharing Protocols as tools designed to assist staff in identifying both the categories of information that may be shared under the current laws and the process to be followed to share specific kinds of information.

In March 2004, the Competition Bureau Canada signed two separate Information Sharing Protocols with the ACCC,<sup>42</sup> and with the UK OFT to ensure faster means to share complaints and investigation data.<sup>43</sup> According to the UK OFT, the protocols were specifically put in place as a means to implement the Guidelines which call for efficient notification procedures to tackle fraudulent and deceptive practices across borders (UK OFT, 2004).

The Information Sharing Protocol signed between Competition Bureau Canada and the US FTC was amended in May 2004 to clarify when and how information obtained as a result of search warrants may be communicated to each of the two enforcement bodies. Similar amendments were made to the Competition Bureau Canada – ACCC Information Sharing Protocol and the Competition Bureau Canada – UK OFT Information Sharing Protocol (respectively in October 2004 and March 2005).

In practice, information sharing has often led to successful investigative actions permitting either the arrest of worldwide rogue traders or the cessation of their unlawful activities. The so-called “Operation Roaming Charge” in October 2004 illustrates a successful information exchange process between a number of United States Attorneys’ office, the US FTC and other US agencies, and the Competition Bureau Canada, resulting in an unprecedented coordinated enforcement action.<sup>44</sup> Following this investigation, more than 135 perpetrators of worldwide telemarketing fraud were arrested (100 in the United States and 35 in Canada) on the basis of evidence exchanged between United States, Canadian, United Kingdom, Spanish, Nigerian, Philippines and Costa Rica enforcement authorities.

In some countries, governments created databases containing information on rogue traders which can be consulted and fed into by foreign national consumer protection enforcement agencies. *Consumer Sentinel*, which contains such kind of information, is accessible through a secure password to federal, state, and local law agencies in the United States, Canada and Australia. The system allows members to submit an “Auto Query” search on scams or possible targets, and provide them with an e-mail notice whenever responsive new complaints are entered in the database.

However, as mentioned earlier, the above specific arrangements are not legally binding and find their limits in existing domestic restrictions on the kind of information which may be shared. Only very few enforcement agencies are empowered to share confidential information with foreign regulators. For

example, the Australian Securities and Investments Commission may exchange confidential information it has obtained during investigations and enforcement activity. Some enforcement bodies, such as the competition authority in Mexico and the US FTC, have concluded specific agreements to determine in which conditions confidential information may be shared.

Most other enforcement bodies are prohibited from sharing confidential information notably in relation to a company subject to investigation before the issuance of a court decision. To address this issue, in a report in January 2005, the Australia Productivity Commission recommended that Australian and New Zealand legislation be amended to enable the two countries' competition and consumer protection enforcement bodies to exchange certain confidential information. Proposed amendments to the *Trade Practices Act 1974* in Australia will enable enhanced co-operation between the two regulatory agencies in the enforcement of the two countries' competition and consumer protection regimes. Consistent with the recommendations of the Productivity Commission's report, it is proposed that these amendments will protect confidential or protected information from unauthorised use or disclosure.

### ***Assistance with investigation***

A number of CPEAs have established informal contacts with their foreign counterparts on ongoing investigations in their territory. The UK OFT, the French DRCCRF in Lille, as well as Austrian, Spanish, Greek and Latvian consumer protection enforcement agencies maintain constant co-operation contacts and promote the possibility to exchange officials.

However, a number of countries reported that co-ordination of their investigation remains rather limited. The implementation of the Guidelines has been slowed down in a few countries due to insufficient budget and staff capable to investigate, obtain, and preserve evidence in a timely and professional manner. In Mexico, PROFECO takes the view that at present, its agents are not sufficiently trained and experienced to effectively handle cross-border cases. It also reported languages difficulties.

### **C. EU-specific co-operation framework**

The Guidelines acknowledge that the exercise of consumer protection enforcement bodies' authority may be subject to "other arrangements within a regional economic integration organisation" (Section V. D).

One such arrangement was recently put in place at the EU/EEA level. Responding to the development of the Euro, e-commerce, and the last EU enlargement, the Regulation on Consumer Protection Co-operation ("CPC Regulation") was adopted in 2004. The CPC Regulation calls on EU/EEA Member states to institute a minimum level of common investigation, enforcement, and co-operation powers among consumer protection enforcement bodies.<sup>45</sup>

In its Proposal for a Regulation on Co-operation between national authorities responsible for the Enforcement of Consumer Protection Laws (EC Commission, 2003, p.4), the European Commission noted that the need for effective cross-border enforcement for consumer protection had been already publicised internationally with the adoption of the Guidelines. As such, the adoption of the Regulation echoes and reinforces their principles for international consumer enforcement co-operation.

Under Article 6.1 of the CPC Regulation, a consumer protection agency shall, upon request from an applicant authority, "supply without delay any relevant information required to establish whether an intra-Community infringement has occurred or to establish there is a reasonable suspicion it may occur." It may also do so without request when it becomes aware of an infringement or where it suspects that such an infringement may occur.

Moreover, under Article 8.1 of the Regulation, authorities in a Member State have the obligation, on request from their counterparts in other Member States, to take all necessary enforcement measures to bring about the cessation of an infringement without delay.

The new framework thereby eliminates a situation where a public authority is prevented, under its national confidentiality rules, from communicating the necessary information requesting assistance from an authority in the member state of the trader. In addition, it puts an end to the gap resulting from either the absence of any public enforcement authority in the Member State where the consumer seeks assistance, or from the fact that mutual assistance in cross-border cases may not be compulsory between Member States enforcement agencies. The Commission is creating a database through which consumer protection enforcement bodies will be able both to communicate with each other and to notify the existence of any unlawful intra-Community practices.

The scope of the Regulation is limited to intra-Community infringements of Community legislation. However, recognising that enforcement challenges go beyond the frontiers of the EU, the Regulation recommends the negotiation of international agreements between the Community and third countries.

In his speech<sup>46</sup> at the opening session of the 7<sup>th</sup> Annual Meeting of the Transatlantic Consumer Dialogue held in Washington in 2005, EU Health and Consumer Protection Commissioner Kyprianou stated that “the enforcement Regulation contains a provision, ..., which specifically provides for international agreements to be drawn-up between the EU and third countries. I am pleased to say there is a clear willingness from the Federal Trade Commission to enter into exploratory discussions with us with a view to negotiating such an agreement. I would add that the EU-US agreement on customs cooperation and mutual assistance in customs matters provide good precedents for this type of agreement.”

Under the Regulation, information received from a third country authority shall be communicated by a Member State to others if it is allowed to do so under bilateral assistance agreements with the third country and in accordance with Community rules on the processing of personal data. Likewise, an EU Member State may communicate information to a third country authority under a bilateral assistance agreement provided that the competent authority that originally communicated the information consents to it.

This scheme will be completed by the implementation of Directive 2005/29/EC on Unfair Commercial Practices<sup>47</sup> which outlines certain practices which will be prohibited throughout the EU, such as pressure selling, misleading marketing and unfair advertising, and which will notably enable EU consumer protection enforcement bodies to target cross-border controls more adequately.

#### **D. Drawing lessons from enforcement co-operation in other policy regimes**

The elaboration of an effective international consumer co-operation regime may benefit from analysing the lessons from law enforcement co-operation activities implemented in other areas. This section examines examples of efficient enforcement co-operation schemes that have been put in place in the field of competition law, and investment securities to face global cross-border challenges.

##### ***Competition Law Enforcement Co-operation***

###### *OECD enforcement Efforts*

OECD Member countries have elaborated detailed rules on both the co-ordination of investigations, and the sharing of information.

The OECD issued its initial Recommendation on co-operation among competition authorities in 1967, and its work in this area has culminated in the 1995 OECD Council Recommendation Concerning Co-operation between Member countries on Anticompetitive Practices affecting International Trade (OECD, 1995). The 1995 Recommendation provides for, *inter alia*, the voluntary notification of, exchange of information between, and cooperation among competition agencies in addressing anticompetitive practices that may affect the important interests of another member country.

In 1998, the OECD Council, upon the Competition Committee's proposal, adopted a Recommendation Concerning Effective Action Against Hard Core Cartels, urging effective action against hard core cartels whose activities fix prices, rig bids, limit output or share or divide markets without producing any countervailing consumer benefit (OECD, 1998).

The Recommendation recognises that Member countries' mutual interest in preventing hard core cartels warrants an effective co-operation scheme that might include: the sharing of documents and information in their possession with foreign competition authorities; the gathering of documents and information on behalf of foreign competition authorities on a voluntary basis and when necessary, through the use of a compulsory process.

The Recommendation also encourages Member countries to review all obstacles to their effective co-operation in the enforcement of laws against hard core cartels and to consider actions, including national legislation and/or bilateral or multilateral agreements or other instruments, by which they could eliminate or reduce those obstacles in a manner consistent with their important interests.

In the light of this Recommendation, the Competition Committee worked on the elaboration of rules to be followed by Member countries when entering into international competition agreements, or when adopting domestic legislation authorising the exchange of confidential information in investigations of hard core cartels. In late 2005, the Competition Committee adopted Best Practices to enhance the exchange of information between competition law enforcement bodies (OECD, 2005c). The Recommendation aims to simplify and expedite the process for exchanging information in order to avoid imposing unnecessary burdens on competition authorities and to allow an effective and timely information exchange.

#### *The European Competition Network ("ECN")*

Valuable lessons can be learned from the European Competition Network ("ECN") to further enhance the competition enforcement framework at the international level.

In the perspective of the 1 May 2004 enlargement, the EU adopted the so-called Modernisation Regulation<sup>48</sup> that radically reformed the framework for enforcement of EC competition rules. Under the new decentralised enforcement regime, companies have to assess themselves whether their proposed restrictive agreement meets one of the exemption criteria set out in the Regulation. National Competition Authorities ("NCAs") and national courts are empowered to apply these criteria in conformity with their national rules on enforcement and sanctions. The European Commission has been attributed new powers to recover fines from companies involved in hard core cartels.

The European Commission and the NCAs co-operate through the ECN, informing each other on new cartel cases and decisions, coordinating investigations, helping each other with investigations, and exchanging evidence. Within the ECN, groups of sectoral experts in certain sectors (for example, insurance and railways) discuss competition problems and promote a common approach to combat these issues. In this way, the ECN allows EU competition authorities to pool their experience and identify best practices.

With a view to avoiding multiple investigations on the same case and related notifications, the ECN allows the best placed authority to take the lead in investigating violations affecting up to three Member

States. If more than three Member States are affected, *e.g.*, by unlawful cartels, the European Commission can automatically deal with the case. The European Commission may use its “dawn raid” powers to undertake surprise co-ordinated searches of a firm’s premises, in the EU, for example, if the firm is suspected of being involved in a multi-jurisdictional hard core cartel, and, as pursuant to the “dawn raid,” the Commission may seize files and any relevant documents located therein. Usually, the national police and national competition law enforcement officials of each Member State where the company is located assist the Commission in this task.

### ***Investment Securities Enforcement Co-operation Efforts***

The International Organisation of Securities Commissions (“IOSCO”) has been successful in recent years in establishing a framework for international co-operation and enforcement in the field of securities.

A Multilateral Memorandum of Understanding (2002) and the Principles and Objectives of Securities Regulation (2003) have set the path for international securities standards to help protect investors from fraud and ensure fair business on transparent and efficient markets. Implementation of these standards relies upon a consistent co-operation framework, empowering securities regulators with enforcement authority and enabling them to share public and confidential information with their domestic and foreign counterparts.

The scheme was further strengthened in 2005 by both the establishment of arrangements for regulators to share information and maximise co-ordination in the implementation of international financial reporting standards, and the identification of jurisdictions unable or unwilling to co-operate (so-called “high risks jurisdictions”).

### ***Concluding Remarks***

The examination of both competition and investment securities law enforcement co-operation schemes demonstrate that these models may serve as examples to build a more integrated consumer enforcement co-operation framework. In both areas, information sharing has been significantly facilitated by the adoption of simplified procedures through best practices and standards, to enable enforcement agencies to quickly and appropriately deal with a case. In the field of competition, mutual assistance with investigation has been widely developed notably within the framework of the ECN where EU Member States help each other to handle cases, and can also rely on the European Commission’s investigative powers.

In an effort to elaborate consistent approaches on enforcement co-operation, the CCP and the OECD Competition Committee have already held a joint-meeting to address cross-border enforcement co-operation, sharing ideas on how cross-border enforcement could be improved. This work shows the commonalities that exist between cross-border enforcement co-operation in different policy domains and the benefits of taking a horizontal approach to addressing challenges.

## SECTION IV. CROSS-BORDER FRAUD CASES AT A GLANCE

A number of OECD Member countries reported detailed information on the volume of their actual cross-border fraud case experiences in their answers to the CCP questionnaire. Others did not have statistics available or had not yet come across cross-border cases.

On the basis of all responses received, it may be concluded that consumer protection enforcement bodies have increasingly used their enforcement powers to stop cross-border fraudulent activities. As shown below, consumer protection enforcement bodies' enforcement powers have been used in cases where wrongdoers were located on their territory and affected foreign consumers, and in cases where wrongdoers were located abroad and affected domestic consumers.

At EU level, the number of cross-border fraud cases reported has been recently growing, and should be further increased by the entry into force of the Regulation on Consumer Protection Co-operation.

### A. Multilateral Fraud Cases

In June 2003, the ASIC took steps to safeguard New Zealand and British consumer interests through an injunctive action against a company operating cold callings from Australia notwithstanding the fact that no domestic consumers were targeted by the deceptive practices in question.

The Royal Canadian Mounted Police has taken criminal proceedings against Canadian participants to a worldwide organised pyramid selling scheme affecting consumers from a number of countries including the United Kingdom, Canada, and Norway. The information provided by the UK OFT to Swiss authorities enabled the closing of PO boxes of more than 40 companies in scams targeting British consumers.

In June 2005 in Canada, individuals involved in a deceptive telemarketing operation targeting consumers in Australia were sentenced in to a two-years-less-a-day conditional sentence, followed by a two-year probation and a USD 20 000 fine for their role in a prize-pitch scam. These telemarketers were explicitly telling consumers they had won valuable prizes such as a Toyota Corolla or up to USD 20 000 or other prizes while in fact customers were required to make a purchase of a promotional item in order to receive these prizes. Competition Bureau Canada returned over USD 18 000 to 14 victims in Australia.<sup>49</sup>

In February 2003, Competition Bureau Canada, the US FTC and the Mexican Health authorities undertook unprecedented co-ordinated, albeit independent, enforcement actions against two individuals who deceptively claimed that their treatment against cancer (Cell Specific Cancer Therapy, "CSCT") could selectively kill cancer cells without harming healthy ones. In August 2005, the two individuals who operated their out-patient cancer clinics in the Dominican Republic, Mexico, Switzerland, and Spain, were finally subject to criminal charges. While Competition Bureau Canada executed search warrants in Ontario and British Columbia (Competition Bureau Canada, 2005c), the US FTC filed a Temporary Restraining Order with the United States District Court for the Northern District of Illinois suspending CSCT's domain name, and the Federal Commission of Health in Mexico closed one remaining clinic in their territory. The investigation was conducted with the assistance of the Toronto Strategic Partnership, a law enforcement partnership established to combat cross-border telemarketing fraud, and with that of law enforcement authorities in Switzerland, Belgium, and Spain.

The US FTC has filed approximately 90 cross-border fraud cases in the past five years.<sup>50</sup> In March 2005, following significant assistance received from some Canadian enforcement authorities, the US FTC charged several Canadian-based companies and their principals with targeting United States consumers in a scheme to trick them into paying for unordered business directories and listings. In this respect, the federal district court in Washington granted an order temporarily halting the defendants' business practices and freezing their assets. The Victoria Police Department in Canada executed a criminal search warrant against one of the companies involved in the unlawful activities and arrested its president on fraud charges. In this case, Competition Bureau Canada also executed a criminal search warrant against another company.

On the basis of assistance received from the Alberta Partnership against cross-border fraud, in *US FTC v. Centurion Financial Benefits*, the US FTC took an action against Canadian based defendants misleading US consumers with telemarketing offers of pre-approved MasterCard and Visa credit cards for an advance fee of USD 249 (FTC, 2005e); (Competition Bureau Canada, 2005b).

In December 2005, the US FTC, together with other US authorities (FTC, 2005d) and Competition Bureau Canada (Competition Bureau Canada, 2005a), announced a law enforcement initiative targeting spammers. The US FTC targeted three operations, Competition Bureau Canada settled two cases, and US Attorneys General filed complaints seeking to block the illegal spamming of three more operations. US federal criminal authorities have executed search warrants as part of this initiative. The US FTC announced in April 2006 that it reached a settlement with two of the spammers that it targeted.

In April 2004, the US FTC filed legal charges against Global Web Promotions Pty Ltd. (FTC, 2004), an Australian company that the US FTC alleged is responsible for massive amounts of spam in the United States. In September 2005, a US court ordered Australian defendants to pay USD 2.2 million – the total of their ill-gotten gains (FTC, 2005c). According to the initial information the US FTC collected in its investigation, the spammer appeared to be in New Zealand. However, when the New Zealand authorities tried to serve process, they learned that the spammers were in Australia. The ACCC was able to track down the spammers and serve them, thus making the judgment possible.

In July 2005, the Swiss *Secrétariat d'Etat à l'Economie* ("SECO") filed criminal complaints with a court in Fribourg against QCNS International SA, a company based in Switzerland which had designed and set up two websites<sup>51</sup> enabling people to make hotel reservations around the world. Following numerous complaints, including those transmitted by the DGCCRF in Lyon, France, it appeared that the hotel prices quoted on QCNS websites were higher than those advertised by the hotels themselves and that the company debited its customers' accounts without being in a position to fulfil its engagements under the websites. Moreover, the company refused to refund its victims.

Further to numerous complaints received from foreign consumers, SECO also filed a complaint against several Swiss-based companies also representing Spanish, Austrian, and German companies, which were involved in unfair business practices in relation to business directory entries. While the companies' forms proposing such entries usually gave interested consumers the impression that the entry was free, by completing and filling them out, consumers were in fact concluding a contract running for several years.

## **B. EU Cross-Border Cases**

The first European cross-border cases have been dealt with by the UK OFT in the United Kingdom, as pointed out by the European Commission in its report on *the First Annual Progress on EU contract law & the Acquis Review* (European Commission, 2005).<sup>52</sup>

In the landmark *Duchesne SA* case, the UK OFT requested a Belgian commercial tribunal to issue an injunction against a Belgian company (Duchesne SA) to prevent it from sending unsolicited mailings

offering household goods to British residents. On 22 December 2005, the Brussels Court of Appeals ruled in favour of the UK OFT, confirming that the mailings sent to British consumers by Duchesne SA were misleading.

In the same case in France, following investigations undertaken by the DRCCRF (North section), the Court of First Instance of Lille imposed in 2005 both a EUR 30 000 fine on Duchesne SA and an additional EUR 30 000 fine together with a year conditional sentence on its manager. In three other cases the UK OFT received undertakings from foreign companies to stop misleading British consumers.<sup>53</sup>

As concluded by the European Commission in its above mentioned report, the entry into force of the Regulation on Consumer Protection should give rise to an increase in EU cross-border injunction cases as each enforcement body is able to request its counterparts to adopt enforcement measures in specific cases.

## CONCLUSION

The present Implementation Report shows that over the past three years, OECD Member countries have undertaken significant and ongoing efforts to combat evolving forms of cross-border fraudulent and deceptive commercial practices. The Guidelines have proved influential at domestic, international, and regional levels through the promotion, by the OECD and its Member countries, of ever more sophisticated means to build up consumer confidence in the global marketplace.

However, Member countries indicated that there are still significant challenges which may undermine such confidence. Notification procedures are only informal, and information sharing is limited due to restrictions in the legislation of some countries. In addition, in some countries, insufficient financial resources, language problems and the remaining need for officials to be trained in the field of cross-border enforcement co-operation limit their practical cross-border experiences. Statistics on the volume of consumer complaints and monetary injuries could be expanded to help measure the impact of cross-border fraud.

These remaining challenges should be addressed in the near future to reinforce the effectiveness of consumer law enforcement co-operation. To achieve this objective, valuable lessons may be learned from integrated enforcement co-operation frameworks set up in other areas such as competition, and investments and securities law. In these areas, enforcement authorities have been allocated consistent and wide powers to share information and to co-ordinate their actions in a centralised manner. Simplified procedures have been adopted to allow effective, quick and coherent actions. In the field of competition law in particular, strong enforcement powers have allowed enforcement authorities to sanction multi-jurisdictional hard core cartels via an effective notification scheme.

In the light of the above, OECD Member countries should continue exploring mechanisms to improve their enforcement co-operation framework.

**ANNEX I**  
**QUESTIONNAIRE ON IMPLEMENTATION OF THE**  
**OECD CROSS-BORDER FRAUD GUIDELINES (PART 1)**  
**DEVELOPING A FRAMEWORK FOR CO-OPERATION**

**Domestic frameworks for combating FDCPs**

1. (a) What implementation actions have you taken to strengthen your domestic framework to limit FDCPs, including:
  - measures to deter or stop FDCPs
  - mechanisms to investigate, obtain and preserve evidence
  - mechanisms for domestic co-operation and information sharing
  - initiatives to educate consumers about FDCPs
- (b) To what extent were existing systems considered adequate? What implementation obstacles have you encountered?

**Principles for international co-operation**

2. Please identify any networks, bilateral or multilateral arrangements that you use for international co-operation against FDCPs. Please provide copies or Web site links to relevant arrangements.

**Notification, information sharing, assistance with investigations, and confidentiality**

3. (a) What implementation actions have you taken to develop methods to notify foreign CPEAs about investigations?  
  
(b) To what extent were existing systems considered adequate? What implementation obstacles have you encountered?
4. (a) What implementation actions have you taken to improve your ability to share information with foreign CPEAs?  
  
(b) To what extent were existing systems considered adequate? What implementation obstacles have you encountered?
5. (a) What implementation actions have you taken to improve your ability to obtain information or provide other investigative assistance to foreign CPEAs?  
  
(b) To what extent were existing systems considered adequate? What implementation obstacles have you encountered?

### **Authority of CPEAs**

6. (a) What implementation actions have been taken to enable your CPEAs to protect foreign consumers from FDCPs by domestic businesses?  
  
(b) To what extent were existing systems considered adequate? What implementation obstacles have you encountered?
7. (a) What implementation actions have been taken to enable your CPEAs to protect your own consumers from FDCPs by foreign businesses?  
  
(b) To what extent were existing systems considered adequate? What implementation obstacles have you encountered?

### **Private-sector co-operation**

8. (a) What implementation actions have you taken to co-operate with the private sector in:
  - educating consumers about FDCPs
  - having the private sector forward relevant complaints; and
  - obtaining co-operation from third parties (e.g. financial institutions, domain name registrars)  
(b) To what extent were existing systems considered adequate? What implementation obstacles have you encountered?

**ANNEX II**  
**QUESTIONNAIRE ON THE IMPLEMENTATION OF THE OECD CROSS-BORDER FRAUD**  
**GUIDELINES (PART 2)**

**Putting the Section III principles into practice**

1. On what occasions, if any, have you co-ordinated your investigation with another consumer protection enforcement agency? [Section III(B)]
2. Have any disagreements as to co-operation arisen, and if so how were they resolved? [Section III(C)]

**Actual case experiences**

3. In how many cases have you notified your counterparts in other Member countries of investigations affecting those countries? [Section IV(A)] Please describe the types of cases and countries involved.
4. Have you had occasion to use evidence, judgements, and enforceable orders obtained by a CPEA in another country to assist you in halting the same conduct in your country? [Section II(G)]
5. Have any difficulties arisen with respect to the need for confidentiality of information exchanged under the Guidelines [Section IV(F)]
6. Have the scope and definitions for the Guidelines proven appropriate for application to the actual cross-border challenges? [Section I(A)-(D)]

**Trend information**

7. Please share any quantitative information you have on the volume and types of consumer complaints relating to FDCPs. Likewise, please share any available data that can help put the complaint information in context (e.g. the overall number of transactions for the sector in question).
8. Please share any quantitative information you have on the monetary value of consumer injuries caused by FDCPs. Likewise, please share any available any data that can help put the consumer injury data in context (e.g. the overall value of transactions for the sector in question).

**Updates**

9. Please provide any updates to your answers to Part I of the Guidelines Implementation Questionnaire on Efforts to Develop a Framework for Co-operation distributed in May 2005 as DSTI/CP(2005)3/REV1.
10. Please provide any updates to your answers to the Section II of the Questionnaire on Dispute Resolution and Redress distributed in July 2004 as DSTI/CP(2004)4.
11. Please provide any updates to your answers to the 2001 Survey of the Enforcement Authority of member country consumer protection agencies.

**ANNEX III**  
**NEW AND PROPOSED LEGISLATION IN MEMBER COUNTRIES AND THE EUROPEAN COMMISSION TO DEVELOP A FRAMEWORK FOR ENFORCEMENT CO-OPERATION IN CROSS-BORDER FRAUD CASES<sup>1</sup>**

**New Legislation**

Country	Legislation
<b>France</b>	<b>September 2005</b> : Order « portant adaptation des pouvoirs d'enquête et renforcement de la coopération administrative en matière de protection des consommateurs ». at <a href="http://www.admi.net/jo/20050902/ECOX0500184R.html">www.admi.net/jo/20050902/ECOX0500184R.html</a> .
<b>Czech Republic</b>	<b>2004</b> : Act on Services of Information Society, at <a href="http://www.micr.cz/files/1599/LawIS.pdf">www.micr.cz/files/1599/LawIS.pdf</a> .
<b>EU</b>	<b>2004</b> : Regulation on Consumer Protection Co-operation, at <a href="http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2004/l_364/l_36420041209en00010011.pdf">http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2004/l_364/l_36420041209en00010011.pdf</a> . Chapter I of the Regulation requesting EU Member states to create a network of national authorities entered into force on 29 December 2005. Rules on mutual assistance pursuant to Chapter II, and III shall enter into force on 29 December 2006. <b>2005</b> : Directive 2005/29/EC on <i>Unfair Commercial Practices</i> , at <a href="http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2005/l_149/l_14920050611en00220039.pdf">http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2005/l_149/l_14920050611en00220039.pdf</a> . The Directive should be transposed in EU Member States' laws at the latest on 11 December 2007.
<b>Germany</b>	<b>July 2004</b> : Revision of the "Gesetz gegen den unlauteren Wettbewerb; UWG". at <a href="http://bundesrecht.juris.de/gwb/BJNR252110998.html">http://bundesrecht.juris.de/gwb/BJNR252110998.html</a> .
<b>Japan</b>	<b>May 2005</b> : Amendments to the <i>Anti-Spam</i> legislation. <b>November 2004</b> : Amendments to the Specified Commercial Transactions Law. at <a href="http://www.icpen.org/Intranet/icpen/library/NR/ENG/Japan_E_.pdf">www.icpen.org/Intranet/icpen/library/NR/ENG/Japan_E_.pdf</a> .
<b>Mexico</b>	<b>May 2004</b> : Reform of the " <i>Ley Federal de Proteccion al Consumidor</i> ". at <a href="http://www.icpen.org/Intranet/icpen/library/NR/ENG/Mexico_E_.pdf">www.icpen.org/Intranet/icpen/library/NR/ENG/Mexico_E_.pdf</a> .
<b>Poland</b>	<b>July 2004</b> : Adoption of the <i>Telecommunications Law</i> . In <i>Official Journal of the European Union</i> No 171, Item 1800 of 3 August 2004.
<b>United States</b>	<b>January 2004</b> : Entry into force of the <i>CAN-SPAM Act</i> . At <a href="http://www.spamlaws.com/federal/108s877.shtml">www.spamlaws.com/federal/108s877.shtml</a> .

1. Since the release of the Guidelines in June 2003.

## Legislation in Preparation

Country	Legislation
<b>Australia</b>	<ul style="list-style-type: none"> <li>- Ongoing revision of the <i>Trade Practices Act 1974</i>.</li> <li>- The Australian government supports the Australian Productivity Commission's proposal to amend the <i>Trade Practices Act 1974</i> and the <i>New Zealand Commerce Act 1986</i> to allow the ACCC and the New Zealand Commerce Commission to exchange of information obtained through their information gathering powers.</li> </ul>
<b>Korea</b>	<ul style="list-style-type: none"> <li>- Ongoing revision of the <i>Consumer Protection Act</i>.</li> <li>- MOFE Proposal for a Guideline for Handling Cross-Border Consumer Disputes. This Guideline will be used among the government, public bodies, consumer organisations and civic groups to handle cross-border consumer dispute cases. In <a href="http://www.icpen.org/Intranet/icpen/library/NR/ENG/Korea_E_.pdf">www.icpen.org/Intranet/icpen/library/NR/ENG/Korea_E_.pdf</a>.</li> </ul>
<b>Netherlands</b>	Ongoing examination by Parliament of the proposed consumer protection law " <i>Wet handhaving consumentenbescherming, Whc</i> ".
<b>New Zealand</b>	<ul style="list-style-type: none"> <li>- Ongoing monitoring of generic consumer protection legislation.</li> <li>- Proposed legislation to cover information sharing and enforcement co-operation: <ul style="list-style-type: none"> <li>- Commerce Commission Information Disclosure and Fees Bill is being drafted.</li> </ul> </li> </ul>
<b>Norway</b>	Ongoing revision of the <i>Marketing Control Act</i> .
<b>Switzerland</b>	<p>A revision of the federal legislation on unfair competition has been undertaken. This revision aims to create a legal basis in relation to the administrative and judicial assistance between Swiss and foreign authorities.</p> <p>In  <a href="http://www.seco.admin.ch/imperia/md/content/spezialthemen/wettbewerb/vernehmlassungsentwurf Franz.pdf">http://www.seco.admin.ch/imperia/md/content/spezialthemen/wettbewerb/vernehmlassungsentwurf Franz.pdf</a></p>
<b>United States</b>	Proposal for a <i>US SAFE WEB Act</i> . The US FTC released a report to Congress " <i>US SAFE WEB Act: Protecting Consumers from Spam, Spyware, and Fraud</i> ," recommending legislation that would enhance the agency's ability to combat cross-border fraud. In <a href="http://www.ftc.gov/reports/ussafeweb/USSAFEWEB.pdf">www.ftc.gov/reports/ussafeweb/USSAFEWEB.pdf</a> .

**ANNEX IV**  
**INTERNATIONAL AGREEMENTS CONCLUDED BY OECD MEMBER COUNTRIES IN THE**  
**FIELD OF CROSS-BORDER FRAUD<sup>2</sup>**

**2005**

- Seoul-Melbourne Multilateral Memorandum of Understanding on Co-operation in countering spam, at [www.acma.gov.au/acmainterwr/consumer\\_info/spam/spam%20-%20multilateral%20mou%20seoul.melbourne%20-%20final%20web%20version.rtf](http://www.acma.gov.au/acmainterwr/consumer_info/spam/spam%20-%20multilateral%20mou%20seoul.melbourne%20-%20final%20web%20version.rtf).
- Atlantic Partnership, at [www.competitionbureau.gc.ca/internet/index.cfm?itemID=194&lg=e](http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=194&lg=e).
- Memorandum of Understanding on Mutual Enforcement Assistance in Commercial Email Matters between the US FTC and the Agencia Espanola de Proteccion de Datos, at [www.ftc.gov/os/2005/02/050224memounderstanding.pdf](http://www.ftc.gov/os/2005/02/050224memounderstanding.pdf).
- Memorandum of Understanding on Mutual Assistance in Consumer Protection Matters between the US FTC and PROFECO, at [www.ftc.gov/os/2005/01/050127memounderstanding.pdf](http://www.ftc.gov/os/2005/01/050127memounderstanding.pdf).

**2004**

- Australian – United States Free Trade Agreement, at [www.dfat.gov.au/trade/negotiations/us.html](http://www.dfat.gov.au/trade/negotiations/us.html).
- Information Sharing Protocol between Competition Bureau Canada and the UK OFT, at [www.ofc.gov.uk/News/Press+releases/2004/77-04.htm](http://www.ofc.gov.uk/News/Press+releases/2004/77-04.htm) and at [www.competitionbureau.gc.ca/internet/index.cfm?itemID=328&lg=e](http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=328&lg=e).
- Information Sharing Protocol between Competition Bureau Canada and the ACCC, at [www.competitionbureau.gc.ca/internet/index.cfm?itemID=328&lg=e](http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=328&lg=e).
- The London Action Plan on International Spam Enforcement Co-operation, at [www.ftc.gov/opa/2004/10/spamconference.htm](http://www.ftc.gov/opa/2004/10/spamconference.htm).
- Co-operation Agreement between Competition Bureau Canada and the UK OFT regarding the Application of their Competition and Consumer Laws, at [www.competitionbureau.gc.ca/internet/index.cfm?itemID=1596&lg=e](http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=1596&lg=e).
- Memorandum of Understanding on Mutual Matters Enforcement Assistance in Commercial Email between agencies in the United States, the United Kingdom and Australia, at [www.ftc.gov/os/2004/07/040630spammoutext.pdf](http://www.ftc.gov/os/2004/07/040630spammoutext.pdf).
- Vancouver Strategic Alliance, to Combat Deceptive Marketing Practices, at [www.competitionbureau.gc.ca/internet/index.cfm?itemID=331&lg=e](http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=331&lg=e).

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2. Since the release of the Guidelines in June 2003.

## 2003

- Memorandum of Understanding On Mutual Enforcement Assistance In Consumer Protection Matters between agencies in the United States and Ireland, at [www.ftc.gov/os/2003/10/irelandmemounderstand%20.pdf](http://www.ftc.gov/os/2003/10/irelandmemounderstand%20.pdf).
- Australian – New Zealand – United Kingdom Co-operation Arrangement regarding the application of their competition and consumer laws, at [www.accc.gov.au/content/item.phtml?itemId=388607&nodeId=file41106d3b40fd0&fn=Australia-New%20Zealand-UK%20cooperation%20and%20coordination%20agreement.pdf](http://www.accc.gov.au/content/item.phtml?itemId=388607&nodeId=file41106d3b40fd0&fn=Australia-New%20Zealand-UK%20cooperation%20and%20coordination%20agreement.pdf).
- Alberta Law Enforcement Partnership, at [www.competitionbureau.gc.ca/internet/index.cfm?itemID=316&lg=e](http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=316&lg=e).

## NOTES

- 1 The new Guidelines were developed very quickly – in less than a year – with only three CCP meetings.
- 2 Part 1 of the CCP implementation questionnaire received 19 answers from the following OECD member countries: Australia, Belgium, Canada, the Czech Republic, Finland, France, Germany, Greece, Hungary, Japan, Korea, Mexico, Norway, Poland, Slovak Republic, Sweden, Switzerland, the United Kingdom, and the United States.
- 3 Part 2 of the CCP implementation questionnaire received answers from the following 19 OECD member countries: Australia, Belgium, Canada, the Czech Republic, Finland, France, Germany, Greece, Hungary, Japan, Korea, Mexico, Norway, Poland, Slovak Republic, Sweden, Switzerland, the United Kingdom, and the United States.
- 4 Article 14.6 on Cross-Border Consumer Protection of the AUSFTA states that “The Parties recognise the existing mechanisms for co-operation in relation to consumer protection, including (b) the OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders of 2003.” In [www.dfat.gov.au/trade/negotiations/us8fta/final-text/chapter614.html](http://www.dfat.gov.au/trade/negotiations/us8fta/final-text/chapter614.html).
- 5 The OECD Council approved the Recommendation on 13 April 2006.
- 6 Regulation (EC) N°2006/2004 of the European Parliament and Council of 27 October 2004 on Co-operation between National Authorities Responsible for the Enforcement of Consumer Protection Laws (“The Regulation on Consumer Protection Co-operation”), text with EEA relevance, *Official Journal of the European Union L 364/1* of 9 December 2004, pp. 1-11, in [http://europa.eu.int/eur-ex/lex/LexUriServ/site/en/oj/2004/l\\_364/l\\_36420041209en00010011.pdf](http://europa.eu.int/eur-ex/lex/LexUriServ/site/en/oj/2004/l_364/l_36420041209en00010011.pdf).
- 7 On 29 December 2005, Chapter I of the Regulation requesting EU Member States to create a network of national enforcement authorities and Chapter IV on Community activities, including provisions on international agreements became applicable. On 29 December 2006, the principle on mutual assistance (covering the exchange of information, the best placed authority to lead investigation, and information exchange with third countries) shall also enter into force.
- 8 The publicly available OECD list of consumer protection enforcement agencies’ contact points may be consulted at [www.oecd.org/document/16/0,2340,en\\_2649\\_34267\\_31675216\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/16/0,2340,en_2649_34267_31675216_1_1_1_1,00.html).
- 9 The background material prepared for the workshop and a summary of the workshop are included in the OECD report on *Consumer Dispute Resolution and Redress in the Global Marketplace*, available at [www.oecd.org/sti/consumer-policy](http://www.oecd.org/sti/consumer-policy).
- 10 Article 14.7 of the Australia-United States Free Trade Agreement (“AUSFTA”), [www.dfat.gov.au/trade/negotiations/us.html](http://www.dfat.gov.au/trade/negotiations/us.html).
- 11 More details may be found at [www.verbraucherrecht.at](http://www.verbraucherrecht.at).
- 12 These authorities are as follows: the Financial Services Authority, the Information Commissioner, Ofcom (the telecommunications regulator), Ofgem (the gas and electricity regulator), the Civil Aviation Authority and the Medicines and Healthcare Products Regulatory Agency.
- 13 Details on the FPF may be found at [www.competitionbureau.gc.ca/internet/index.cfm?itemID=122&lg=e](http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=122&lg=e).
- 14 See [www.ofc.gov.uk/Consumer/Scams/default.htm](http://www.ofc.gov.uk/Consumer/Scams/default.htm) and [www.ofc.gov.uk/NR/rdonlyres/A98E2FB1-2DC2-476A-A71A-A07225BA2F3F/0/ofc764.pdf](http://www.ofc.gov.uk/NR/rdonlyres/A98E2FB1-2DC2-476A-A71A-A07225BA2F3F/0/ofc764.pdf). (“How to recognise a scam – Is it too good to be true?”).

15 The “OnGuard Online” campaign’s comprehensive website may be found in [www.OnGuardOnline.gov](http://www.OnGuardOnline.gov), and is available in both English and Spanish.

16 More information on the National Consumer Protection Week may be found at [www.consumer.gov/ncpw](http://www.consumer.gov/ncpw).

17 The “*Antiphishing Japan*” campaign may be accessed via [www.antiphishing.jp](http://www.antiphishing.jp).

18 The *Consumer Sentinel* database may be found in [www.consumer.gov/sentinel/index.html](http://www.consumer.gov/sentinel/index.html).

19 [www.econsumer.gov/english/index.html](http://www.econsumer.gov/english/index.html).

20 The Biz Opp Flop teaser site can be found at [www.wemarket4u.net/sundaestation](http://www.wemarket4u.net/sundaestation).

21 Details on the UK DTI Consumer Strategy may be found at [www.dti.gov.uk/cp/topics1/consumers\\_strategy.htm](http://www.dti.gov.uk/cp/topics1/consumers_strategy.htm).

22 The Norwegian Post and Telecommunications Authority advice may be found at [www.nettvett.no](http://www.nettvett.no).

23 In [www.visa.ca/en/personal/shop\\_education.cfm](http://www.visa.ca/en/personal/shop_education.cfm) and [www.visa.ca/en/personal/shop\\_protect\\_email.cfm](http://www.visa.ca/en/personal/shop_protect_email.cfm) and see Competition Bureau Canada’s press release at [www.competitionbureau.gc.ca/internet/index.cfm?itemID=203&lg=e](http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=203&lg=e) and at [www.competitionbureau.gc.ca/internet/index.cfm?itemID=196&lg=e](http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=196&lg=e).

24 Details on “CyberConso” may be found at [www.foruminternet.org/groupes\\_travail/lire.phtml?id=655](http://www.foruminternet.org/groupes_travail/lire.phtml?id=655).

25 The legislative Recommendation to the Congress *US SAFE WEB ACT on Protecting Consumers from Spam, Spyware, and Fraud* is available at [www.ftc.gov/reports/ussafeweb/USSAFEWEB.pdf](http://www.ftc.gov/reports/ussafeweb/USSAFEWEB.pdf).

26 See Press Release of New York State Attorney General Eliot Spitzer, in [www.oag.state.ny.us/press/2003/dec/dec18b\\_03.html](http://www.oag.state.ny.us/press/2003/dec/dec18b_03.html).

27 All information on ICPEN may be found at [www.icpen.org](http://www.icpen.org).

28 The 34 ICPEN members are as follows: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Cyprus, Denmark, Estonia, EU, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Korea (Republic of), Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, OECD, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, the United Kingdom, the United States.

29 See [www.econsumer.gov](http://www.econsumer.gov) where ICPEN website is presented as a multilingual public website, and a government, password-protected website. The public site provides general information about consumer protection in all ICPEN countries, contact information for consumer protection authorities in those countries, and an online complaint form.

30 See paragraph 81 of the present Implementation Report.

31 See more information on the ECC-net and a full list of EU member States’ ECCs in [http://europa.eu.int/comm/consumers/redress/ecc\\_network/index\\_en.htm](http://europa.eu.int/comm/consumers/redress/ecc_network/index_en.htm).

32 The 23 EU Member States of the ECC-net are as follows: Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, France, Finland, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Spain, Slovakia, Sweden, and the United Kingdom.

33 It should be noted that the ECCs are exclusively an action to deal with individual consumer complaints only.

34 This extra-judicial redress may be undertaken in the form of an amicable settlement or an alternative dispute resolution.

35 The Slovak and Czech Republic reported that they may rely on this network to fight against cross-border fraud.

36 See Annex IV to the present Implementation Report which draws a list of international agreements regarding cross-  
border enforcement co-operation concluded by OECD Member countries since June 2003.

37 The text of the Agreement may be found at [www.forbrug.dk/english/dco/icpen0/nordic-cooperation/8](http://www.forbrug.dk/english/dco/icpen0/nordic-cooperation/8).

38 The text of the US-Mexico Memorandum of Understanding may be found at  
[www.ftc.gov/opa/2005/01/memunderstanding.htm](http://www.ftc.gov/opa/2005/01/memunderstanding.htm).

39 The text of the Memorandum of Understanding may be found in  
[www.ic.gc.ca/cmb/welcomeic.nsf/261ce500dfcd7259852564820068dc6d/85256a5d006b9720852570050049b88b!OpenDocument](http://www.ic.gc.ca/cmb/welcomeic.nsf/261ce500dfcd7259852564820068dc6d/85256a5d006b9720852570050049b88b!OpenDocument) and see Competition Bureau Canada's press release at  
[www.competitionbureau.gc.ca/internet/index.cfm?itemID=194&lg=e](http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=194&lg=e).

40 See the US FTC Complaint for Injunctive and other equitable relief, *FTC v. Centurion Financial Benefits*, in  
[www.ftc.gov/os/caselist/centurion/050927compcenturion.pdf](http://www.ftc.gov/os/caselist/centurion/050927compcenturion.pdf) and see  
[www.competitionbureau.gc.ca/internet/index.cfm?itemID=1949&lg=e](http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=1949&lg=e).

41 The text of the US-UK-Australian Memorandum of Understanding may be found at  
[www.ftc.gov/opa/2004/07/mou.htm](http://www.ftc.gov/opa/2004/07/mou.htm).

42 The Canadian-Australian ISP contains the two following tools to assist each consumer protection enforcement bodies' staff: under an Information Sharing Matrix, enforcement body agents are given tips to identify the categories of information to be shared and to determine the process to be followed to share specific information. By filing the Information Access Request Form, CPEAs may identify the nature of the information being sought.

43 [www.competitionbureau.gc.ca/internet/index.cfm?itemID=328&lg=e](http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=328&lg=e).

44 More precisely, "Operation Roaming Charge" involved coordination among 37 United States Attorneys' offices nationwide, the Criminal, Civil and Tax Divisions of the Department of Justice, 25 of the FBI's 56 field divisions, 14 of the Postal Inspection Service's 18 field divisions, the Bureau of Immigration and Customs Enforcement, the Royal Canadian Mounted Police, the PhoneBusters National Call Center in Canada, the Federal Trade Commission, and the National Association of Attorneys General, together with the Competition Bureau of Industry Canada, Internal Revenue Service Criminal Investigation, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the North American Securities Administrators Association and numerous other federal, state, local and foreign law enforcement and regulatory agencies. Reference to the operation may be found in [www.usdoj.gov/opa/pr/2004/October/04\\_crm\\_680.htm](http://www.usdoj.gov/opa/pr/2004/October/04_crm_680.htm).

45 Norway is planning to take part in this co-operation.

46 Markos Kyprianou, European Commissioner for Health and Consumer Protection, Speech for the opening session of the 7<sup>th</sup> Annual Meeting of the Transatlantic Consumer Dialogue (TACD), Washington, 18 April 2005 SPEECH/05/234, in <http://europa.eu.int/rapid/pressReleasesAction.do?reference=SPEECH/05/234&format=HTML&aged=1&language=EN&guiLanguage=en>.

47 Directive 2005/29/EC of the European Parliament and of the Council on Unfair Commercial Practices, *Official Journal of the European Union L 149/22*, [http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2005/l\\_149/l\\_14920050611en00220039.pdf](http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2005/l_149/l_14920050611en00220039.pdf).

48 Council Regulation (EC) No 1/2003 of 16 December 2002 on the Implementation of the Rules on Competition Laid Down in Articles 81 and 82 of the Treaty, *Official Journal of the European Union L 1*, 4 January 2003, pp. 1-25). The Regulation came into force on 1 May 2004.

49 See details on sanctions imposed on fraudsters liable for deceptive telemarketing activities, in [www.competitionbureau.gc.ca/internet/index.cfm?itemID=1869&lg=e](http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=1869&lg=e).

50 All US FTC cross-border cases are detailed in [www.ftc.gov/bc/international/fedcases.htm](http://www.ftc.gov/bc/international/fedcases.htm).

51 [www.europhotelreservation.com](http://www.europhotelreservation.com) and [www.francehotelreservation.com](http://www.francehotelreservation.com).

52 Reference to EU cross-border cases may be found in the European Commission Report on the *First Annual Progress on EU contract law & the Acquis Review* of 23 September 2005, COM(2005) 456 FINAL, [http://europa.eu.int/comm/consumers/cons\\_int/safe\\_shop/fair\\_bus\\_pract/cont\\_law/progress05\\_fr.pdf](http://europa.eu.int/comm/consumers/cons_int/safe_shop/fair_bus_pract/cont_law/progress05_fr.pdf).

53 1. *D.C. Direct Communications Venk BV*: On 25 May 2005, the UK OFT secured binding undertakings preventing D.C. Direct Communications Venk BV, a Dutch marketing company, from publishing and distributing misleading mailings to companies selling goods and services such as healthcare products and participation in the German lotto UK residents.

2. *Fitanova BV*: On 27 June 2005, Fitanova BV, a Dutch company selling health-related products via, has been held responsible for the misleading advertisements sent by D.C. Direct Communications Venk BV as it initiated and agreed the marketing material. Fitanova BV gave binding undertakings to the UK OFT that it will no longer be involved in sending such misleading mailings to UK residents.

3. *William Pince Publishers*: On 20 July 2005, the UK OFT received undertakings from William Pince Publishers, and its director, a Dutch genealogist who claimed to produce individualised family trees for UK consumers with unusual family names, that it would stop misleading British consumers and will abide by distance selling laws.

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