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and Practices Applied  
to Electronic Commerce

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COMMITTEE ON CONSUMER POLICY**

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**INVENTORY OF CONSUMER PROTECTION LAWS, POLICIES AND PRACTICES APPLIED TO  
ELECTRONIC COMMERCE**

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**English - Or. English**

## **INVENTORY OF CONSUMER PROTECTION LAWS, POLICIES AND PRACTICES APPLIED TO ELECTRONIC COMMERCE**

### **Note by the Secretariat**

In keeping with the objectives of the *OECD Guidelines for Consumer Protection in the Context of Electronic Commerce* and to complement the Committee's ongoing work on electronic commerce issues, the Committee developed this comprehensive inventory of existing consumer protection laws, fair business, fair marketing and disclosure requirements.<sup>1</sup> The inventory will serve as a starting point to gather and exchange information as government and private sector consumer policies and initiatives are reviewed, formulated, and implemented online. While a number of private sector initiatives to protect online consumers both exist and are under development, the inventory will not attempt to cover these efforts. Neither will the inventory attempt to cover the issues of privacy protection<sup>2</sup>, content<sup>3</sup>, or authentication and certification<sup>4</sup> as the OECD has already produced recent inventories of these issues.

The Inventory will be available on the OECD Web site and best efforts will be made to update it, as necessary, to incorporate revisions, amendments and additions to reflect the changes in OECD Member countries. The Inventory is intended to present an overview of existing public sector consumer laws, policies and practices by providing brief descriptions and, wherever possible, hypertext links to national government Web sites and other pertinent information. These links will allow readers to search out more specific detail about the national entries and access the most up-to-date information possible as changes and updates are introduced on the linked sites. As more and more national information is made available electronically, Member countries are encouraged to provide additional hypertext links to the text in an effort to develop the most accurate and useful collection of information possible.

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## INTRODUCTION

Consumer laws, policies and practices exist to help build consumers' trust and confidence by protecting them from unfair or deceptive acts or practices and helping to establish a more balanced relationship between sellers and consumers in commercial transactions. Domestic retail markets offer consumers assurances that their interactions and purchases are covered by national legal and private sector consumer protections. The increase in cross-border transactions and the limited or non-existent face-to-face contact between businesses and consumers brought on by the growth of electronic commerce reinforce the need for a predictable and trustworthy global marketplace.

OECD Member countries recognise that, in general, existing consumer protection laws and policies are equally applicable to electronic commerce. These same countries have also begun to review existing laws and practices to determine whether or not changes need to be made to accommodate the unique aspects of electronic commerce. Governments are challenged to strike the right balance between the desirability of social development and economic growth based on emerging network technologies, and the need to provide their citizens with effective and consistent consumer protection.

The *Guidelines for Consumer Protection in the Context of Electronic Commerce*<sup>5</sup>, approved on 9 December 1999 by the Council of the OECD are an important step in achieving these goals. The Guidelines are designed to help ensure that consumers are no less protected when shopping online than they are when buying from their local store or placing an order through a catalogue. The *Guidelines* reflect the existing legal protection available to consumers in more traditional forms of commerce and set forth the core characteristics of transparent and effective consumer protection for online business-to-consumer transactions.

In keeping with the objectives of the *Guidelines* and to complement the ongoing work of the Committee on Consumer Policy on electronic commerce issues, the inventory is intended to provide a comprehensive overview of existing consumer protection laws, fair business, fair marketing and disclosure requirements. The inventory will serve as a means to gather and exchange information as government and private sector consumer policies and initiatives are reviewed, formulated, and implemented online.

While the private sector has undertaken a number of initiatives to protect consumers online, this Inventory will not attempt to cover these efforts. Neither will the Inventory attempt to cover the issues of *privacy protection*<sup>6</sup>, *content*<sup>7</sup>, or *authentication and certification*<sup>8</sup> as the OECD has already produced recent inventories of these issues.

The Inventory is designed to present an overview of existing public sector consumer laws, policies and practices by providing brief descriptions and, wherever possible, hypertext links to national government Web sites and other pertinent information. It will be available on the CCP Web site, and best efforts will be made to update, as necessary, to incorporate revisions, amendments and additions to reflect the changes in OECD Member countries.<sup>9</sup> Member countries are encouraged to provide additional hypertext links as more and more national information is made available electronically. These links will allow readers to search out more specific detail about the national entries and access the most up-to-date information possible as changes and updates are introduced on the linked sites.

## INVENTORY OF CONSUMER LAWS, POLICIES AND PRACTICES APPLIED TO ELECTRONIC COMMERCE IN OECD MEMBER COUNTRIES

### AUSTRALIA

#### *Federal, State and Territorial Responsibilities*

In Australia, significant consumer protection laws, policies and initiatives are undertaken at the Federal State and Territory levels. Many of the State and Territory fair trading laws mirror the consumer protection provisions of the Commonwealth Trade Practices Act 1974. Australian States and Territories also have more specific regulatory roles in such issues as consumer credit, weights and measures, and licensing of various professions. The Consumer Affairs Division and the Australian Competition and Consumer Commission (ACCC) maintain close formal and informal links with the State and Territory consumer affairs and fair trading agencies.<sup>10</sup> Formal links are provided through the Ministerial Council on Consumer Affairs (MCCA) which was established by the Council of Australian Governments in 1993 and includes New Zealand.<sup>11</sup>

Australia is continuing its ongoing audit of the consumer protection laws contained in the Commonwealth *Trade Practices Act 1974* and State and Territory fair-trading or sale of goods legislation in an effort to identify inconsistencies, gaps and overlaps between the legislative regimes.

#### *Government-supported Multi-Stakeholder Co-operation*

On 12 August 1999, the Minister for Financial Services & Regulation (also responsible for Consumer Affairs) established an independent task force to provide advice on industry self-regulation in Australia in consumer markets. The objective of the Task Force on Industry Self-Regulation was to develop guidelines on "good practice" for self-regulation in order to lower compliance and regulatory costs to businesses while, at the same time, improving market outcomes for consumers.<sup>12</sup> The Task Force was comprised of government, business and consumer representatives and consulted widely with all stakeholders to ensure that their resulting reports were representative of self-regulatory schemes in Australia.

Using information collected through research, written submissions and a number of public consultations, the Task Force presented its final report to the Minister on 31 August 2000. The report and Government response were released on 13 December 2000. In response to Task Force recommendations, the Government is developing a specialist self-regulation Web site, expected to be launched in the first half of 2001.

#### *Australian Commonwealth Government*

##### *Australian Department of the Treasury*

The Consumer Affairs Division of the Treasury Department is responsible for consumer affairs policy and advancing consumer interests at the marketplace at the Commonwealth level.<sup>13</sup> The principal tasks of the

Consumer Affairs Division include, *i.a.*: consumer protection law reform; consumer education and information; electronic commerce policy and consumer protection; industry self-regulation, including codes of conduct and alternative dispute resolution; and co-ordinating Australia's consumer policy position on international issues.

In October 1999 the Australian Government released its *Policy Framework for Consumer Protection in Electronic Commerce*.<sup>14</sup> The framework outlines the government's overall objective to enhance Australia's standing in global commerce by promoting the interests of Australian consumers and businesses alike in the realm of electronic commerce.

One of the key initiatives announced in the Policy Framework was for the development of a Model code for traders in electronic commerce. That initiative culminated in the release of the *Australian E-commerce Best Practice Model* in May 2000. The Model provides guidance to business on building consumer confidence in e-commerce and meeting their responsibilities in the on-line environment. The Model is promoted through a specific Web site, [www.ecommerce.treasury.gov.au](http://www.ecommerce.treasury.gov.au), and represents Australia's implementation of the OECD Guidelines.

#### *Australian Competition and Consumer Commission*

The Australian Competition and Consumer Commission (ACCC) is an independent agency that is charged with, among other things, the administration and enforcement of the *Trade Practices Act 1974* (discussed in further detail below) and the *Prices Surveillance Act 1983*.<sup>15</sup> The Commission is the only national agency dealing generally with competition matters and the only agency with responsibility for enforcing the provisions of the *Trade Practices Act* and the associated State and Territory legislation. The ACCC has been diligent in its efforts to combat consumer fraud online and has participated in a number of international Internet "sweep days" and other activities to weed out fraudulent and other illegal activities online.<sup>16</sup>

#### *Australian Securities and Investments Commission*

On 1 July 1998, the Australian Securities and Investments Commission (ASIC), was established under new legislation to give effect to recommendations from a major review of Australia's financial regulatory system<sup>17</sup>. ASIC became the regulator of Australian companies and was given primary responsibility for consumer protection and market integrity in the financial services sector. The *ASIC Act* mirrors consumer protection provisions contained in the *Commonwealth Trade Practices Act 1974*.

The ASIC's new legislation contains specific requirements in relation to approving codes in the financial sector, including ensuring that there are adequate procedures for alternative dispute resolution. In addition, amendments to the *Trade Practices Act 1974* came into effect on 1 July 1998 to enable the Government, where necessary, to mandate codes of conduct to support important industry self-regulation schemes and to ensure they operate more effectively.

The ASIC also has responsibility for the *Electronic Funds Transfer Code of Conduct* (EFT Code) and a working group has undertaken to expand the code to cover all forms of electronic funds transfers including telephone and Internet banking and stored value cards such as smartcards and digital cash. The expanded code would cover issues such as: liability for unauthorised transactions; privacy; disclosure; and complaints handling. In January 2000, the working group released a second draft expanded EFT Code for public comment.<sup>18</sup>

## *Commonwealth Laws*

### *Federal Trade Practices Act 1974*

The *Trade Practices Act 1974*<sup>19</sup> (*TPA*) effects the basic consumer protection laws in Australia and, along with a number of parallel State and Territory laws, contains a range of provisions intended to protect consumers by making certain types of business practices illegal. At the national level, the *TPA* is a "mandatory law" of Australia that applies generally to the business and commercial activities of:

- Most corporations.
- Sole traders or partnerships whose activities:
  - Cross State boundaries.
  - Take place within a Territory.
  - Are conducted by telephone or post, or use radio or television (Parts IVA and V only).
- To the commercial activities of the Commonwealth.

### *Consumer Protection Provisions*

The consumer protection provisions of the *TPA* are found in Parts IVA (restrictive trade and contract provisions), V (fair trading - prohibits unfair practices, and covers warranties, conditions and safety requirements) and VA (manufacturers liability in cases of deceptive goods).

Unfair practices provisions<sup>20</sup> outline fair marketing practices and, under Division 1, the *Act* contains a general prohibition for conduct which is actually misleading or which is likely to mislead or deceive. It is not necessary to show that a consumer has actually been misled or deceived nor is it necessary to show that such conduct was intentional, the likely effect of the conduct is the determinant factor. The *Act* also contains specific prohibitions on:

- Misleading representations about the future supply and use of goods and services.
- False or misleading representations about certain features of the goods/services or transaction.
- False representations in relation to land.
- Misleading conduct in relation to employment.
- Not specifying the full cash price.
- Falsely offering prizes.
- Misleading the public as to the nature or characteristics of goods and services.
- Bait advertising.
- Referral selling.
- Accepting payment without intending to supply.
- Making false or misleading statements about work-at-home schemes.



- Harassment or coercion.
- Pyramid selling.
- Sending unsolicited debit or credit cards.
- Unsolicited goods or services.

Division 1A refers to specific product safety and product information, including:

- Compulsory consumer product standards.
- Unsafe goods and bans.
- Warning notices.
- Voluntary product recalls.
- Compulsory product recalls.
- Emergency orders.

Division 1AA outlines the information required relative to country of origin claims, including:

- General country of origin claims.
- The "produce of/ product of" test.
- The use of a prescribed logo.

The *Act* also imposes certain statutory warranties and conditions upon suppliers and manufacturers with respect to goods and services provided under consumer contracts<sup>21</sup>. Consumer transactions are automatically given warranty protection by the law, whether or not suppliers give their own warranties or guarantees. These warranties and conditions are mandatory in that they cannot be “contracted away” by the consumer, they include:

- Implied conditions that:
  - The supplier must be able to give the consumer clear title.
  - The goods must be of merchantable quality.
  - The goods must be fit for their purpose.
  - Goods must correspond with the description or sample.
- Implied warranties that:
  - The consumer is entitled to quiet possession.
  - The consumer is entitled to own goods outright.
  - Services must be carried out with due care and skill.
  - Services and associated materials must be fit for the purpose.

The above provisions are self-enforcing. This means that aggrieved consumers can bring private actions for damages in a consumer tribunal, however the ACCC cannot bring an action for breach of these provisions.

Under section 68 of the *Act*, a seller may not exclude, restrict or modify the statutory conditions and warranties, and any term of a contract that attempts to do so will be void. However, under s 66A, the provisions of the *Vienna Sale of Goods Convention* will prevail over the *Act's* provisions wherever there is an inconsistency.<sup>22</sup>

Other relevant parts of the *Act* are provisions on which the ACCC (or other parties for certain provisions) can take enforcement action, these include:

- Part IV - Anti-competition practices: The *Act* contains certain prohibitions on anti-competitive agreements and exclusionary provisions, misuse of market power, exclusive dealing, resale price maintenance, and certain mergers.
- Part IVA - Unconscionable conduct: The *Act* contains specific prohibitions against taking advantage of an evident special disability or disadvantage to obtain a benefit in either commercial dealings or consumer transactions.
- Under Sect 5 of the *Act*, all of the above-mentioned provisions have extra-territorial application.

### ***Direct marketing code of conduct***

In 1997, the ACCC released a voluntary *Model code for Direct Marketing*, which was endorsed by the Ministerial Council on Consumer Affairs. The code covers fair trading requirements, information privacy protection, telemarketing, and complaint and dispute settlement procedures. The code provides consumers with the right of cancellation either before the goods have been delivered or for a minimum period of seven working days after delivery (goods are considered to have been delivered three days after being sent, unless the consumer can prove otherwise).

The code also includes certain exceptions to the cooling-off period:

- In cases where the performance of the service began before the end of the seven-day period.
- Where the price of the product or service is dependent on fluctuations of the financial markets or in the case of specially ordered or personalised products.
- Products which can be immediately copied if the seal is broken.
- Personal health or hygiene products where the seal is broken.

## CANADA

### ***Federal and Provincial/Territorial Responsibilities***

The Federal Government and the 13 provincial and territorial governments in Canada have all enacted extensive consumer protection legislation. The Federal Government is responsible for the regulation of inter-provincial trade and setting national standards to ensure a fair, efficient and competitive marketplace for producers, traders, and consumers. Provincial governments<sup>23</sup> are responsible for contractual matters relating to the buying and selling of goods and services<sup>24</sup> and most sectoral issues.<sup>25</sup> Provincial statutes also cover such matters as unfair business practices, warranties and conditions of sale, guarantees and business licensing.

Despite differences in legislation among the provincial and territorial jurisdictions, the protections available to consumers are broadly similar across the country. While most of the legislation described below is not specific to electronic commerce, commentators generally agree that the existing legislation is applicable. However, commentators also recognise that the legislation may not be adequate in some respects to meet all of the challenges arising from electronic commerce.<sup>26</sup> In addition to consumer protection legislation of general application currently in place within each jurisdiction, considerable efforts among federal, provincial and territorial governments are currently underway to seek co-operative, harmonised approaches to deal with those challenges.

### ***Government-supported Multi-stakeholder Co-operation***

In 1998 and 1999 the Federal Industry Minister, through the Office of Consumer Affairs<sup>27</sup>, Industry Canada, provided a forum for the development of *Principles for Consumer Protection in Electronic Commerce - A Canadian Framework*.<sup>28</sup> A multi-stakeholder working group that included representatives of industry, consumer organisations and government developed the Principles. The voluntary Principles call for: clear disclosure of a business's identity, the goods and services it offers, and the terms and conditions of sale; a transparent transaction confirmation process; payment security; protection of personal data; restriction of unsolicited commercial E-mail ("spam"); a fair balance of liability in the event of transaction problems; timely and affordable means of complaint handling and redress; and effective consumer education. The Principles are consistent with the core protections available in consumer law governing traditional forms of commerce including the *OECD Guidelines for Consumer Protection in the Context of Electronic Commerce*.

### ***Inter-Jurisdictional Harmonisation***

In November 1999, Federal, provincial and territorial ministers responsible for consumer affairs met in Banff, Alberta to further co-operation and action on several key consumer issues, including Consumer Protection for Electronic Commerce. At that meeting, Ministers tasked their Consumer Measures Committee (CMC)<sup>29</sup> to focus on the following three areas:

- i) Adaptation and harmonisation of existing consumer protection laws to the electronic commerce environment: The CMC has developed a common approach to adapting and harmonising consumer protection law, based on present distance selling and direct sales provisions, including rules for information disclosure, contract formation and cancellation rights. Key aspects include requirements for clear contract formation procedures, contract documents being in the custody and control of the consumer and the use of electronic

signatures. This provides a guide for jurisdictions as they consider changes to their consumer protection laws and regulations. Although there is no timetable for this harmonisation exercise, a number of jurisdictions are moving ahead and all jurisdictions will be exchanging information on planned legislative initiatives.

- ii) Consumer education and information: The CMC will be working together with business and consumer groups to determine what information products and tools could be developed to help consumers protect themselves when shopping online.
- iii) Merchant Certification and Online Consumer Redress: The CMC will be working with business and consumer groups on the development of a coherent Canadian approach to these issues. The objective is to introduce measures aimed at providing adequate protection for consumers regarding electronic commerce, and to develop good commercial practices.

### ***Federal Laws***

The three principal Federal institutional bodies dealing with consumer issues related to electronic commerce are arms of Industry Canada: the Office of Consumer Affairs<sup>30</sup>, a consumer policy, research and information branch; the Spectrum, Information Technologies and Telecommunications Sector (SITT)<sup>31</sup>, which is responsible for policy issues related to the protection of personal data, and in particular the Federal *Personal Information Protection and Electronic Documents Act*<sup>32</sup>; and the Fair Business Practices Branch of the Competition Bureau<sup>33</sup>, which is an enforcement agency administering and enforcing the misleading representations and deceptive marketing practices provisions of the *Competition Act*<sup>34</sup>.

### ***The Competition Act***

One of the principal instruments used on a national basis to address misleading representations and deceptive marketing practices is the *Competition Act*.<sup>35</sup> The *Competition Act* is equally applicable to misleading advertising on the Internet as it is to other forms of commerce.

The *Competition Act* prohibits both the direct and indirect use of false or misleading representations in the promotion, supply or use of a product by any means whatever. The *Act* does not require proof that any person was misled or deceived to establish that a violation has occurred.

The *Competition Act* also establishes parameters for multi-level marketing plans and prohibits the establishment, operation, advertisement or promotion of pyramid selling schemes.

In addition, Part VII.1 of the *Competition Act* prohibits certain deceptive marketing practices, which may be relevant to electronic commerce, including:

- Misrepresentations to the public.
- Misrepresentation as to the ordinary selling price of a product.
- Misrepresentations as to reasonable tests and the publication of testimonials.
- Bait and switch selling.
- Sale above advertised prices.

- Promotional contests without specific and adequate disclosures.

The *Act* provides two adjudicative regimes, civil and criminal, to address misleading advertising and deceptive marketing practices. Anyone who breaches the civil provisions of the *Act* may be subject to an order:

- Prohibiting the conduct for up to ten years.
- Requiring the issuance of a correction notice and/or,
- Imposing an administrative monetary penalty of up to a maximum of CDN 100 000 in the case of an individual and CDN 200 000 in the case of a corporation.

Violation of the criminal provisions of the *Act* may lead to fines of up to CDN 200 000 and/or one year imprisonment on summary conviction, or to fines at the discretion of the court and/or imprisonment for up to five years on conviction upon indictment.

#### *Other Federal Legislation*

In addition to the *Competition Act*, the Canadian government has six statutory instruments through which it can enforce the accuracy of information as well as uniform standards. These are:

- The *Bank Act*<sup>36</sup> and the *Interest Act*<sup>37</sup> which govern the advertising and sale of financial instruments.
- *Consumer Packaging and Labelling Act*<sup>38</sup>.
- *Textile Labelling Act*<sup>39</sup>.
- *Precious Metals Marking Act*<sup>40</sup>.
- *Weights and Measures Act*<sup>41</sup>.
- *Food and Drugs Act*<sup>42</sup>.

In addition to certain packaging and labelling requirements, the *Consumer Packaging and Labelling Act* contains specific prohibitions against false or misleading advertising or labelling representations about a product's type, quantity, contents, function, origin or method of manufacture or production of pre-packaged products. Similar advertising and labelling restrictions are included in the *Textile Labelling Act*.

An important new piece of legislation protecting consumers in electronic commerce is the *Personal Information Protection and Electronic Documents Act*.<sup>43</sup> When the provisions of the proposed *Act* come into full effect, they will apply to all personal information collected, used, or disclosed in the course of commercial activities. The *Act's* privacy provisions are based upon principles of: accountability; identifying purposes; consent; limiting collection; limiting use, disclosure, and retention; accuracy; safeguards; openness; individual access; and providing individuals with the opportunity to challenge an organisation's compliance.<sup>44</sup>

A number of business guides on misleading advertising and labelling requirements and how they are applied within various commercial sectors can be found on the Industry Canada Web site.<sup>45</sup> Similar guides

geared toward consumers intended to educate and facilitate informed consumer choice are also available on the Competition Bureau site.<sup>46</sup> Additionally, the *Consumer Connection* site developed by the Office of Consumer Affairs provides a wide array of consumer and business information related to both Canadian consumer laws and voluntary codes of practice.<sup>47</sup>

### ***Provincial/Territorial Legislative Measures***

Important consumer issues covered by provincial/territorial legislation include unfair business practices and consumer warranties, discussed in some detail below. It is important to note that while Federal law covers such issues as misleading advertising and is soon to cover the protection of consumer privacy, these issues may also be dealt with at the provincial level. For instance, the prohibited misrepresentations described below under “Unfair Business Practices” may be applied to advertising. In addition, Quebec has its own extensive provisions in regard to advertising, including not only the prohibition of misleading advertising, but also the prohibition of advertising directed toward children.<sup>48</sup> Furthermore, Quebec has enacted a legislative framework for the use of consumers’ personal information by business.<sup>49</sup> Provinces have also enacted a variety of sector-specific statutory and regulatory instruments. Some are common to all jurisdictions – for instance, legislated disclosure requirements for credit transactions; others are employed in only a few provinces.<sup>50</sup> (See Annex for additional information and Web links to provincial/territorial government sites where available.)

Most of these instruments are tangential to electronic commerce. However, a number of provincial legislative initiatives in specific regard to electronic commerce have been undertaken; these are therefore discussed below. Finally, those provincial/territorial legislative instruments that apply to consumer law in a cross-border environment are briefly mentioned, because of the growing importance of this issue in regard to electronic commerce.

In August 1998, the Office of Consumer Affairs published a report prepared by Roger Tassé, O.C., Q.C., and Kathleen Lemieux entitled *Consumer Protection Rights in Canada in the Context of Electronic Commerce*.<sup>51</sup> The report provides an analysis of existing provincial and territorial contract law principles and rules in Canada in the context of business-to-consumer electronic commerce.

### ***Unfair Business Practices***

Eight provinces have enacted legislation to protect consumers against unfair business practices. Such legislation provides authorities with an instrument for preventing and punishing misrepresentations by business, without having to resort to criminal fraud law, with its higher burdens of proof.<sup>52</sup> Seven provinces – Alberta, British Columbia, Manitoba, Newfoundland, Ontario, Prince Edward Island and Saskatchewan – provide similar lists of practices that are deemed to be unfair.<sup>53</sup> Such practices are typically false or misleading representations of a specific kind. For instance, Ontario’s *Business Practices Act*<sup>54</sup> provides a list of 14 unfair practices, prohibiting, *inter alia*:

- A representation that the goods [offered by the business to the consumer] have been used to an extent that is materially different from the fact.
- A representation that the goods or services have been supplied in accordance with a previous representation, if they have not, [and]
- A representation that a specific price advantage exists if it does not.<sup>55</sup>

Quebec's *Consumer Protection Act*<sup>56</sup> prohibits the making of any false representation "by any means whatsoever"<sup>57</sup> and then goes on to provide more detailed sets of representations which a businessperson may not falsely make, such as:

- Ascribing certain special advantages to goods or services.
- Holding out that the acquisition or use of goods or services will result in pecuniary benefit.
- Holding out that the acquisition or use of goods or services confers or ensures rights, recourses or obligations.<sup>58</sup>

All of these provinces' applicable statutes include regulation-making power to add new unfair practices. Penalties for contravention of the trade practices statutes include fines<sup>59</sup> and, in very rare instances, imprisonment.<sup>60</sup> Moreover, consumers generally are provided with a statutory right of civil action to seek rescission of the contract and/or damages.<sup>61</sup>

#### *Consumer Warranties and Conditions*

All Common Law provinces<sup>62</sup> and territories provide for implied warranties of merchantability and fitness for purpose of goods within all contracts, including consumer contracts.<sup>63</sup> Quebec's *Civil Code* provides for, *inter alia*, obligations in regard to delivery, warranties of ownership and of quality.<sup>64</sup>

Beyond these generally applicable implied warranties, Manitoba, Nova Scotia, Northwest Territories and Yukon provide additional warranties and conditions to be implied in consumer sales contracts.<sup>65</sup> Citing Nova Scotia's statute these include, but are by no means limited to, conditions that:

- The goods correspond with the merchant's description.
- The goods are of merchantable quality (*i.e.* that they are suitable for sale and purchase).
- The goods are durable for a reasonable period of time.<sup>66</sup>

Ontario's *Consumer Protection Act* stipulates that those conditions generally applicable to contracts by virtue of the *Sale of Goods Act* are also applicable to consumer contracts, and that furthermore, parties to a consumer transaction may not contract out of such implied warranties and conditions.<sup>67</sup> New Brunswick, Saskatchewan and Quebec provide more extensive product warranty protections. The applicable statutes should be consulted for further information.<sup>68</sup>

#### *Initiatives specific to electronic commerce*

Alberta's *Fair Trading Act* contains regulation-making power in regard to consumer protection for electronic commerce.<sup>69</sup> Regulations pursuant to this power are expected to be in place later in 2001. Saskatchewan is the first province to introduce an *Electronic Documents and Information Act*.<sup>70</sup> (Other jurisdictions are currently developing similar statutes.) The *Act* provides basic rules and general principles to ensure the equivalent treatment of electronic and paper documents and information. The legislation is based on a model developed by the Uniform Law Conference of Canada<sup>71</sup>, which in turn based its work on the United Nations Model Law on Electronic Commerce.

*Cross-border issues*

An important issue with regard to consumer protection in electronic commerce is whether consumers have recourse to their law and courts when conflicts arise from a cross-border transactions. Quebec law specifically provides that a consumer contract that involves a consumer resident in Quebec is subject to Quebec's laws and fora.<sup>72</sup> Similarly, Alberta and Saskatchewan respectively deal with the issue of applicable law and forum, providing that a consumer contract concluded within those provinces is subject to the consumer protection laws of those jurisdictions and to their courts.<sup>73</sup> Most provinces, however, do not specifically treat the issues of conflict of law and forum in their consumer legislation. It is worth mentioning, however, that some jurisdictions do explicitly state that a given consumer protection law is applicable to consumer contracts, despite any agreement to the contrary.<sup>74</sup> In the absence of legislation, Common Law conflict of laws and choice of forum principles for contract and tort will likely apply.



## CZECH REPUBLIC

The Czech Republic is in the process of developing and implementing a number of legislative acts intended to make its consumer protection laws fully compatible and harmonised with the laws of the European Community. The Ministry of Industry and Trade of the Czech Republic is the primary agency responsible for the oversight of consumer protection laws and policies in the country.<sup>75</sup> One of the initial and substantial steps to achieve this goal was the Government's *Concept of Consumer Policy*<sup>76</sup> approved in December 1998. The *Concept* outlined a range of general principles as well as the goals and role of government consumer policy in the Czech Republic. The *Concept* recognised the following objectives:

- Protection of the safety of life and health of the population.
- Protection of the internal market against unfair activities especially those that are difficult to combat by legal or private means.
- Encouraging the activities of civil consumer associations.
- Dissemination to the general public of information about citizens' rights related to the purchase of goods and services as well as about methods to pursue economic interests in the markets.

### *Act on Consumer Protection*

The principal consumer protection legislation in force to protect consumer interests in the Czech Republic is the *Act on Consumer Protection*.<sup>77</sup> The *Act* sets forth a number of consumer protection provisions and consumer rights as well as the tasks of public authorities in the area of consumer protection. The *Act* makes no distinction as to the medium of commerce and is intended to apply to the sale of products, the rendering of services and other "events" and business activities performed or carried out on the territory of the Czech Republic.

Part Two of the *Act* relates to business obligations in the sale of products and the rendering of services and, in addition to prohibiting the sale of dangerous goods, prohibits discrimination against consumers in any way. Article 3 of this section relates to "honesty" and requires sellers to provide:

- Accurate information on weight, measure and the quality of goods.
- Services of prescribed approved quality as stipulated by law or where such stipulations have not been made, such products or services should be of "standard" quality.
- Products and services for agreed and correct prices.

The *Act* prohibits deception and in particular, prohibits "false, unattested, incomplete, inaccurate, unclear, ambiguous or exaggerated data or conceal data about the actual properties of products or services or the level of purchase terms<sup>78</sup>." In addition, it states the any reference to a guarantee or any terms of a similar nature may only be used if the content and conditions of the guarantee are provided at the same time. The *Act* also requires the seller to inform the consumer correctly about the scope, conditions and methods for enforcement of liability for defects on products and services including the data about where claims can be exercised and how guarantee repairs are carried out<sup>79</sup>.

The *Act* also requires sellers to provide consumers with information about the products being sold or the nature of the services being rendered; the use and maintenance of the product and the risks resulting from its incorrect use or maintenance; and risks associated with the services rendered<sup>80</sup>. The *Act* also sets forth specific labelling requirements for goods and stipulates that all information covered in Articles 9 and 10 that is provided in writing, must be provided in Czech.

Article 12 provides specific requirements with regard to pricing information. Information about the price may not misrepresent to the consumer:

- That the price is lower than the actual price.
- How the actual price is determined.
- That the price includes delivery of the product, activities, works or services that are in fact paid separately.
- That the price has been or will be increased, decreased or will not change.
- The relationship between the price and the usefulness of the offered product or service and the price and usability of a comparable product or service.

In addition, under Article 16 the *Act* requires the seller to issue documentation upon a consumer's request, about the purchase of products or rendering of services giving the date of the product sale or rendering of services, the type of product or service, price and, where applicable, the destination and date of delivery.

## DENMARK

In June 1997, the Danish Ministry of Business and Industry released a report entitled the *Legal Protection of Consumer Rights in Relation to Transnational Digital Networks*<sup>81</sup>. The report includes a discussion of the potential consumer risks posed by the online environment and makes a number of proposals for consumer-related initiatives and revisions of specific Danish legislative Acts. The report is intended to open a broad dialogue about consumer policy in an attempt to determine the appropriate balance between the interests of consumers and trade and industry, while keeping in mind the social and economic benefits offered by the networked environment. Among other things, the report proposes:

- That businesses using the Internet for commercial purposes should always establish their identity including providing their physical address.
- To amend the *Sale of Goods Act*, The *Product Liability Act* and the *Product Safety Act*<sup>82</sup> to recognise the existence of purely digital products.
- To amend the *Canvassing Act* to take into account the new means of communication and marketing practices provided for by the information technology. To, among other things, make it possible for consumers to avoid receiving unsolicited commercial e-mail communications.
- To amend the *Price Labelling Act*, to require companies to state prices etc., when offering the remote trading of goods and services through the Internet.

### ***The Danish Marketing Practices Act***

In July 2000, the Danish Ministry of Business and Industry released a consolidated version of the *Danish Marketing Practices Act* which, among other things, sets forth specific requirements for unsolicited marketing.<sup>83</sup>

The *Act* prohibits the use of any false, misleading, or unreasonably incomplete indication or statement, or practice that is likely to affect the demand for or supply of goods, real or personal property, and work or services. The *Act* also requires that it be possible to substantiate the veracity of the claims.

The *Act* also requires that information or instructions about the nature or quality of goods or services – particularly as it relates to fitness for purpose, durability, the nature of any risks involved, and information related to maintenance – should be provided either at the time an offer is made, at the conclusion of a contract or, where appropriate, upon delivery of goods or the supply of services.

The *Act* states that a guarantee, warranty or any similar declaration can only be given to consumers if it affords the consumer a considerably better legal position than he or she is otherwise provided by existing legislation. Where a guarantee or warranty is given, the seller must clearly and unambiguously inform the consumer of its contents and provide the information necessary to make the guarantee or warranty valid. In addition, the seller is required to clearly inform the consumer that those terms do not affect the consumers' existing legal rights. Upon request, the seller is required to distribute the guarantee or warranty in writing and all written guarantees or warranties shall be in the Danish language.

The *Act* provides for the possibility that future regulations may require that certain goods sold by retail must be labelled as being Danish or foreign and thus bear an indication of the place of origin or production. In addition, future regulations may provide:

- That certain trade descriptions or symbols shall be reserved for or applied to goods that comply with certain specified requirements.
- That certain goods shall be sold or offered for sale only where such goods or their wrapping or packaging are, in a manner prescribed by the Minister, provided with information relating to the contents and composition of the goods, their durability, directions for use and other properties.

Section six of the *Act* restricts sellers from using or advertising by providing gifts or similar inducements unless they are of negligible value. With certain exceptions, the *Act* also prohibits the promotion of goods and/or services by offering consumers the possibility of a prize for participating in the drawing of a lot, prize competition or any other arrangement where the results are wholly or partly dependent on chance, provided that such participation is conditional upon purchase.

In July 2000, a new provision concerning suppliers' unsolicited calls for the purpose of selling goods or services was implemented. This provision states that a supplier is not allowed to make calls to any consumer using electronic mail, automated calling systems (automatic calling machines) or facsimile machines (fax), unless the particular customer has made a prior request for such calls. A supplier may not call a specific natural person using other means of distance communication, if that person has asked the supplier not to make such calls, or if this appears from the Civil Registration System (CPR). If the specific natural person has not objected to calls, the supplier shall inform that person in a clear and comprehensible manner of his right to object to further calls.

### ***Means of Payment Act***

A new *Act on Certain Payment Instruments*<sup>84</sup> came into force on 1 July 2000 replacing the *Consolidated Payment Cards Act, etc.* The *Act* is intended to help ensure that consumers are provided with secure and effective payment mechanisms. Among other things, the *Act* requires businesses to provide consumers with a receipt for the transaction and, in many instances, affords consumers the right to terminate the transaction without notice.

### ***Guidelines for distance selling etc. in connection with payment systems based on payment cards***

After negotiations with the Danish Trade and Consumer Organisations, the Danish Consumer Ombudsman issued *Guidelines for distance selling transactions* in December 1966. In connection with distance selling transactions, the payment transaction will often be made without reading the payment card combined with an authorisation from the cardholder, such as a signature or statement of a PIN-code. Therefore, the guidelines, among other things, stipulate rules about chargebacks of amounts in case of objections from the cardholder about misuse and non-delivery and the use of a right of cancellation.

### ***The Injunctions Act***

In January 2000, an *Act* came into force regarding injunctions for the protection of consumer interests.<sup>85</sup> The *Act* implements the *European Parliament and Council Directive 98/27/EC* of 19 May 1998 on

injunctions for the protection of consumer interests. The *Act* secures that foreign authorities and organisations may take action in Denmark, in accordance with the rules of the *Administration of Justice Act*, and that Danish authorities may act as representatives at court on behalf of the foreign authorities and organisations.

### ***The Act on Distance Selling***

In June 2000, the *Act on Distance Selling* was amended in accordance with the *European Parliament and Council Directive 97/7EF* of 20 May 1997 on the protection of consumers with respect to distance contracts. The amendments of the *Act* include an essential amendment of the scope of application of the special rules on distance selling (among other things, distance selling of services is now also comprised), and new rules regarding the supplier's duty of information and fulfilment of the agreement have been implemented. Moreover, the right of withdrawal in connection with distance selling and agreements not made at a business site has been amended to 14 days.

### ***The Nordic consumer ombudsmen's common position on electronic commerce***

In addition to the aforementioned *Acts* and policies, Denmark is a signatory to the common paper adopted by the Nordic consumer ombudsmen entitled a *Common position in connection with trading and marketing on the Internet and in similar communication systems*. This common position comprises marketing that from an overall point of view is directed at the Nordic market. A copy of the full paper is included in the Annex to this text.

### ***Trustmark***

Ultimo 2000, an electronic trustmark system based upon guidelines for trade and marketing over the Internet, was introduced in Denmark. The trustmark system is established on the basis of negotiations between a number of Danish trade and consumer organisations in co-operation with the Ministry of Trade and Industry and the Ministry of Research. The trustmark system is administered by a private foundation, and the first Danish e-businesses have been assigned an e-mark.

### ***Strategy for a consumer policy***

In April 2000, the Danish Government announced a strategy for a new consumer policy – “Strengthening Consumer Policy in the EU” – with a number of concrete proposals for new initiatives that will contribute to improving the position of consumers when shopping across borders within the EU, including over the Internet. Among other things, it is suggested that harmonised regulation of good market behaviour in the EU be introduced, as well as a minimum directive on consumer protection in connection with electronic payments and a strengthening of consumer access to justice in cross-border transactions through the establishment of a common and coherent out-of-court settlement system for disputes between businesses and consumers in the EU.

## FINLAND

### *National Laws*

#### *Consumer Protection Act*

In Finland, the *Consumer Protection Act*<sup>86</sup> is a special consumer protection legislation that covers all the consumer transactions from marketing to warranty provisions. The *Act* does not make any distinction among the various commercial media with respect to the protection of consumer rights. Any contract terms restricting the rights of the consumer under this *Act* are considered, in general, to be null and void.

The Finnish Consumer Ombudsman provides a number of guidelines relating to various aspects of the marketing act.<sup>87</sup> The guidelines are based on rulings of the market Court and the Consumer Ombudsman and/or are the result of discussions with organisations in the specific commercial sectors concerned. These include guidelines on mail order sales, guarantees in the consumer goods trade, and children and marketing.<sup>88</sup>

#### *Marketing*

Chapter 2 of the *Act* regulates marketing to consumers. Marketing is required to be fair and to be undertaken in accordance with good marketing practises. The *Act* also requires that the marketing reveal all necessary information required by the consumer with regard to the consumers' health and economic security. The *Act* expressly prohibits the use of marketing that is considered misleading or false. Marketing that promises a benefit based on chance is also forbidden if obtaining such benefit presupposes consideration, purchase of consumer goods or services or the making of a purchase offer.

The marketing in question is always judged by the overall impression it conveys to the consumer. If deemed necessary with respect to consumer protection, an injunction may be issued against the merchant ordering or carrying out the marketing operation.

The Finnish Consumer Ombudsman has supervisory authority to determine compliance with the *Act* and the conformity of specific marketing practices with consumer protection legislation.

#### *Contract terms*

Chapter 3 of the *Act* regulates the contract terms used in consumer transactions. It includes a requirement that businesses offering consumer goods or services for sale shall not make use of a contract term which, considering the price of the good or service and the other relevant circumstances, is to be deemed unfair from the consumers' perspective. Wherever necessary in order to ensure the protection of consumer interests, a business may be enjoined from continuing or repeating the use of such a contract term.

The Consumer Ombudsman shall supervise the use of contract terms with respect to consumer protection.

Chapter 4 of the *Act* outlines the consequences of using unreasonable contract terms. If, considering the quality of the consumer good or service and the general price level, a price included in a contract covered by the *Act* is considered unreasonable that price may be adjusted. If any other contract term in such a contract is unconscionable from the consumers' perspective or if its application would lead to an unconscionable result, the contract term may be either be adjusted or disregarded. The unconscionability

of a term shall be estimated taking into account the contract in its entirety, the status of the parties, the circumstances of the contract and any change in these circumstances as well as any other factors.

If, on the other hand, a contract term referred to in this *Act* has been drafted in advance without the consumer having had a possibility to affect its contents and if uncertainty arises as to the contents of the term, the term shall be interpreted in favour of the consumer.

### *General provisions*

Chapter 5 of the *Act* regulates the general provisions regarding the sale of consumer goods. The provisions of this chapter apply to the sale of goods where the seller is a merchant and the buyer is a consumer. Any contract term differing from the provision of this chapter that is deemed to be to the detriment of the consumer shall be void unless otherwise provided.

The goods shall in type, quantity, quality, other characteristics and package comply with what can be deemed agreed upon. Except where otherwise can be deemed to have been agreed, the goods shall:

- Be fit for the purpose for which similar goods are ordinarily used.
- Be fit for any particular purpose for which the goods were intended if the seller knew or must have known the purpose at the time of the conclusion of the contract and if it was reasonable for the buyer to rely on the seller's skill and judgement.
- Possess the qualities of the goods that the seller has held out as a sample or model.
- Be packaged in a manner that is usual or otherwise appropriate if packaging is necessary to preserve or protect the goods.
- Be durable and otherwise correspond to what the seller ordinarily may expect in the purchase of such goods.

Goods that do not conform to these provisions are considered to be defective.

The quality and fitness for use of the goods shall be determined with regard to their properties at the time when the risk passes to the buyer. The seller shall be liable for any defect that existed when the purchase was made even if the defect did not appear until later. There is no particular time limit from the time of the conclusion of the contract during which the customer loses his right to base a claim on the defect in the goods.

If the seller, by giving a warranty or a similar promise, has assumed liability for the fitness or other properties of the goods for a fixed period, the goods shall be deemed defective if they deteriorate during this period. A warranty or other promise shall not restrict the liability for defects provided for in this Act.

The buyer shall not have the right to base a claim on a defect in the goods if he does not give notice to the seller of the defect within a reasonable time after he discovered or ought to have discovered it.

### *Distant selling*

Chapter 6 of the *Act* regulates door-to-door sales and mail order sales. According to this chapter the consumer is entitled to cancel his or her offer to acquire consumer goods or his acceptance of a merchant's offer. Mail order sales shall refer to the offering of goods for order on the basis of a brochure, catalogue or announcement delivered to the buyer.

In mail order sales, notice of cancellation shall be sent within seven days of receipt of the goods or the first shipment of the goods; return of the goods received shall be considered notice of cancellation. If the buyer has received the goods and wants to cancel the contract, he shall dispatch the goods to the seller within a reasonable period of time. When the buyer has received the returned goods or when cancellation takes place while the goods are still in the possession of the seller, the seller shall, without delay, return the amount of the purchase price that has been paid as well as compensate the buyer for the cost of returning the goods.

In calculating the period of cancellation, the date on which documents or the goods were received shall not be included. If the last date of the period is a Sunday or a holiday, Independence day, May Day, Christmas Eve, Midsummer Eve or a Saturday, the cancellation may be made on the first week day following the said day.

If the goods or performance are destroyed or if they deteriorate or diminish through no fault of the consumer, the consumer shall not forfeit his right of cancellation. The consumer shall not be liable for any reduction in value caused by unpacking or inspection of the goods or performance or other comparable reason.

### *Miscellaneous provisions*

Chapter 12 of the *Act* regulates various miscellaneous provisions. According to the language in this chapter, a term in a contract concluded before a dispute arises, under which a dispute between a merchant and a consumer shall be settled in arbitration, shall not be binding on the consumer.

In a dispute between a consumer and a merchant, the consumer may bring the action also in the general court of first instance of the location of his residence.

### ***The Nordic consumer ombudsmen's common position on electronic commerce***

In addition to the aforementioned *Acts* and policies, Finland is a signatory to the common paper adopted by the Nordic consumer ombudsmen entitled a *Common position in connection with trading and marketing on the Internet and in similar communication systems*. This common position comprises marketing that from an overall point of view is directed at the Nordic market. A copy of the full paper is included in the Annex to this text.



## FRANCE

The Directorate-General for Competition, Consumer Affairs and Fraud Repression (DGCCRF) of the Ministry of Economic Affairs, Finance and Industry is responsible for ensuring the proper functioning of the market, in particular by protecting the economic interests of consumers.

The French government believes that the current consumer protection system is applicable to the Internet, with the caveat of some additions, clarifications or adaptations.

The rules of evidence were adapted to information technologies by Act No. 2000-230 of 13 March 2000 on electronic signatures.<sup>89</sup>

### *National Legislation*

The Code on Consumer Protection<sup>90</sup> contains the main provisions in the field of consumer law, which are intended to achieve the following objectives:

1. To ensure that consumers are informed of:
  - The essential characteristics of goods and services: Articles L. 111-1 to L. 111-3.
  - Prices and sales conditions: Articles L. 113-1 to L. 113-3.
  - Delivery time: Articles L. 114-1.
2. To regulate certain commercial practices:
  - Advertising: Sections L. 121-1 to L. 121-15.
  - Distance selling: By providing for a right of withdrawal within seven open days from the date on which the product is delivered (Section L. 121-16); rules applicable to home shopping (Section L. 121-17); and the requirement that sellers and service providers identify themselves clearly to consumers by giving their name, physical address and telephone number (Article L. 121-18).

It should be noted that these provisions on distance selling are currently in the process of being reviewed in the context of the transposition into French law of *Community Directive 97/7/EC* of 20 May 1997 on the protection of consumers in respect of distance contracts.

- Door-to-door selling: Articles L. 121-21 and L. 121-33.
  - Sales or services with free or bonus items: Article L. 121-35.
  - Games, contests, advertising sweepstakes: Article L. 121-36 to 121-41.
3. To ban a certain number of commercial practices which deceive consumers.
    - Refusal to deal and “bundling” of sales or services: Article L. 122-1.

- Sales without a prior order: Articles L. 122-2 to 122-5.
  - Pyramid selling of goods or services: Articles L. 122-6 and 122-7.
  - Practices that take advantage of vulnerable individuals: Articles L. 122-8 to 122-11.
4. To regulate the general terms of contracts, in particular by forbidding unfair clauses: Articles L. 132-1 to 135-1.
  5. To establish the rules for the conformity and safety of products and services.
    - General conformity requirement: Section L. 212-1.
    - Sanction of deception: Articles L.213-1, 214-3.
    - Legal guarantee/obligation: Section L. 211-1.
    - Information on conventional guarantees: Section L. 211-2.
  6. These provisions on guarantees will be amended in the context of the transposition into French law of *Community Directive 99/44/EC* of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees.
  7. All provisions of the Consumer Code are applicable, whatever the nature of the medium and the communication technologies. They therefore apply to goods and services offered on-line.
  8. Lastly, the rules concerning liability for defective products are laid down by *Act No. 98-389* of 19 May 1998.

## HUNGARY

Hungary has not yet determined how it intends to deal with the legal regulation of electronic commerce. Existing laws and statutes regulating distance selling services as well as “traditional” products and services generally apply to electronic commerce. However, certain special characteristics of electronic commerce and the global network environment may pose problems and risks that have not yet been encountered and therefore are not regulated by existing laws.

Hungary is currently preparing legislation related to electronic commerce. As part of the country’s legislative plan, Hungary will ensure that consumer protection in electronic commerce will not be less than the level of protection afforded in other forms of commerce.

The Government has outlined its medium-term strategy for the development of micro-, small and medium-sized enterprises<sup>91</sup>. Section 8 of that plan, states that ensuring business access to information and helping to improve the competitiveness of micro-, small and medium-sized enterprises through the widespread use of up-to-date electronic information should be supported. The Decision also notes the importance of ensuring that the country maintains a favourable economic environment for the development of electronic commerce. The Minister of Economy, the Minister of Transport, Telecommunication and Water-management, the Prime Ministers Office and other relevant Ministries and Chambers are responsible for the implementation of these policies. The resulting legislation should be completed by 31 December 2000.

In addition, a new working group was founded in June 1999 by the Secretary of State of the Ministry of Transport, Telecommunication and Water-management. The working group deals with regulations related to electronic documents and will organise the legislative work to meet the Government’s deadline.

The *1995 Act on Public Procurement* authorised the Government to set forth the rules related to the procurement through electronic means of certain specific products defined by the Decree<sup>92</sup>. This applies to budgetary organisations within the Government that are different from those regulated by the *Act on Public Procurement*. The new Decree will regulate a particular aspect of electronic commerce, however it is expected that it will affect the general development and regulation of electronic commerce in Hungary. The Decree and the information system required to implement it are currently being prepared.

### ***General consumer protection laws and policies***

The most important governing law protecting consumers in this field is the *Act No. CLV of 1997 on Consumer Protection*. Chapter II of this *Act* regulates the protection of the consumers' life, health and safety. The *Act* stipulates that only safe goods can be put into commercial circulation. The *Act* also states that it is especially important to take into account the impact of a product used on vulnerable - particularly minor - consumers. Chapter IV of the *Act* deals with consumer information, focusing on the rules of labelling, providing the user manual and instructions, the conformity assessment, affixing price tags and packaging.

*Decision No 1036/1999 (IV.21) of the Government* relates to the development of national consumer protection policy. Having accepted the corresponding draft the Government has adopted a resolution which sets forth the following medium-term goals and policy priorities for consumer protection. The resolution includes the following:

*Goals:*

- To reach a higher degree of safety for goods and services in order to protect the health and safety of consumers. To realise this goal, the Government intends to develop an efficient system of public institutions for consumer protection, securing the co-operation of the authorities responsible for consumer protection.
- To secure an improved co-operation between consumers and business representatives intended to protect the economic interests of consumers and create an effective system to provide efficient and prompt legal remedies.
- To prepare the consumers for new challenges such as globalisation, environmental protection, and the information society. By providing consumer education in a manner that enables them to obtain the necessary information to meet those challenges, and rendering support to existing civil organisations for consumer protection and to assist in the creation of new ones.
- When forming policies in other fields, to take into consideration the interests of consumer protection.

*Priorities:*

- To operate a powerful and efficient public system for consumer protection that is able to modernise its activities of market surveillance to help ensure the protection of the life, health, personal and environmental safety of the consumers.
- To develop the activities under civil agreements to promote consumer protection and provide information intended to help protect the interests of consumers. Correspondent public funds shall be granted for the development of these activities.
- To ensure consumers prompt and efficient access to legal remedies. Steps shall be taken and any necessary changes to the institutional background will be made to facilitate this initiative.
- At the elementary, middle school and higher education levels, a greater emphasis must be made on teaching and encouraging consumer education and on emphasising the overall national goals of consumer protection.

In addition, section 43 of the *Consumer Protection Act, Government Decree No. 89/1998.(V.8.)* outlines the organisation, scope of duties and authority of the General Inspectorate for Consumer Protection, and the distribution of consumer protection penalties allows consumer protection agencies – and extends their powers – to include compliance oversight for the regulations related to the quality of goods and services and to take up complaints in this respect.

*Government Decree No. 18/1999. (II.5.) on unfair terms in consumer contracts* stipulates the contractual terms and conditions to be considered "unfair" - until providing evidence to the contrary - under this Decree in the contract concluded by the consumer and the business organisation.

*Marketing provisions*

*Act No. LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices* empowers the Office of Economic Competition to sanction the unfair influencing of consumer decisions and activities violating the prohibition of unfair competition within the framework of an administrative proceeding (chapters II and III).

*Advertising provisions*

*Act No. LVIII of 1997 on Business Advertising Activity*, together with the so-called *Competition Act* mentioned above, provide an opportunity for controlling advertisements considered unfair by administrative means and sanctioning them effectively, if necessary. This law concerns electronic commerce as well.

*Distance selling provisions*

Distance selling is primarily regulated by *Government Decree No. 17/1999. (II.5.)* on the protection of consumers in respect of distance contracts (which entered into force on 1 March 1999). This *Decree* regulates in detail the obligation of business organisations to provide information and stipulates the possible ways of enforcing complaints. Section 4 stipulates the right of withdrawal, which entitles consumers to withdraw from the contract within eight working days without offering an explanation. The business organisation concerned is obliged to repay the amount paid by the consumer immediately after the termination of the contract, but within 30 days the latest. The consumer is to cover all expenses incurred in connection with the return of the goods when exercising his or her right of withdrawal. The consumer is not obliged to bear any other expenses. Section 8 of the *Decree* stipulates that the business organisation concerned may not demand any compensation from the consumers if it sells goods or renders services not ordered by the consumer earlier.

*Statement No. 24/1995 (IKK.13.)* on the performance of certain commercial activities issued by the Ministry of Industry and Trade provides assistance for fulfilling the obligation of registration. According to this statement, distance selling activities can be started in the possession of the following documents: an effective certificate of incorporation, including activity No. 52.61 "Retail trading through distance selling", furthermore an entrepreneur's licence, the registration form of the shop countersigned by the notary of the municipality and the announcement of the product range planned to be sold.

*Government Decree No. 4/1997 (I.22.)* on the conditions of operating shops and pursuing domestic trading activities stipulates all the conditions that mail order firms must fulfil to operate (conditions of operation, licences by the competent authorities, opening hours, the settlement of complaints, etc.).

## ITALY

In the field of consumer protection law, Italy mostly applies EU directives. The government is now waiting for the implementation in the Italian legislature of the recent *EU Directive on Electronic Commerce*, published in the Official Journal of the EU on July 17 2000, L 178.

Other related European directives, already implemented, are in force by legislative decrees. In particular:

- Dlgs (Legislative Decree) 15 Jan. 1992, No. 50, implementing *Directive 85/577/EEC* for contracts negotiated away from business premises.
- Dlgs 22 May 1999, No. 185, implementing *Directive 97/7/EEC* for consumer protection on distance selling.

The Dlgs of 31 March 1998, no. 144, modified Italian laws regarding traditional commerce. Some of its articles could be applied to sales by mail connected to e-commerce. In addition, a general framework law on consumer protection is in force in Italy. This is the Law of 30 July 1998, No. 281.

## JAPAN

In an effort to protect consumers from fraudulent and misleading conduct online all existing Japanese consumer laws are considered to be applicable to business-to-consumer electronic commerce.

### *National Laws*

#### The Consumer Protection Fundamental Act

The *Consumer Protection Fundamental Act*<sup>93</sup> was enacted in 1968. The *Act* is intended to provide comprehensive general measures related to consumer protection and the improvement of consumer interests. The *Act* defines the responsibilities of the central government, local governments and business enterprises as well as the role of consumers.

- 1) The Japanese national government and local governments should plan and implement comprehensive consumer policies in accordance with the development of the economy and society.
- 2) Businesses should take the necessary actions to provide consumer protection and comply with government policies. Businesses must always endeavour to quickly, and effectively resolve any consumer complaints.
- 3) Consumers should play a positive role in the improvement of consumer life by taking the initiative to acquire the necessary information related to the consumer marketplace and by endeavouring to behave in a self-reliant and rational manner.

In addition, the *Act* defines the government's basic policy position on consumer related issues. This includes protecting consumer safety, ensuring proper notice of correct weights and measures, labelling requirements, ensuring free and fair competition. The *Act* also established the Consumer Protection Council, a government organisation comprised of relevant Cabinet ministers who deliberate plans for basic consumer protection.

#### *The Antimonopoly Act – The Act against Unjustifiable Premiums and Misleading Representations*

The *Antimonopoly Act*<sup>94</sup> (AMA) prohibits unfair trade practices that might lead to misunderstandings or deceptive activities. Under the *Act*, the Fair Trade Commission (FTC) prohibits the use of unfair trade practices related to consumer inducement as they serve to impede fair competition.<sup>95</sup> The *AMA* defines deceptive customer inducement as the act of unjustly enticing the customers of a competitor by misleading them as to the substance of a commodity or service, the terms of a transaction or other matters relating to the transaction causing the consumer to believe they are either much more favourable than is true, or that they are better than those of the competitor. The FTC also defines the inducement of consumers through unjust benefits, such as inducing a consumer by offering unjust benefits as compared to normal business practices.

### *Act against Unjustifiable Premiums and Misleading Representations*

The use of exaggerated or deceptive representations that may mislead consumers and notice of excessive premiums in connection with transactions involving commodities or services are prohibited by the *Act Against Unjustifiable Premiums and Misleading Representations*<sup>96</sup> (Premiums and Representations Act).

The *Premiums and Representations Act* was enacted in 1962, as a special provision for the AMA. It aims to protect the general interests of consumers by promptly and effectively preventing the inducement of customers through the use of unjustifiable premiums and misleading representations – each of which is a type of unfair trade practice prohibited by the AMA.

To prevent unfair customer inducement, the *Premiums and Representation Act* prevents any representation by which the quality, standard, or any other matter relating to the substance of a commodity or services might be misunderstood by consumers as being much better or more favourable than is true, or better than that of a competitor (misleading representation). It also prohibits the use of excessive premiums. The FTC or prefectural governors can take measures such as the issuance of an injunction against businesses found to be in violation of the *Premiums and Representation Act*.

In addition, in an effort to prevent excessive premiums and misleading representations in the marketplace, the *Premiums and Representation Act* outlines the fair competition code system, in which business operators or trade associations can establish voluntary rules concerning premiums and representations suitable for trade in the business sectors and characteristic of the commodity or service.

Recognising the need for the government to have the power to restrict any increase in unfair advertisement and/or any action that could mislead consumers during a change of advertisement media, the FTC revised a related notice in December 1998 to make the *Act* applicable to advertisements and related indications on the Internet. The notice has been in force since February 1999.

### *Law Concerning Door-to-door Sales and Other Direct Sales*

Business-to-consumer electronic commerce transactions are defined as a form of “mail order sales” based on the *Law Concerning Door-to-door Sales and Other Direct Sales* (Direct Sales Law).<sup>97</sup>

This *Law*, enacted in 1976, is intended to protect the benefits of existing and prospective customers of door-to-door sales, mail order sales, telemarketing sales, multilevel marketing transactions and continuous service contracts. This law was amended in November 2000 to regulate so called “work-at-home” transactions and to avoid ambiguity concerning the consumer’s intent to make a purchase when he participates in electronic commerce. It is also intended to facilitate the effective and appropriate offering of merchandise and services to customers by requiring fair transactions and helping to prevent any damages that may be incurred by consumers. In this way, the *Law* is designed to help contribute to the development of the national economy.

The *Direct Sales Law* includes the following clauses governing mail order sales, which also apply to business-to-consumer electronic commerce:

- Article 11 of the law on advertisement for mail order sales describes the information a seller must disclose to the consumer (*i.e.* price, method and period of payment, period for delivery, terms on returns and information about the business, such as name, address, telephone number, and name of a representative).



- Article 12 prohibits businesses from engaging in misleading or exaggerated advertising attributes, specifications, and functions.
- Article 13 obliges a business to issue a written notice of acceptance to the customer when the business requires a customer to make payment before shipping, and the business cannot ship the ordered merchandise at once. In stead of written notice, email notice will be permitted in April 2001.
- Furthermore, once a year, in an effort to increase awareness and compliance with related legislation by business, including new entrants into the online direct marketing business, the Ministry of Economy, Trade and Industry (METI) conducted a Web survey “Internet Surf Day.” METI sent warning e-mails to businesses that had homepages that were found to be insufficient with regard to consumer protection safeguards. MITI is also prepared to take any necessary compulsory measures for those not in compliance.

#### *The Instalment Sales Act*

Instalment sales in Japan are governed by the *Instalment Sales Act*<sup>98</sup>. The *Act* is intended to ensure secure transactions and the protection of consumer rights when purchasing goods or services on an instalment payment plan. By the amendment of 2000, instalment sales with passwords or ID numbers on the Internet were included in the scope of the *Act* in addition to those with credit cards.

Article 30-4 of the *Act* is a provision that enables consumers (cardholders) in a consumer credit purchase to raise the same claims against the creditor other than the supplier, as against the supplier himself. The *Act* applies to both face-to-face transactions and distance contract transactions including electronic commerce.

A number of additional measures are enforced by the Japanese government to help ensure consumer interests. One such law is the *Household Goods Quality Marking Law*.

#### *The Consumer Contract Act (Outline)*

The bill representing the new *Consumer Contract Act*<sup>99</sup> was promulgated on 12 May 2000 and will be enforced on 1 April 2001. The act (outlined below) will cover all consumer contracts.

##### 1. Process for Concluding Contracts

A consumer could void contracts concluded with the business if his/her own decision-making were impeded by the following improper solicitation to the contract by the business:

###### a) Misconception

- (i) Where the business tells the consumer an untruth about important matters, which are directly relevant to the object or the conditions of the transaction and generally influence the consumer's decision-making.
- (ii) Where the business provides the consumer with the conclusive evaluations about a matter of uncertain future related to the object of the contract (such as the price of the object, or the amount of money that the consumer can expect to obtain).

(iii) Where the business intentionally refuses to tell the consumer any unfavourable facts that are relevant to the object or the transaction while providing the consumer with favourable or positive information.

b) Embarrassment

(i) Where the business attempts to solicit consumer contracts and will not leave the consumer's residence or workplace, despite the consumer's expression of his/her intention for said business to leave.

(ii) Where the business attempts to solicit consumer contracts and refuses to allow the consumer to leave a particular place, despite the consumer's expression of his/her intention to leave.

2. Contractual Terms

The following types of terms as contained within the consumer contract are to be nullified wholly or partly:

1. The five types of the term that limit or exempt a business from its liability for damages to the consumer.
2. The two types of the term that demand a higher late charge and cancellation fee from consumers than the actual cost for the business.
3. The term that one-sidedly harms the interests of the consumers, and that restricts the consumer's right or imposes certain obligations more than the related provisions of the Civil Code, Commercial Code or other laws.

***Dispute Resolution and Redress***

In addition to central government offices, such as the Ministry of Public Management, Home Affairs, Posts & Telecommunications (MPHPT)'s Telecommunications Consumer Advice Center, MITI's Consumer Advice Office, the National Consumer Affairs Center of Japan (NCAC), a government affiliated corporation, which was known as the Japan Consumer Information Center (JCIC)<sup>100</sup> until September 2000 and about 400 local government consumer information centres accept consumer complaints. These organisations assist the consumer with a wide variety of consumer-initiated disputes, including those related to electronic commerce, and implement other consumer policies, including the provision of reliable information to consumers and testing of products.

## KOREA

Recognising that electronic commerce between businesses and consumers is dramatically increasing both domestically and throughout the world, the Korean government established an *Overall Counter-plan for Online E-commerce* in February 1998, and has incrementally enacted a variety of national policies related to e-commerce. One such initiative is the *Electronic Signature Act* enacted in late December 1998. The *Act* regulates the management of authentication systems, guaranteeing the legality of electronic signatures and their related documents. In February 1999, the Korean government also revised the *Act for Promoting Use of Information and Communication Networks* in an effort to strengthen the protection of personal information on the Internet and it established the *Electronic Commerce Act*, a regulatory device to secure safety and trust in electronic commerce.

### *National Laws*

Korea has a diverse set of laws and regulations governing consumer protection issues. The primary consumer protection provisions are included in the *Consumer Protection Act*<sup>101</sup>, and the *Monopoly Regulations and Fair Trade Act*<sup>102</sup> which intended to restrict unfair business and trade practices.

Other important provisions are included in the *Regulation of Standardized Contracts Act*<sup>103</sup> which regulates unfair stipulations, the *Act on Discount Sales* (rev. 1999) and the *Door-to-Door Sales Act* (rev. 1999) which are to protect consumers from unjust instalment sales and door-to-door sales tactics.

In July 1999, the Korean government gave advance notice of the establishment of the *Product Liability Law* for the redress and prevention of consumer damages from defective goods, and it has carried out policies to introduce the legal principles of the product liability.

### *Marketing*

The Korean government has taken steps to protect consumers from unfair business practices including protecting consumers from fraudulent and deceptive practices through the *Consumer Protection Act*.<sup>104</sup>

Article 15 of the *Consumer Protection Act* forbids unfair actions and practices of business that are thought to possibly disturb consumer's rational selection or in some way damage consumers.

The *Monopoly Regulations and Fair Trade Act*<sup>105</sup> also includes marketing provisions that prohibit the following unfair practices considered to hinder free and fair transactions:

- Actions that unfairly set and maintain the price of goods and services and efforts to unfairly control the sale of goods and services.
- Actions that decide the sales or payment conditions of goods in advance, actions which restrict production, delivery from a warehouse, shipment, sales of goods and services, and actions which limit trade zones or correspondents.
- Actions to maintain the resale price.
- Actions to attract customers unjustly, actions to indicate unfair labelling and other anomalous actions concerning sales.

### *Advertising*

The Korean Fair Trade Commission introduced two separate articles concerning labelling and advertising practices within the *Monopoly Regulations and Fair Trade Act*<sup>106</sup> and, in July 1999, implemented the *Fair Labelling and Advertising Act*<sup>107</sup>. These efforts were intended to correct unfair labelling and advertising practices (including fraud and deception) and to ensure that consumers are provided with accurate and useful information. The law includes the following important provisions:

- Strengthens the requirements for comparative advertisements in order to forbid unfair labels and advertisements including falsities, overstatement, deceit, and slander as well as to revitalise comparative advertisements. (Article 13).
- Introduces a Mandatory Disclosure System on pertinent information concerning goods and services for consumers. (Article 140).
- Introduces the Advertisement Substantiation System to make it possible to request information concerning the facts in an advertisement's contents, if necessary. (Article 15).
- Within the order system, it empowers the government to temporarily halt unfair labelling and advertisements that urgently need correction. (Article 19).

### *Distance selling*

Distance selling is regulated in accordance with the *Door-to-door Sales Act*. The *Act* regulates door-to-door selling and multi-level marketing as well as distance selling. The *Act* has been revised four times, most recently in May 1999.

The *Act* prescribes several regulations for consumer protection including the following:

- Distant sellers shall indicate for advertisement *i*) the name of the firm, the address and phone number; *ii*) kinds and contents of goods and services; *iii*) sale price of goods and services; *iv*) shipment time of goods and services; *v*) delivery time of goods and services; *vi*) terms of subscription periods and delivery expenses. They shall not indicate any false description.
- Consumers may cancel subscription within 20 days after they receive goods or services: *i*) in cases where goods are damaged during their delivery; *ii*) in cases where goods or services differ from those advertised; *iii*) in cases where goods or services arrive later than advertised; *iv*) in cases where subscriptions are made without the mandatory indications advertised.

### *E-commerce Specific Legislation*

The *Electronic Signature Act* (February 1999): This *Act* prescribes fundamental terms upon an electronic signature in order to secure the safety and trust of electronic signature and of electronic documents and revitalise their use.

- To indicate terms concerning the designation and authentication of certified authentication agencies. (Chapter 2).
- To validate certificates by electronic signature. (Chapter 3).

- Comprehensive systems to secure the safety and trust of the authentication service. (Chapter 4).

The *Act for Promoting the Use of Information & Communication Networks* was revised in February 1999 and the protection of personal data on the Internet has been strengthened.

In cases where businesses gather personal data, they shall obtain the info-communications user's approval.

The use, other than the original purpose of gathered information, shall be limited.

The users shall authorise the businesses to use their own personal data and to correct any errors.

The *Electronic Commerce Act* (February 1999): This *Act* was established for validating online transactions through electronic documents for securing their safety and trust, and for fair trade.

- To validate electronic documents and signatures as effectively as paper documents, its signatures and seals, and to establish transaction principles according to the *Act*.
- To establish comprehensive systematic and technological terms in order to remove dangers and uncertainties from e-commerce including personal data protection, the private free use of passwords, promotional policies for consumer protection and to secure trust.
- To extend the government's role in the promotion of e-commerce and to support private free e-commerce.

The Korean government has encouraged self-regulation by businesses with regard to certain consumer protection issues in accordance with the basic ideals of private-sector led electronic commerce solutions. The government will establish the *E-commerce Consumer Protection Guidelines* soon in order to provide guidelines for business taxpayers.

In addition, business groups including the Korea Association of Information & Telecommunication (KAIT) and public institutions including the Korea Institute for Electronic Commerce (KIEC) will introduce the Certificate Mark System to shopping malls.

#### *Consumer Safety*

A comprehensive law concerning consumer product safety has not been introduced yet. However, the *Consumer Protection Act* for the protection of consumers' fundamental rights prescribes business obligations to the preventive standards concerning danger and injury, for the standards of labelling and advertisements, for mandatory recalling and discarding of dangerous goods and services. The Korean government has prepared proper steps in accordance with the *Act*.

Individual laws and ordinances containing articles concerning product safety including orders for recalling or discarding of dangerous goods and services have been prepared in accordance with the *Food Sanitary Act* and the *Electronic Appliances Safety Control Law*.

#### *Consumer Redress*

The *Consumer Protection Act* (Article 12) prescribes measures necessary for the government to deal with consumer complaints and redress quickly and fairly. The government has established the *Consumer*

*Damages Compensation Regulations* in accordance with the Law to facilitate the fair resolution of disputes between businesses and consumers.

In addition, the Consumer Dispute Settlement Committee, an Alternative Dispute Resolution (ADR) mechanism to resolve disputes between consumers and businesses, has been established and is run by the Korea Consumer Protection Board (KCPB).

## MEXICO

In Mexico, general consumer provisions have been in effect since 1975. However, these provisions were harmonised and integrated in the Federal Consumer Protection Law<sup>108</sup> (LFPC) of 1992, which is intended to promote and protect the rights of the consumer and to safeguard equity and legal security in relations between providers and consumers. The Ministry of Economy (SE) is the department responsible for developing consumer policies and co-ordinates the various offices that work in the area. The Federal Agency for Consumer Protection (PROFECO) is the authority responsible for enforcing and monitoring the LFPC. Both are federal authorities, with representatives in the 31 States of the Mexican Republic.

### *Federal Civil, Commercial, Procedural and Consumer Laws*

In accordance with the spirit and objectives of the OECD Guidelines and based on the legal framework within the Constitution and the legislative system and traditions in Mexico, the Executive Branch of the Government, through the Ministry of Commerce and Industrial Development (now SE), called upon the electronic commerce representatives in order to conciliate ideas and proposals with the aim of submitting a draft Electronic Commerce Law to the Congress.

As a result of this consultation, an important reform was approved and published in the Official Gazette of 29 May 2000, and became effective on 8 June 2000. Not one single piece of legislation is known as the “Electronic Commerce Law”, but rather the amendments and additions to four Federal Statutes:

- Civil Code.
- Federal Civil Procedure Code.
- Code of Commerce.
- Federal Consumer Protection Law.

The four statutes amended have a complementary basis, with the Civil Code providing for certain matters of federal applicability. Among such federal matters, it now includes contract formation by electronic and optical means or by any other technology, which allows the expression of the offer and its acceptance in an immediate way.

Likewise, the Civil Code provides that Notary Publics may now, along with the contracting parties, generate, send, receive, file or communicate the information containing the exact terms they have agreed upon through the use of electronic and optic means or by any other technology.

### *Federal Civil Procedure Code*

The Federal Civil Procedure Code was amended to recognize as evidence such information generated and communicated through electronic and optic means or by any other technology. The value as evidence will be determined by the trustworthiness of the method employed to transfer such information.

### *Code of Commerce*

The Code of Commerce provides that contracts and agreements entered into by mail, telegraph or by electronic, optic means or by any other technology shall become binding from the moment acceptance of an offer is received. It is, therefore, expressly stated that electronic and optic means may now be utilised in all acts of commerce and that, for purposes of this Code, information generated, sent, received, filed or communicated through such electronic or optic means shall be generically denominated “data message”.

### *Federal Consumer Protection Law*

The 1992 Law was amended to incorporate among the basic principles of the Statute protection of consumers who carry out transactions through electronic and optic means or by any other technology, as well as promotion by the Ministry of Economy to encourage self-regulation codes among suppliers.

Particularly, the Consumer Protection Law, in accordance with the OECD Guidelines and UNCITRAL Model Law for Electronic Commerce, provides that every electronic transaction between suppliers and consumers shall comply with the following:

- All personal information provided by consumers shall be kept confidentially by suppliers.
- Suppliers shall employ technical methods to provide security and confidentiality. Prior to the celebration of any transaction, suppliers shall disseminate such technical methods.
- Before entering into the transaction, suppliers shall provide to consumers their physical domicile, phone numbers and such other data that allow consumers to file claims or request clarifications.
- Suppliers shall avoid deceptive commercial practices with respect to products or services. Likewise, they will be subject to other provisions relating to directions and advertising as contemplated in the Law.
- Consumers are entitled to know all information concerning terms, conditions, costs, additional charges as well as payment methods.
- Suppliers shall respect consumers’ decisions concerning quantity and quality in their transactions. Suppliers shall also respect consumers’ desires to not receive unsolicited advertisements; and finally,
- Suppliers shall avoid using sales or advertising strategies which do not provide clear and sufficient information about the services offered and shall employ special care with respect to marketing practices addressed to vulnerable populations such as children, the elderly and sick people.

In addition to the new provisions on electronic commerce, as referred to above, there are some other provisions, especially on distant selling, which are equally applicable to electronic commerce.

Chapter V of the LFPC refers to distance selling directed at the home, whether through telephone, television, mail, or electronic means. It contains provisions that protect the consumer by requiring that:

- Price, costs of delivery and other charges are revealed to the consumer.



- Payment mechanisms and transparency must be provided in all aspects of billing.
- Individualisation of the transactions: providers have to maintain registers and provide the consumer with information that can establish the identity of the person transacting.
- The consumer will have the right to revoke the distance-selling contract within five working days without penalty (cooling-off period).

In order to widen and strengthen the provisions of the LFPC, the Ministry of Economy published a Mexican Official Standard “Criteria for Selling outside a Commercial Establishment”. The regulation is mandatory and establishes the information requirements for sellers of commercial goods to consumers who sell outside a commercial location. Relevant provisions of the Standard include:

- Information requirements established by this regulation are applied in Mexico indifferently to service providers from national or foreign origins.
- The general characteristics of the goods and services must be specified in the offer, as well as sales conditions, costs of delivery, and method of payment.
- Consumers must be given a five-day cooling-off period.
- The conditions regarding complaints refund policy, returns, and guarantees must be disclosed.

Chapter III of the LFPC provides protection for consumers against false or misleading advertising. It requires that all communication, regardless of the medium or form, shall be truthful and sufficiently exact, in order to avoid error or confusion on the part of the consumer. These provisions are monitored and enforced by PROFECO, and it is important to recall that both provisions, among others, are being revised in terms of changes in the marketplace, such as electronic commerce.

## NEW ZEALAND

The consumer protection laws and self-regulatory frameworks in New Zealand are technology-neutral and intended to provide flexible legal parameters that effectively protect the country's consumers. When dealing with New Zealand-based businesses, consumers in New Zealand have the same rights and protections available to them regardless of how their transactions are carried out – whether electronically or by more traditional means.

In March 2000, the New Zealand Ministry of Consumer Affairs<sup>109</sup> released a report entitled *Electronic Commerce and the New Zealand Consumer – A Status Report*<sup>110</sup>. The report provided an overview of the current marketplace environment and proposed the adoption of a *Model Code for Consumer Protection in Electronic Commerce* to address a variety of issues facing online consumers in New Zealand. The Model Code was issued in October 2000. It is intended to be flexible and can be adhered to by individual businesses or used as a basis for self-regulatory mechanisms such as codes of conduct. The Model Code has been used as the basis for a new Internet-based self-regulatory scheme applying to marketers and advertisers.

### *National Laws*

#### *The Fair Trading Act*

The *Fair Trading Act* and the *Consumer Guarantees Act* are the two principal pieces of consumer protection legislation in New Zealand.

The *Fair Trading Act*<sup>111</sup> covers all advertising and selling of goods and services by sellers; the *Act* does not cover private sales by individuals. The *Act* prohibits misleading and deceptive conduct, false representations, and unfair practices. The *Act* lists a number of specific practices considered to be “unfair” including:

- Offering prizes or gifts without intending to supply them or not supplying them as offered.
- Bait advertising.
- Making misleading claims about certain details of businesses that can be carried out from home.
- Demanding or accepting payment without intending to supply the goods or services.

#### *The Consumer Guarantees Act*

The *Consumer Guarantees Act*<sup>112</sup> (CGA) sets forth the guarantees that must be provided with respect to consumer goods and services. Like the Fair Trading Act, the CGA does not cover sales by private individuals. The CGA covers:

- Goods that are ordinarily acquired for personal or household use.
- Services that are generally provided for personal or household use.
- New and used goods bought on or after April 1994.

Exceptions to the *Act* include:

- Goods purchased through auctions or by tender.
- Commercial goods.
- Commercial services.

The *Act* sets forth certain guarantees for consumer goods that can not be contracted away. These consumer guarantees require:

- Goods must be of acceptable quality.
  - Fit for the purpose for which they are intended.
  - Safe.
  - Durable.
  - Free from minor defects.
  - Acceptable in look and finish.
- Goods must be suitable for any particular purpose discussed with the seller.
- Goods must match their description.
- Goods must match any sample or demonstration.
- Consumers must be given full ownership or title.
- Spare parts and repair facilities must be available.

#### *The Electronic Transactions Bill*

The New Zealand Government has recently introduced an *Electronic Transactions Bill* which is designed to facilitate the use of electronic technology and to contribute to the Government's goal of growing an inclusive innovative economy for the benefit of all.<sup>113</sup> The *Bill* will remove impediments to the use of electronic technology based on legal requirements that documents be in writing, or signed, or have particular physical attributes. It will give legal effect to electronic transactions or communications which are functionally equivalent to paper-based transactions or communications, where the parties have chosen to transact electronically.

The *Bill* excludes some statutory requirements in respect of which it may not be appropriate to allow use of electronic technology. These exclusions include wills, affidavits and statutory declarations. The *Bill* also excludes certain documents related to consumer credit contracts, such as initial disclosure of the total cost of credit, and default and repossession notices. These documents have been excluded on the basis that they require a time-bound or urgent response, and personal service of a physical document will better ensure their timely delivery.

*Consumer Credit Law*

Consumer credit is governed by various statutes in New Zealand (*Credit Contracts Act 1981, Hire Purchase Act 1971, Credit (Repossession) Act 1997, and the Door to Door Sales Act 1967*) which are currently under review. Consumer credit law currently prevents credit contracts being concluded online, although many banks and financial services currently advertise online and allow consumers to apply for credit online. The review will consider whether this restriction is still appropriate and how best to protect consumer interests without imposing unreasonable restrictions on parties' ability to contract within an electronic medium.

## NORWAY

In 1999, the Norwegian Government presented a White Paper outlining the major policy objectives and challenges related to electronic commerce that elaborated a number of strategies for a national policy regarding e-commerce. The paper also strongly emphasised that the development of electronic commerce should be in accordance with social and societal considerations such as security, privacy, and consumer protection, with a special view to the protection of children and younger people. Furthermore, the Government underlines that the level of consumer protection that already applies to traditional forms of commerce, as a *minimum*, must apply to electronic commerce. By encouraging these values, enterprises may develop a comparative advantage, which in turn may increase their competitiveness in the marketplace.

The Ministry of Trade and Industry co-ordinates the work in the field of electronic commerce within the Government Administration. The Ministry of Children and Family Affairs has the responsibility for consumer protection in general, including consumer protection in the context of electronic commerce.

### *The Marketing Control Act*

The *Marketing Control Act*<sup>114</sup> is the principal regulatory framework relating to marketing practices. The purpose of the *Act* is to prevent consumers from making choices based on misleading information, prevent business, *i.e.* advertisers, from using means that are unfair and that conflict with good marketing practice. The *Act* contains provisions for good marketing practice, and bans *inter alia* on misleading/insufficient advertising and on unfair marketing practices in general.

An amendment to the *Marketing Control Act* was adopted recently, implementing the provisions on unsolicited commercial communication from the EC Directive on distance selling (97/7/EC). Given the fact that this Directive contains only minimum provisions, the legislature has increased consumer protection on this point. Commercial communications by electronic mail may only be sent to consumers if the consumers have given their prior consent to receiving such messages. The same rule applies to text messages sent to mobile phones. These provisions will enter into force on 1 March 2001.

The Consumer Ombudsman (CO) is an independent administrative body with the responsibility of supervising the *Marketing Control Act* as well as certain parts of the regulatory framework governing advertising in broadcasting.<sup>115</sup> It is recognised that the *Marketing Control Act* applies to marketing via the Internet which is directly aimed at Norwegian consumers. The CO has been, in particular, concerned with advertising on the Internet directed towards children. As children are not always able to make the distinction between advertising and for instance games on the Internet, they are easy “targets” for commercial marketing.

The *Marketing Control Act* does not contain any special regulations as far as children and young people are concerned, and neither is there any prohibition against directing advertisements at this group in general. Through the enforcement practice however, it has been established that stricter requirements should be applied for advertising directed at children and younger people. This includes principles that it should be easy to distinguish advertising from other material, that no exploitation for commercial purposes should take advantage of the fact that children and younger people can be influenced more easily than other consumer groups, and that their credulity, trust and inexperience should not be misused. Thus, there is a lower threshold for regarding *the Marketing Control Act* as being violated when the marketing is directed at minors.

However, the Internet being an international medium, there are considerable problems in having foreign commercial marketers comply with Norwegian law when directing advertising towards Norwegian consumers. On a Nordic level, the consumer ombudsmen in the Nordic countries drew up a *Common position on trade and marketing on the Internet and similar communication systems* in December 1998. (The full text of the paper is available in the Annex of this document.) Furthermore, the Nordic governments developed a set of nine rules for marketing towards children and youth on the Internet<sup>116</sup>. The Nordic ministers with responsibility for consumer issues approved the rules in August 1999. The initiative may serve as a basis for a common initiative in the EU. A wider international set of rules, regulations or principles that defines what is to be considered good marketing practice on the Internet, is considered essential in order to develop trust and stability in the international marketplace.

### *Right of Withdrawal Act*

The recently adopted *Act relating to Information Requirements and Right of Withdrawal for Contracts Concluded at a Distance or Outside Ordinary Sales Outlets (Right of Withdrawal Act)* contains provisions that protect consumers' interests (e.g. when shopping on the Internet). The *Act* mainly implements the EC directive on distance selling (97/7/EC) and will enter into force on 1 May 2001.

Among the *Act's* highlights are provisions dealing with the following:

- There are provisions stating which information is to be provided before the conclusion of a contract so that the consumer knows, for instance, whom he or she is buying from, the basic information about the product and the total amount he or she must pay.
- Upon the conclusion of the contract, further information is to be given. The consumer has a right to withdraw from the contract within 14 days of the receipt of the goods and of the required information. When buying services, the consumer may withdraw within 14 days of the receipt of the information, unless the service has already been provided and the consumer has agreed to this.
- The consumer is, among other things, to be informed of the right to withdraw and how to proceed when exercising this right. Some information is to be provided in written form, including the required use of a special form. If the information is not given, the cooling-off period increases from 14 days to three months or one year at the most.
- If the marketing of a product has been directed to the Norwegian market, or if the marketing was in Norwegian, the information should be given in Norwegian as well.

### *Product Safety and Labelling*

According to the *Product Control Act*, businesses involved in the production and marketing of products shall act with due care and implement reasonable measures to prevent them from causing damage to health and disturbances of the environment. This entails, among other things, a general requirement to provide whatever information is necessary for the consumer's use and safe handling of the product. In pursuance of this provision, it contains a number of specific safety regulations including an obligation for producers to give necessary details on how to safely use a product.

Some of the regulations have more detailed requirements as concerns instructions for use. This applies *inter alia* to the regulation on machines and personal protective equipment, respectively, which implement the EU Directives 89/392 and 89/686 and include requirements that are parallel to those of the Directive.

Product information required to accompany all products shall include placing and possible founding, safety zones, the surface under the equipment, maintenance etc. Furthermore, instructions for installation shall include *inter alia* a list of parts, a description of the installed product, and information on necessary tools for the installation. Finally, information shall be given on area of application, whether it is intended for indoor use only, and which age groups the equipment is intended for.

The Consumer Ombudsman has deemed it to conflict with the *Marketing Control Act* when warnings related to health and safety in instructions for use (or on the packing) are given in a foreign language. The same applies explicitly to the requirements for marking of electrical products.

There are no explicit requirements for information of use beyond those concerning health and safety. However, under the *Act* relating to the sale of goods, the lack of necessary information on how to use a product may, under certain circumstances, be considered to represent a product defect.

There is no general requirement that the Norwegian language be used in cases other than where consumer health and safety are concerned. However, a general requirement related to language contained in the *Marketing Control Act* states that: if the information for use is considered vital for the appropriate handling of the product and such information is provided in a non-Scandinavian language, then the producer/importer is obliged to inform the consumers of this fact. (Scandinavian languages include, in addition to Norwegian, Swedish and Danish).

## POLAND

With the exception of certain regulations in Banking and Insurance Laws, there are no specific regulations in Poland directly governing electronic commerce issues. In practice, the existing provisions of traditional civil law such as the *Act on Counteracting Monopolistic Practices*<sup>117</sup> are equally applicable to electronic commerce. These regulations are not always suitable to deal with certain specific issues related to electronic trade; for example it is difficult to determine legal status of so-called digital products or to define the scope of responsibility of Internet service providers.

Poland has undertaken intensive work intended to implement adequate standards for consumer protection by adapting Polish laws to comply with both European Union law and international standards such as the *OECD Guidelines for Consumer Protection in the Context of Electronic Commerce*.

Within the framework of a project commissioned by the Office for European Integration a document has been prepared on the harmonisation of Polish consumer regulations with the European Community regulations – including consumer protection online and distance selling. This document was prepared by a group of research workers from the Institute for Inventiveness and Intellectual Property Protection and Cracow University.

### *National Laws and Initiatives*

A governmental draft act on electronic signature, which was approved by the Council of Ministers on 7 February 2001, will soon be a subject of Parliamentary work. Another piece of legislation elaborated recently is a draft act on electronic payment tools. On 14 July 2000, the Polish Parliament adopted a resolution concerning the establishment of the basis of the information society in Poland. This document, in general, obliges the government, among others, to prepare as soon as possible legal regulations dealing with electronic commerce and referring to such issues as electronic documents, information security, cryptography, data protection, security and principles concerning agreements concluded through Internet and telecommunication networks, issues connected with duties and rules in the field of retail turnover with foreign countries.

The Act on the protection of certain consumer rights and on the liability for damage caused by a dangerous product, which came into force on 2 July 2000, implements the EU directive on distance selling. The Act on amendments to the Act on combating unfair competition and on amendments to the Act on radio broadcasting and television, which came into force on 19 July 2000, implements the directives on misleading and comparative advertising.

Representatives of the Office for Competition and Consumer Protection actively participate in the work of the Inter-Ministerial Team for electronic commerce trade issues, which is chaired by the Vice-Minister of the Economy.<sup>118</sup> This group prepared a document which suggests directions for the necessary future initiative to facilitate development of electronic commerce and consumer protection.

In addition, the Office submitted a set of assumptions for consideration by the Inter-Ministerial Team outlining the potential liability of Internet Service Providers where they are found responsible for false, misleading or otherwise unlawful online content. Poland believes that issues related to online content and liability will require comprehensive and consistent regulation and will likely be the subject of close co-operation between individual administration authorities and many entrepreneurs operating in this field.

Within the framework of co-operation with foreign consumer protection authorities, the Office for Competition and Consumer Protection also participates in various international initiatives aimed at



detecting and combating unfair commercial practices conducted on the Internet. Poland has participated in three International Internet Sweep Days organised by the International Marketing Safety Network. Through these online “sweeps”, sites promoting financial pyramids and “miracle products” making deemed to be unfair and/or misleading statements were identified and were then sent warnings about the potential illegality of their online operations. Poland has also undertaken a similar sweep focused on Polish businesses aimed at checking the level of compliance with national consumer protection standards as well as international standards such as those reflected in the *OECD Guidelines for Consumer Protection in the Context of Electronic Commerce*.

## SPAIN

Spain has a number of State regulations<sup>119</sup> related to consumer protection as well as regulations issued by the Autonomous Communities.

### *Horizontal Laws*

#### *General Law 26/84, of 19 July, for the Defence of Consumers and Users*

This *Law* provides the general legal framework for consumer protection and outlines the basic rights of Spanish consumers. These rights include:

- 1) Protection from risks which could affect consumer safety or health.
- 2) Protection of the economic and social interests of consumers.
- 3) Providing for repair or compensation for damages.
- 4) Access to accurate information about products and services and providing education materials and information to facilitate consumer knowledge as to their correct use, consumption or enjoyment.
- 5) Providing consumers with a voice to allow for consultation and participation in the preparation of the general provisions that directly affect them and the representation of their interests, all of this through legally constituted consumer and user associations, groups or federations.
- 6) Access to legal, administrative and technical protection in situations of inferiority, subordination or lack of defence.

The text also includes a set future policy options and introduces a series of qualifications for later parliamentary development intended to help effectively implement these rights. It should be emphasised that, based on these basic consumer rights, regulatory requirements have already been established regarding labelling, marketing, and advertising of consumer products as well as requirements related to the safety and health related aspects of these products.

#### *General Law 34/88, of 11 November, on advertising*

This *Law* is intended to implement Directive 84/450/EEC regarding false or deceptive advertising into Spanish Law. The *Law* goes beyond the current regulations related to the advertisement of certain products and services by considering other types of illegal advertising. In particular, this includes subliminal advertising, advertising directed toward teens, children and women, and deceptive advertising (comparative advertising is considered to be deceptive in certain cases).

In choosing from among the various options offered in the aforementioned EC Directive, the Spanish legislature opted to allow for enforcement of these advertising provisions through civil judicial procedure. This includes the power to prosecute and sanctioning in cases of illicit, fraudulent and/or deceptive advertising.

*Law 16/89, of 17 July, on the defence of competition*

This *Law* is intended to guarantee competition and protect the marketplace from any actions contrary to the public interest. Among other issues, the *Law* considers agreements and potential restrictive practices related to competition and economic concentrations within various industries. The Court for the Defence of Competition is the body tasked with applying and ensuring compliance with this *Law*.

*Law 26/91, of 21 December, on contracts signed outside trading establishments*

This *Law*, intended to implement Directive 85/577/EEC, has a broader field of application than the existing regulations related to mail order sales. In mail order sales, the contract proposal and acceptance are always concluded by means of distance communication. This *Law* requires contracts to be made in writing and, wherever applicable, an annulment document must also be delivered.

*Law 22/94, of 6 July, on civil liability for damages caused by defective products*

Following Directive 85/374/EEC, this *Law* establishes a regime of objective, although not absolute, liability, permitting the manufacturer to exonerate itself from liability in the specific cases listed in the *Law*. Damages subject to compensation are considered to be personal harm and material damage, with an exemption of up to ESP 65 000. In general, those protected by the *Law* include anyone suffering harm caused by the defective product, independently of whether or not they meet the definition of “consumers” in the strict sense of the word.

The objective liability of the manufacturer lasts for ten years from the time that the defective product causing the harm is put into circulation. This is the time period that is considered reasonable if one takes the field of application of this legal text into account, which includes personal property, gas and electricity. The liability requirements included in the *General Law for the Defence of Consumers and Users* is applicable to other product categories.

*Law 7/96, of 15 January, on the organisation of retail trading*

Because of the nature of the commercial sector that it regulates, this *Law* contains specific basic requirements related to consumer protection. The *Law* includes regulations related to: the commercial offer, activities for promoting sales, selling during specific sale periods, bargain sales, etc. The *Law* also contains policy options with regard to what are known as “special sales” which include automatic selling, street or non-sedentary selling, selling by public auction and mail order sales. The provisions related to mail order sales include the right to cancel, the minimum informative content for contract proposals, a minimum period for executing the contract, etc.

*Royal Decree 44/96, of 19 January, by which measures are adopted which guarantee the general security of the products put at the disposal of the consumer*

This *Decree* is intended to guarantee the general safety of products before they reach the consumer market and is intended to apply exclusively to products destined for consumer use. Jurisdiction over the application and enforcement of this provision is entrusted to Public Administrations within their classic police or limiting functions.

Four important provisions were introduced through this *Royal Decree* which are intended to more fully ensure that products introduced into the market that are specifically intended for use by consumers or products likely to be used by consumers, should be safe.

1. The obligations of the producers and distributors with regard to the security of their products are fully developed and made concrete.
2. The competent authorities for controlling and monitoring the commercialisation of safe products are determined.
3. In order to help guarantee the security of products, the *Decree* also outlines the measures the controlling authorities can adopt are also outlined. At the same time, the *Decree* leaves open the possibility of adopting exceptional measures in emergency situations.
4. A system for the notification and exchange of information about product safety has been created in which the corresponding bodies in the Autonomous Communities, the Ministry of Health and Consumption and the European Commission are inter-related.

*Law 7/98, of 13 April, on general contracting condition*

This *Law* transposes Directive 93/13/EEC on abusive clauses into an internal ordinance. At the same time, the *Law* introduces important modifications to the *General Law 26/84*, of 19 July, for the Defence of Consumers and Users, which also includes references to abusive clauses. The *Law* is intended to protect the legitimate rights of consumers and others who enter into contractual agreements that include general conditions by distinguishing the abusive clauses in the general contract conditions.

The *Law* establishes a non-exhaustive list of clauses that are considered abusive. At the same time, the requirements for the inclusion of a general clause considered to comply with the *Law* are regulated and it opts for the interpretation of obscure clauses in the most advantageous manner for the consumer.

In addition, collective actions aimed at preventing the use of contrary general conditions are also regulated.

***Sectoral Legislation***

*Order of 12 December 1989 on interest rates and commission, rules for acting, information to clients and advertising by the credit companies*

In an effort to protect the legitimate interests of the clients of credit companies, this *Order* establishes a group of specific obligations applicable to contractual relations and requires the administrative authorities to be informed of the basic conditions of the operations and regulates certain aspects of their advertising.

Although the *Order* pays special attention to classic operations, such as bank loans or deposits, its field of application is more general. The *Order* includes other operations such as transfers of financial assets, foreign exchange operations, etc. in which accurate information about the client provides a basis for better competition between banks.

With regard to advertising, there has been a liberalisation of the advertising performed by the credit companies. However, those advertisements that make reference to the cost or profitability of a credit company's operations continue to be subject to previous authorisation by the Bank of Spain in order to maintain a level of control over public expectations.

*Law 25/90, of 20 December, on medication*

The principal objective of this *Law* is to contribute to the existence of safe, efficient and quality medication, correctly identified and with the appropriate information. To achieve this goal, certain

measures have been established including, among others, requiring the approval of the medication by health authorities and the product registration, prior to the commercial sale.

Advertising of medications is subject to restrictions and, in certain cases, prohibited.

*Law 5/92, of 9 October, on the regulation of automatic processing of data of a personal nature*

This *Law* is aimed at introducing cautionary measures intended to prevent any violations of privacy that could result from processing personal information. The general principles contained in the *Law* define the guidelines that must be followed when collecting data of a personal nature in an effort to ensure both the veracity of the information contained in the data stored and the congruity and rationality of the use of the data. This principle of congruity in the processing of data guarantees that the data cannot be used except when the end for which it has been obtained is justified.

The *Law* includes the principle of consent, which allows the individual to determine the level of protection the data referring to him/her should be afforded and agree to its ultimate use. This principle is based on the need for conscious and informed consent by the individual for the data to be admissible.

As an additional guarantee of information privacy and security, the *Law* also regulates the correct transfer and storage of the data. Finally, the *Law* addresses the right of access, allowing individuals to correct and/or delete the information.

*Law 25/94, of 12 July, by which the ordinance of Directive 89/552/EEC is included on the co-ordination of legal, regulatory and administrative provisions of the Member States relating to the exercise of television and radio communication activities*

This *Law* establishes the basic regulatory provisions related to television and radio advertising. It establishes not only the types of advertising that it is illegal to diffuse on television but also the maximum advertising times per day and per hour. Telephone sales are specifically considered within the *Law*.

In addition, the *Law* establishes a series of norms for the protection of minors with regard to the content of certain television programmes.

This *Law* was recently modified by means of the promulgation of *Law 22/99*, of 7 June, which includes the Spanish ordinance on Directive 97/36/EEC.

*Law 7/95, of 23 March, on consumer credit*

The *Law* begins by defining its scope of application and includes a definition of a consumer that is adapted to that which is established in Directives 87/102/EEC and 90/88/EEC. The *Law* does not apply to contracts for which the amount is less than ESP 25 000 or more than ESP 3 000 000, although the provisions on advertising and information and the determination of the equivalent annual rate will be applied to the latter. The consumer protection provisions of this *Law* include requirements related to advertising and information, the content of the contract, the contractual format, causes of contract invalidity and methods to determine such things as the cost of credit and the equivalent annual rate.

*Law 21/95, of 6 July, regulating combined travel*

This *Law*, which transposes Directive 90/314/EEC relating to combined travel, begins by outlining the required aspects of combined travel contracts citing the minimum services that must be included in the contract such as transport and/or accommodation and other tourist services that are not an accessory to these. The consumer protection provisions are centred on the requirement that consumers must be given complete and detailed information about the offer via a travel programme whose content is of a binding nature according to the *Law* for both the organiser and the retailer.

The emphasis on providing consumers with adequate information is reiterated in the requirement for a written contract and the inclusion of clauses related to the description of the combined travel. This written information should include all information required to be provided at the beginning of the trip, the consumer's right to transfer the reservation and any established limitations (excluding any exceptions made related to price reviews).

*Law 28/98, of 13 July, regulating the sale of personal property on hire purchase*

This norm is applicable to hire purchase contracts for non-consumable and identifiable corporal personal property for which *Law* 7/95, of 23 March, on consumer credit, is not applicable.

According to the *Law* a series of clauses considered to be the minimum content of such contracts together with a series of formal requirements are required. The omission of any of the required clauses will be penalised in the form laid down by the *Law*. Other provisions contained in this *Law* are also aimed at protecting the consumer, such as the ability of the consumer to abandon the contract within seven days when certain circumstances and minimum norms are complied with in regard to the advertising content.

*Law 42/98, of 15 December, on the use by turn of real estate for tourists*

This *Law* is not limited to the strict transposition of Directive 94/47/EEC, but is also intended to provide complete regulation for what is commonly known as time-share property (multi-property).

The *Law* includes references to the right to unilateral abandonment, the obligation to provide certain information and specifics related to the language of the contract and establish the applicable jurisdiction. Together with concrete measures embodied in the Directive, these provisions comprise a right of a real nature, through which the right to enjoy a particular property with certain services attached is acquired, for a particular period of the year.

The *Law* requires that this real right must be constituted in a public deed and registered in the Property Register, in such a way that the takers before or after acquisition, may go to the Registry to obtain information on the system to which their acquisition is subject, with a full guarantee that it is legally appropriate.

The *Law* also establishes a minimum duration of three years and a maximum of 50 years for the multi-property system.

Finally, there is precise regulation as to the consequences of modifying the contract and the subsequent resolution or cancellation. The regulation implicitly carries with it the return of the amounts paid as well as the payment of the corresponding indemnity. Cases of failure to execute the contract or deficient execution are also considered and the responsibility derived from these.

## SWEDEN

Due to the growing use of the Internet as part of every day trade and marketing and keeping in mind the challenges posed by its global, borderless nature, the Swedish Consumer Ombudsman has given priority to the supervision of trade and marketing on the Internet.<sup>120</sup>

In October 1999, a governmental committee released a report entitled *Consumers and Information technology – an investigation on computers, commerce and marketing*.<sup>121</sup> According to its terms of reference, the Committee was tasked with investigating and developing a survey regarding the special problems faced by consumers through various means of electronic communication and their participation in the Information society. The Committee's work focused primarily on problems related to marketing and sales practices.

According to the report, consumer protection must be strengthened in a number of specific areas. The report noted that the overarching assumption and goal of online consumer protection must be that the consumer shall have the same protection when buying on the Internet as he or she has in traditional commercial transactions.

The Committee outlined the following policy proposals:

- Those who market products and services on the Internet should be required to provide the consumer with the following information before an agreement is made:
  - The identity of the business (name, address, etc.).
  - Contact information that allows the consumer to easily reach the seller.
  - All other information necessary for the consumer to evaluate the offer.
- The applied contract terms must be clearly presented. Using the new technologies, the seller must provide an effective mechanism to ensure that the consumer has taken notice of the terms before an agreement is made. Where this is not the case, the consumer cannot be bound by the terms. The burden of proof that this information has been provided to the consumer rests with the seller.
- The *Consumer Sales Act* should be revised as necessary to apply to digital products such as program files, data files with music, films, etc. The Committee report also proposes a revision of the *Product Liability Act*.
- The government should consider enacting special legislation to cover intellectual services such as Internet subscriptions.
- Consumer protection should be exempted from the principle of country of origin that is proposed within the EU to determine jurisdiction for electronic commerce.

This Committee proposal is currently under review and is expected to form the basis for a government bill to be submitted to the Swedish Parliament.

### *Distance Selling*

To implement the EU directive on distance selling, the Ministry of Justice recently proposed a new law on consumer protection as it relates to distance selling and door-to-door sales. This *Act* would be applicable to contracts agreed to over the Internet, by telephone, through mail order, and television in addition to door-to-door sales.

The proposed law regulates above all the aforementioned information that the seller should be obliged to provide to the consumer as well as defining the cooling-off period (designated in the *Act* as a period of two weeks). According to the proposal, included in any marketing materials, the seller should inform the consumer of, among other things, the name and address, the properties and price of the product, delivery costs, payment details and information about the cooling-off period. Special considerations should be taken in an effort to protect children and young people.

Once a contract has been signed, the seller must provide the consumer with information – either in written form or in some other durable manner – about the cooling-off period including where to direct requests to exercise the right to cancel the contract, and where to direct any complaints. The *Act* also requires information to be provided regarding applicable warranties and/or service.

With this proposal, the existing *Door-to-Door-Sales Act*, which provides for a cooling-off-period of one week and applies only to door-to-door and telephone sales, would be abolished and replaced by this more comprehensive act. In any case, the cooling-off-period does not begin until the consumer has received the necessary documentation and information on his rights.

This proposal is currently under review and is also expected to result in a governmental Bill.

### *Marketing Act*

#### *Proposed Amendments*

The Ministry of Finance recently proposed a number of amendments to the *Marketing Act*. Notably, this includes a prohibition against sending commercial advertising by e-mail, fax or similar automatic systems (e.g. mobile phones) to consumers who have not, in advance, agreed to receive such communications. The Ministry believes that special protection is required in such cases as it considers these methods to be particularly intrusive as well as imposing certain costs to the consumer.

#### *Current Legal Situation*

The *Swedish Marketing Act*, along with other existing legislation governing contracts, purchases and electronic data processing, also apply to trading and marketing on the Internet and through other similar communication systems when directed towards the Swedish market.

The *Marketing Act* includes a general clause that prohibits businesses from using unfair marketing practices and establishes a general requirement to apply good marketing practice. Violations of this clause are subject to default fines.

In Sweden, “unfair” marketing has a more far-reaching definition than merely referring to “misleading” advertising. This fact provides the basis for regulations prohibiting a variety of marketing methods, including those considered unethical due to an over-obtrusive, aggressive or exploitative nature.



It is incumbent upon the business to prove that its advertising is not misleading or unfair in any other respect. The *Marketing Act* explicitly refers to good marketing practice, as expressed for instance in the advertising rules of the International Chamber of Commerce (ICC) and decisions by the Market Court.<sup>122</sup>

Under this general clause, sufficient information must be included in the marketing. Facts about product properties, prices etc. that are of particular importance from the consumers' perspective, must not be omitted in the advertising. The Swedish *Price Indication Act* specifies the requirements concerning price indication on consumer goods and services.

The *Act* also includes a number of specific rules prohibiting specific marketing activities. Any company that either intentionally or through carelessness violates one of these specific rules may be ordered to pay a special market disturbance charge. Among other things, these rules apply to advertising identification and misleading advertising.

According to these rules, all marketing shall be designed and presented so that it is clearly indicated to be marketing material. It also requires that the marketing material clearly indicate who is responsible for the marketing. When marketing, a business may not make claims or other statements that are misleading. Among other things, this rule applies to statements relating to the nature, quantity, quality or other properties of the product, the origin, use, any environmental and/or health effects and to the product price and any conditions of payment.

The *Marketing Act* has no specific regulations concerning marketing to children and young people, however according to the comments on the law there are, at times, reasons for particularly high standards for honesty and responsibility. This could include cases in which the marketing is directed to more vulnerable consumers such as children.

The *Consumer Contract Terms Act* also is applicable on sales on the Internet. According to the *Act* any unfair contract term that is used by a salesperson as part of a consumer contract may be prohibited. A contract term is typically considered to be unfair if it gives the seller an exclusive benefit at the expense of the consumer. Well-developed case law exists in this area.

The *Product Safety Act* is intended to prevent dangerous goods and services from reaching the consumer marketplace. The *Act* obliges businesses, wherever necessary, to provide safety information, to prevent the distribution of goods or services that may cause damage, or provide warning information about products or service that have proven to be hazardous. As a final measure, the *Act* also allows products to be prohibited or recalled.

According to the *Consumer Sales Act* an advertisement can be considered misleading where a product is found to be faulty. Claims for compensation must be made within two years and a warrant must afford the consumer a better legal position than provided by the law.

The Consumer Ombudsman has supervisory authority over all of the above laws. However, borderless international media like the Internet can pose a number of jurisdictional problems. The Nordic Consumer Ombudsmen have drafted a *Common position on trade and marketing on the Internet and similar communication systems*. The rules outlined in the position paper are applicable when marketing is directed to a national market within the Nordic community. (The full text of the paper is available in the Annex of this document.)

In August 1999 the Nordic consumer ministers also adopted nine rules for marketing towards children and young people on Internet. These rules are expected to serve as guidelines in the Nordic countries and the Nordic ministers also intend to propose that they be used to serve as the basis for common European rules.

## SWITZERLAND

### *Overview*

The Federal Bureau for Consumer Policy<sup>123</sup> supports and promotes consumer interests and consumer protection in Switzerland. The Bureau's Web site provides information on national consumer policy laws and decrees.<sup>124</sup>

### *Laws and Recommendations*

On 7 December 1999, the Federal Consumer Commission issued two recommendations directed to the governmental Federal Council, one on e-commerce and the second on distant selling.<sup>125</sup>

The first of those recommendations requested the Federal Council to modify some provisions of the *Code on Obligations* concerning the conclusion of contracts (electronic signature, consumer right to be informed, withdrawing right and right of return) on the basis of current EU directive drafts (of 23 December 1998 and 17 August 1999, respectively), as well as the OECD *Guidelines*. The recommendation also requested that the Federal Council take measures to reinforce international co-operation in the field of e-commerce and adjust Swiss law to accommodate trends and solutions adopted by the European Union.

The second of the recommendations requested the Federal Council to elaborate on legal provisions for consumer protection on the basis of the European Parliament and Council's Directive of 20 May 1997 on consumer protection in the field of distant selling.

The *Federal Order* on services of electronic certification came into force on 1 May 2000.<sup>126</sup> This *Order*, if adopted as such, will serve as a legal basis for stipulating the conditions to be fulfilled for providing electronic certificates. It will, most of all, put on the same level written and electronic forms in concluding contracts. Lastly, it will take into account the Federal Consumer Commission's recommendations mentioned above on legal provisions for consumer protection. Thus, Swiss law will be compatible with EU law, particularly with regard to Directive 97/7/CE on consumer protection in distant selling and Directive 2000/31/CE on e-commerce. The federal law on unfair competition will be supplemented in order to take into account the OECD Guidelines. Under this measure, an online service provider should provide all information on his firm, as well as on the goods and services sold. If the provider does not, he will be considered guilty of unfair competition and thus liable for penalty.

Several departments of the federal administration are currently examining existing laws with a view to adjust them or extend them to include e-commerce requirements, if necessary. Those departments are: the Federal Office of Communication (OFCOM), the Federal Police Office (ÖFP), the Federal Office of Justice (OFJ), the Federal Bank Commission (CFB), the Federal Office of Commerce Register (OFRC), the Federal Finance Administration (AFF), the Federal Administration of Contributions (AFC), the Federal Institute for Intellectual Property (IPI), the General Custom Directorate (DGD) and the Ministry of Economy (SECO).

## UNITED STATES

The Federal Trade Commission (FTC or Commission) has the broadest enforcement jurisdiction over consumer issues in the United States (US). The mandate of the FTC's Bureau of Consumer Protection is to protect consumers against unfair, deceptive, or fraudulent practices. The Bureau enforces a variety of consumer protection laws enacted by the US Congress, as well as trade regulation rules issued by the Commission. The focus of the Bureau's enforcement actions is on the FTC Act and the rules declaring certain practices to be unfair or deceptive.

A number of other federal and state agencies have law enforcement authority over consumer-related issues. These agencies are described later below.

### ***General Protections Enforced by the FTC***

#### ***Federal Trade Commission Act*** (15 U.S.C. §§ 41-58, as amended)

Under this *Act*, the Commission is empowered, among other things, to (a) prevent unfair methods of competition, and unfair or deceptive acts or practices in or affecting commerce; (b) seek monetary redress and other relief for conduct injurious to consumers; (c) prescribe trade regulation rules defining with specificity acts or practices that are unfair or deceptive, and establishing requirements designed to prevent such acts or practices; (d) conduct investigations relating to the organisation, business, practices, and management of entities engaged in commerce; and (e) make reports and legislative recommendations to Congress.

#### ***FTC Protections Related to Telecommunications***

##### ***Telephone Disclosure and Dispute Resolution Act of 1992 (TDDRA)*** (codified in relevant part at 15 U.S.C. §§ 5701 et seq.)

The *Act* requires the Commission to promulgate certain regulations respecting advertising for, operation of, and billing and collection procedures for, pay-per-call or "900 number" telephone services. The regulations must include certain provisions, such as price disclosure requirements, mandatory warnings on services directed to children, and required disclosures in billing statements. The *Act* also directs the Commission to promulgate a regulation extending to pay-per-call services the billing dispute provisions of the *Fair Credit Billing Act*, 15 U.S.C. § 1666 et seq. The Commission's rules can be found at 16 C.F.R. Part 308.

##### ***Telemarketing and Consumer Fraud and Abuse Prevention Act*** (codified in relevant part at 15 U.S.C. §§ 6101-6108)

The *Act* requires the Commission to promulgate regulations (1) defining and prohibiting deceptive telemarketing acts or practices; (2) prohibiting telemarketers from engaging in a pattern of unsolicited telephone calls that a reasonable consumer would consider coercive or an invasion of privacy; (3) restricting the hours of the day and night when unsolicited telephone calls may be made to consumers; and (4) requiring disclosure of the nature of the call at the start of an unsolicited call made to sell goods or services. The law expressly authorises the Commission to include within the rules' coverage entities that "assist or facilitate" deceptive telemarketing practices. The Commission's rules can be found at 16 C.F.R. Part 310.

The *Act* also authorises the Commission to seek designation of its attorneys as assistant US attorneys for the purpose of pursuing criminal contempt actions for violations of orders that the Commission has previously obtained under section 13(b) of the *Federal Trade Commission Act* against a telemarketer.

*Telecommunication Act of 1996*  
(Pub. L. No. 104-104)

Section 701(b)(1) of the *Act*, amending section 204(1) of the *Telephone Disclosure and Dispute Resolution Act of 1992* (TDDRA), 15 U.S.C. § 5714(1), authorises the Commission to expand upon the definition of "pay-per-call service (currently 900 number services)" to "other similar services providing audio information or audio entertainment if the Commission determines such services are susceptible to the unfair and deceptive practices" prohibited by the Commission's TDDRA rules.

***FTC Protections Related to Privacy***

***Fair Credit Reporting Act***  
(15 U.S.C. §§ 1681-1681(u), as amended)

The *Act* protects information collected by consumer reporting agencies, such as credit bureaus, medical information companies and tenant screening services. Information in a consumer report cannot be provided to anyone who does not have a purpose specified in the *Act*. Companies that provide information to consumer reporting agencies also have specific legal obligations, including the duty to investigate disputed information. Also, users of the information for credit, insurance, or employment purposes must notify the consumer when an adverse action is taken on the basis of such reports. Further, users must identify the company that provided the report, so that the accuracy and completeness of the report may be verified or contested by the consumer.

*The Children's Online Privacy Protection Act*  
(15 U.S.C. §§ 6501-6506)

This *Act* protects children's privacy by giving parents the tools to control what information is collected from their children online. Under the *Act's* implementing Rule (codified at 16 C.F.R. Part 312), operators of commercial Web sites and online services directed to or knowingly collecting personal information from children under 13 must:

- (1) Notify parents of their information practices.
- (2) Obtain verifiable parental consent before collecting a child's personal information.
- (3) Give parents a choice as to whether their child's information will be disclosed to third parties.
- (4) Provide parents access to their child's information.
- (5) Let parents prevent further use of collected information.
- (6) Not require a child to provide more information than is reasonably necessary to participate in an activity.

- (7) Maintain the confidentiality, security, and integrity of the information.

In order to encourage active industry self-regulation, the *Act* also includes a “safe harbor” provision allowing industry groups and others to request Commission approval of self-regulatory guidelines to govern participating Web sites’ compliance with the Rule.

*Identity Theft Assumption and Deterrence Act of 1998*  
(codified in relevant part at 18 U.S.C. § 1028 note)

Section 5 of this *Act*, Pub. L. No. 105-318, 112 Stat. 3007, makes the FTC a central clearinghouse for identity theft complaints. The *Act* requires the FTC to log and acknowledge such complaints, provide victims with relevant information, and refer their complaints to appropriate entities (*e.g.* the major national consumer reporting agencies and other law enforcement agencies).

*Gramm-Leach-Bliley Act*  
(to be codified in relevant part at 15 U.S.C. §§ 6801-6809)

Title V, subtitle A, of this *Act*, Pub. L. No. 106-102, §§ 501-510, 113 Stat. 1338, 1436-45 (Nov. 12, 1999) requires the FTC, along with the Federal banking agencies, the National Credit Union Administration, the Treasury Department, and the Securities and Exchange Commission, to issue regulations (to be codified at 16 CFR Part 313) ensuring that financial institutions protect the privacy of consumers' personal financial information.

Such institutions must develop and give notice of their privacy policies to their own customers at least annually, and before disclosing any consumer's personal financial information to a nonaffiliated third party, must give notice and an opportunity for that consumer to "opt out" from such disclosure. The *Act* also limits the sharing of account number information for marketing purposes, and requires the Treasury Secretary, in conjunction with the FTC and other regulatory agencies, to study and prepare a report with recommendations to Congress by 1 January 2002, on information sharing practices among financial institutions and their affiliates.

***FTC Protections Related to Credit***

*Truth in Lending Act*  
(15 U.S.C. §§ 1601-1667f, as amended)

This *Act* (Title I of the *Consumer Credit Protection Act*) vests the Commission with responsibility for assuring compliance by non-depository entities with a variety of statutory provisions. Specifically, the *Act* requires all creditors who deal with consumers to make certain written disclosures concerning all finance charges and related aspects of credit transactions (including disclosing finance charges expressed as an annual percentage rate).

The *Act* also establishes a three-day right of rescission in certain transactions involving the establishment of a security interest in the consumer's residence (with certain exclusions, such as interests taken in connection with the purchase or initial construction of a dwelling). The *Act* also establishes certain requirements for advertisers of credit terms.

*Fair Credit Billing Act*  
(15 U.S.C. §§1666-1666j)

This *Act*, amending the *Truth in Lending Act*, requires prompt written acknowledgement of consumer billing complaints and investigation of billing errors by creditors. The amendment prohibits creditors from taking actions that adversely affect the consumer's credit standing until an investigation is completed, and affords other protection during disputes. The amendment also requires that creditors promptly post payments to the consumer's account, and either refund overpayments or credit them to the consumer's account.

*Fair Credit and Charge Card Disclosure Act*  
(codified in scattered sections of the US Code, particularly 15 U.S.C. §1637(c)-(g))

This *Act*, amending the *Truth in Lending Act*, requires credit and charge card issuers to provide certain disclosures in direct mail, telephone and other applications and solicitations to open-end credit and charge accounts and under other circumstances.

*Equal Credit Opportunity Act*  
(15 U.S.C. §§ 1691-1691f, as amended)

This *Act* (Title VII of the *Consumer Credit Protection Act*) prohibits discrimination on the basis of race, colour, religion, national origin, sex, marital status, age, receipt of public assistance, or good faith exercise of any rights under the *Consumer Credit Protection Act*. The *Act* also requires creditors to provide applicants, upon request, with the reasons underlying decisions to deny credit.

*Fair Debt Collection Practices Act*  
(15 U.S.C. §§ 1692-1692o, as amended)

Under this *Act* (Title VIII of the *Consumer Credit Protection Act*), third-party debt collectors are prohibited from employing deceptive or abusive conduct in the collection of consumer debts incurred for personal, family, or household purposes. Such collectors may not, for example, contact debtors at odd hours, subject them to repeated telephone calls, threaten legal action that is not actually contemplated, or reveal to other persons the existence of debts.

*Electronic Fund Transfer Act*  
(15 U.S.C. §§ 1693-1693r)

This statute (Title IX of the *Consumer Credit Protection Act*) establishes the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. The *Act* requires financial institutions to adopt certain practices respecting such matters as transaction accounting, preauthorised transfers, and error resolution, and sets liability limits for losses caused by unauthorised transfers.

*Consumer Leasing Act*

(15 U.S.C. §§ 1667-1667f, as amended)

This *Act*, amending the *Truth in Lending Act*, regulates personal property leases that exceed four months in duration and that are made to consumers for personal, family, or household purposes. The statute requires that certain lease costs and terms be disclosed, imposes limitations on the size of penalties for delinquency or default and on the size of residual liabilities, and requires certain disclosures in lease advertising.

*Home Equity Loan Consumer Protection Act*

(codified in scattered sections of the US Code, particularly 15 U.S.C. §§ 1637 and 1647)

This *Act*, amending the *Truth in Lending Act*, requires creditors to provide certain disclosures for open-end credit plans secured by the consumer's dwelling and imposes substantive limitations on such plans.

*Home Ownership and Equity Protection Act*

(15 U.S.C. § 1639)

The *Act*, amending the *Truth in Lending Act*, establishes disclosure requirements and prohibits equity stripping and other abusive practices in connection with high-cost mortgages. It is enforced by the Commission for nondepository lenders and by the States through their attorneys general.

*Credit Repair Organisations Act*

(15 U.S.C. §§ 1679-1679j)

This Act, Pub. L. No. 104-208, § 2451, 110 Stat. 3009-455 (Sept. 30, 1996), amending title IV of the *Consumer Credit Protection Act*, prohibits untrue or misleading representations and requires certain affirmative disclosures in the offering or sale of “credit repair” services. The *Act* bars “credit repair” companies from demanding advance payment, requires that “credit repair” contracts be in writing, and gives consumers certain contract cancellation rights.

***FTC Protections Related to Warranties***

*Magnuson Moss Warranty-Federal Trade Commission Improvements Act*

(15 U.S.C. §§ 2301-2312)

Title I of this *Act* authorises the Federal Trade Commission to develop regulations for written and implied warranties. The *Act* directs the Commission to establish disclosure and designation standards for written warranties, specifies standards for full warranties, and establishes consumer remedies for breach of warranty or service contract obligations.

***FTC Protections Related to Labelling****Wool Products Labelling Act*

(15 U.S.C. §§ 68-68j, as amended)

Under this statute, the manufacture, introduction, sale, transportation, distribution, or importation of misbranded wool constitutes a violation of the *Federal Trade Commission Act*. The *Act* was amended, by the *Drug Price Competition and Patent Term Restoration Act of 1984*, Pub. L. No. 98-417, §§ 301-307, 98 Stat. 1585, 1603, to require (1) that wool product labels indicate the country in which the product was processed or manufactured, and (2) that mail order promotional materials clearly and conspicuously state whether a wool product was processed or manufactured in the United States or was imported.

*Fur Products Labelling Act*

(15 U.S.C. §§ 69-69j)

This statute requires that articles of apparel made of fur be labelled, and that invoices and advertising for furs and fur products specify, among other things, the true English name of the animal from which the fur was taken, and whether the fur is dyed or used. The *Act* also requires the Commission to issue a Fur Product Name Guide.

*Textile Fiber Products Identification Act*

(15 U.S.C. §§ 70-70k, as amended)

This statute deals with mandatory content disclosure in the labelling, invoicing, and advertising of textile fibre products. Under the *Act*, misbranding is unlawful, as is falsely or deceptively invoicing or advertising textile fibre products. The *Act* also directs the Commission to establish a generic name for each man-made fibre that does not as yet have such a name. The statute was amended by the *Drug Price Competition and Patent Term Restoration Act of 1984* (Pub. L. No. 98-417) to require (1) that any textile fibre product processed or manufactured in the United States be so identified, and (2) that mail order promotional materials clearly and conspicuously indicate whether a textile fibre product was processed or manufactured in the United States or was imported.

*Federal Cigarette Labelling and Advertising Act of 1966*

(15 U.S.C. §§ 1331-1340, as amended)

This *Act* requires the Commission to submit annual reports to Congress concerning (a) the effectiveness of cigarette labelling, (b) current practices and methods of cigarette advertising and promotion, and (c) recommendations for legislation. The statute was amended by the *Comprehensive Smoking Education Act of 1986* (Pub. L. No. 98-474, 98 Stat. 2200), which establishes the text of four health-related warning labels and requires that cigarette packages and advertisements carry these warnings on a rotating basis.

*Fair Packaging and Labelling Act*

(80 Stat. 1296, 15 U.S.C. §§ 1451-1461)

This *Act* directs the Commission to issue regulations requiring that all consumer commodities other than food, drugs, therapeutic devices, and cosmetics be labelled to disclose net contents, identity of commodity, and name and place of business of the product's manufacturer, packer, or distributor. The *Act* authorises



additional regulations where necessary to prevent consumer deception (or to facilitate value comparisons) with respect to descriptions of ingredients, slack fill of packages, use of "cents-off" or lower price labelling, or characterisation of package sizes.

*Violent Crime Control and Law Enforcement Act of 1994*  
(Pub. L. No. 103-322)

Under Section 320933 of the *Act* (108 Stat. 2135, 15 U.S.C. § 45a), labels representing that a product is "Made in America" or "Made in the U.S.A." must conform with the domestic content requirements for such claims established by the Commission's decisions and orders. The current standard for making such claims is that the product's content of parts and labour must be "all or virtually all" domestic.

***Other FTC Protections***

*Franchise and Business Opportunities Rule*  
(16 C.F.R. 436)

This *Rule* requires sellers of franchises and business opportunities to give prospective buyers a disclosure document containing specific information about the franchise and any earnings claims that are made.

*Funeral Rule*  
(16 C.F.R. 453)

This *Rule* requires funeral directors to disclose price and other information about funeral goods and services.

*Mail or Telephone Order Merchandise Rule*  
(16 C.F.R. 435)

This *Rule* requires companies to ship purchases when promised (or within 30 days if no time is specified) or to give consumers the option to cancel their order for a refund.

*Comprehensive Smokeless Tobacco Health Education Act of 1986*  
(15 U.S.C. §§ 4401-4408)

This *Act* requires manufacturers, packagers, and importers of smokeless tobacco products to place one of three statutorily-prescribed health warning labels on product packages and in advertisements, and prohibits advertising of smokeless tobacco products on radio and television. The *Act* directs the Federal Trade Commission to require that the label warnings be displayed on a rotating basis, and that they be placed conspicuously on smokeless tobacco packages and in advertisements.

*Federal Deposit Insurance Corporation Improvement Act of 1991*  
(Pub. L. No. 102-242)

Section 151(a)(1) of this *Act* (codified in relevant part at 12 U.S.C. § 1831t) amends the *Federal Deposit Insurance Act* to impose certain disclosure requirements on non-federally insured depository institutions

and to require that the Commission prescribe the manner and content of those disclosures. The section also requires private deposit insurers to obtain annual audits and to file copies of their annual audit reports with each depository institution that they insure and with the appropriate supervisory agency of each State in which such depository institutions receive deposits.

Effective December 1993, any depository institution lacking federal deposit insurance is barred from using the mails or any instrumentality of interstate commerce to take or facilitate taking deposits, unless the State supervisor, in the State where the depository institution is chartered, has determined that the institution meets all eligibility requirements for federal deposit insurance. The statute authorises the Commission, in consultation with the Federal Deposit Insurance Corporation, to exempt depository institutions from this prohibition. The Commission is authorised to enforce the *Act's* requirements, and any implementing regulations or orders, under the *Federal Trade Commission Act*.

However, Pub. L. No. 103-317, 108 Stat. 1724, appropriating funds to the Commission for fiscal year 1995, provided that no funds allocated to the Commission shall be available for expenses authorised by section 151. Subsequent laws appropriating funds for the Federal Trade Commission for fiscal years 1996 (Pub. L. No. 104-134, 110 Stat. 1321); 1997 (Pub. L. No. 104-208, 110 Stat. 3009); and 1998 (Pub. L. No. 105-119, 11 Stat. 2440) have incorporated this spending prohibition, and the Commission has been barred from implementing the regulatory and enforcement requirements of section 151.

*Dolphin Protection Consumer Information Act*

(104 Stat. 4465, codified in relevant part at 16 U.S.C. § 1385, as amended)

The *Act* makes it unlawful under section 5 of the *Federal Trade Commission Act* for any producer, importer, exporter, distributor, or seller of any tuna product that is exported from or offered for sale in the United States to deceptively claim that its tuna is “dolphin safe.” The standard for labelling tuna as “dolphin safe” has been loosened by Section 5 of the *Dolphin Protection Consumer Information Act* (Pub. L. No. 105-42, 111 Stat. 1122).

*Energy Policy Act of 1992*

(106 Stat. 2776, codified in scattered sections of the US Code, particularly 42 U.S.C. §§ 6201 et seq.)

This *Act* amends the *Energy Policy and Conservation Act* to require that the Commission issue: (1) disclosure rules to assist consumers in choosing the most efficient incandescent and fluorescent light bulbs; (2) efficiency labelling rules for certain plumbing fixtures; (3) amendments to the Commission's Octane Certification and Posting Rule establishing automotive fuel posting and certification requirements for all liquid automotive fuels, including alternative fuels; and (4) labelling requirements concerning the costs and benefits of non-petroleum alternative fuels and alternative-fuelled vehicles. The *Act* also requires the Commission to enforce energy efficiency labelling rules issued by the Department of Energy for high intensity discharge lamps, distribution transformers, and small electric motors, and gives the Commission contingent authority to issue efficiency labelling rules for windows, commercial office equipment, and luminaries if the Department of Energy finds that it is appropriate to develop energy efficiency testing procedures for such products. The Commission's rules can be found at 16 C.F.R. Parts 305, 306, and 309.

*Energy Policy and Conservation Act*  
(42 U.S.C. §§ 6201-6422, as amended)

This *Act* (a) directs the Commission and the Justice Department to participate in developing, implementing, and monitoring voluntary agreements and plans established by oil companies to deal with emergency international oil shortages (Section 252, 42 U.S.C. § 6272); (b) requires the Commission to issue regulations providing that certain household appliances must bear labels showing the products' "energy efficiency ratings" (Section 324, 42 U.S.C. § 6294); (c) vests the Commission under 15 U.S.C. § 2008 with authority to recommend that penalties assessed by the Department of Transportation against automobile manufacturers for violating average fuel economy standards be reduced if payment would result in decreased competition in the automobile industry (Section 301, amending the *Motor Vehicle Information and Cost Savings Act*, 15 U.S.C. § 2001 et seq.); and (d) gives the Commission certain duties with respect to labelling of recycled oil (Section 383, 42 U.S.C. § 6363).

*Lanham Trade-Mark Act*  
(15 U.S.C. §§ 1051-1127, as amended)

Section 14 of this *Act* (15 U.S.C. § 1064) authorises the Commission, under certain specified conditions, to apply to the Patent and Trademark Office for the cancellation of registered trade-marks.

*Packers and Stockyards Act*  
(7 U.S.C. §§ 181-229, as amended)

Section 406 of this *Act* (7 U.S.C. § 227) extends the Commission's jurisdiction to cover such activities of meat packers as are not related to the sale of livestock, meat products, and the like; transactions in oleomargarine; and retail sales of meat and related products. Other matters involving meat and related products are subject to the Commission's jurisdiction if the Secretary of Agriculture so requests or, in certain circumstances, where action by the Commission is necessary to exercise effective jurisdiction over retail sales of such products. This statute was amended by the *Poultry Producers Financial Protection Act of 1987* (Pub. L. No. 100-173, § 7, 101 Stat. 917) to vest the Commission with similar authority over poultry product transactions.

*Hobby Protection Act*  
(16 U.S.C. §§ 2101-2106)

This *Act* outlaws manufacturing or importing imitation numismatic and collectible political items unless they are marked in accordance with regulations prescribed by the Federal Trade Commission.

*Petroleum Marketing Practices Act*  
(15 U.S.C. §§ 2801-2841)

Subchapter II of this *Act* (15 U.S.C. §§ 2821-2824) authorises the Commission to prescribe requirements for the calculation and posting of gasoline octane ratings by gasoline distributors and retailers.

*Postal Reorganisation Act of 1970*  
(39 U.S.C. §§ 3009(a))

Section 3009(a) of this *Act* authorises the Commission to prosecute as an unfair or deceptive practice in violation of the FTC Act any use of the mails to send unordered merchandise.

***Protections Enforced by Other Government Agencies***

*Consumer Product Safety Commission (CPSC)*

The CPSC is charged with reducing unreasonable risks of injury from consumer products. The CPSC has jurisdiction over approximately 15 000 products in the home, in schools, and in recreation.

*Federal Communications Commission (FCC)*

The mission of the FCC is to encourage competition in all communications markets and to protect the public interest. In response to direction from the Congress, the FCC develops and implements policy concerning interstate and international communications by radio, television, wire, satellite, and cable.

***Federal Reserve Board (FED)***

The FED is the central bank of the United States. The FED is responsible for supervising and regulating banking institutions to ensure the safety and soundness of the nation's banking and financial system and to protect the credit rights of consumers.

*Food and Drug Administration (FDA)*

The FDA scrutinises food, cosmetics, medicines, medical devices, and radiation-emitting products, such as microwave ovens, to ensure that they are safe, wholesome, and will not cause human injury or harm. The FDA has similar responsibility for feed and drugs for farm animals and pets.

***National Highway Traffic Safety Administration (NHTSA)***

NHTSA is responsible for reducing deaths, injuries, and economic loss caused by motor vehicle crashes. NHTSA establishes and enforces safety performance standards for motor vehicles and items of motor vehicle equipment and conducts public safety programmes.

*Securities and Exchange Commission (SEC)*

The SEC enforces the laws that ensure the fairness of the securities markets and that guarantee that investors have access to all material information concerning publicly traded securities.

*Criminal Authorities*

Various criminal enforcement agencies in the United States, such as the Department of Justice, enforce anti-fraud provisions of federal laws. Actions by these agencies protect consumers from fraud.

**Other Federal Consumer Materials**

Consumers can obtain additional consumer protection material by visiting the US Consumer Gateway, a “one-stop” link to a broad range of federal information resources available online at [www.consumer.gov](http://www.consumer.gov). It is designed so that you can locate information by category – such as Food, Health, Product Safety, Your Money, and Transportation. Each category has subcategories to direct users to areas within individual federal Web sites containing related information.

*State Consumer Protections*

Each State also has consumer protection laws, which are typically enforced by State Attorneys General. Many States enforce statutes that essentially parallel the FTC Act. Information about the State Attorneys General can be obtained from the National Association of Attorneys General (NAAG). The NAAG Web site is at [www.naag.org](http://www.naag.org).

## EUROPEAN COMMISSION

Within the framework of the European Union, a body of Law has been created to ensure consumer protection, covering all of the above-mentioned stages. By and large, this legislation has a general nature and is not specifically directed at one or the other sector or technologically specific form of commercial activity. As a consequence it is also applicable to electronic commerce.

The Commission has prepared the following information which sets forth the substantive consumer protection provisions most relevant to electronic commerce as well as some general issues as they relate to each stage of the business-to-consumer commercial relationship. A brief description of the applicable rules and principles is given, together with references to the source of these principles and rules.<sup>127</sup>

### *Commercial Communications/Advertising and Promotion*

As regards advertising and promotion of goods and services, the following Directives and initiatives are particularly relevant:

- *Directive 97/55/EC of European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising.*<sup>128</sup>
- *Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising.*<sup>129</sup>
- *Council Directive 89/552/EEC of 3 October 1989 on the co-ordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities as amended by Directive 97/36/EC of the European Parliament and the Council of 30 June 1997.*<sup>130</sup>
- *Directive 92/28/EEC of 31 March 1992 on the advertising of medicinal products for human use.*<sup>131</sup>
- *Directive 98/43/EC of the European Parliament and of the Council of 6 July 1998 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products.*<sup>132</sup>
- *Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts.*<sup>133</sup>
- *Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector.*<sup>134</sup>
- *Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee - The follow-up to the Green Paper on commercial communications in the internal market.*<sup>135</sup>

- Proposal for a European Parliament and Council Directive on certain legal aspects of electronic Commerce in the Internal Market<sup>136</sup>.

One of the objectives of rules on advertising is to protect consumers against misleading advertising and the unfair consequences thereof. Misleading advertising is defined as any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which by reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, injures or is likely to injure a competitor.

Within this context, comparative advertising is permitted if:

- It is not misleading.
- Compares goods or services meeting the same needs or intended for the same purpose.
- It compares objectively one or more material, relevant, verifiable and representative features.
- It does not create confusion between an advertiser and competitor, or between advertiser's trade marks, trade names, other distinguishing marks, goods or services and those of a competitor.
- It does not discredit or denigrate the trademarks, trade names, etc. of a competitor.
- It does not take unfair advantage of the reputation of trademarks, trade names, etc. of a competitor.

As regards television advertising, sponsorship and teleshopping, *Directive 89/552 as amended by Directive 97/36*, contains a number of specific provisions.<sup>137</sup> These are specifically intended for television broadcasts and as such only cover electronic commerce to the extent the electronic commercial activity takes place within the context of a television broadcast or vice versa. In this respect it is probably useful to highlight that, as a basis for the application of the country of origin principle, the following rules apply:

- Television advertising and teleshopping must be readily recognisable as such and kept separate from other parts of the programme service.
- Advertising and teleshopping may not use subliminal techniques.
- Surreptitious advertising and teleshopping<sup>138</sup> is prohibited.
- Television advertising and teleshopping may not:
  - Prejudice respect for human dignity.
  - Include any discrimination on grounds of race, sex or nationality.
  - Be offensive to religious or political beliefs.
  - Encourage behaviour prejudicial to health or safety.
  - Encourage behaviour prejudicial to the protection of the environment.
- All forms of television advertising and teleshopping for cigarettes and other tobacco products are prohibited.
- Television advertising for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the broadcaster falls is prohibited.

- Teleshopping for medicinal products that are subject to marketing authorisation as well as teleshopping for medicinal treatment is prohibited.
- Television advertising and teleshopping for alcoholic beverages must comply with the following criteria:
  - It may not be aimed specifically at minors or, in particular, depict minors consuming these beverages.
  - It may not link the consumption of alcohol to enhanced physical performance or to driving.
  - It may not create the impression that the consumption of alcohol contributes towards social or sexual success.
  - It may not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts.
  - It may not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light.
  - It may not place emphasis on high alcoholic content as being a positive quality of the beverages.
- Television advertising may not cause moral or physical detriment to minors. Therefore it must comply with the following criteria for their protection:
  - It may not directly exhort minors to buy a product or a service by exploiting their inexperience or credulity.
  - It may not directly encourage minors to persuade their parents or others to purchase the goods or services being advertised.
  - It may not exploit the special trust minors place in parents, teachers or other persons.
  - It may not unreasonably show minors in dangerous situations.
- Teleshopping must also comply with these criteria and may not exhort minors to contract for the sale or rental of goods and services

The *proposal for a Directive on certain legal aspects of electronic commerce in the internal market*<sup>139</sup>, currently being examined by the Council and the European Parliament, will complete this framework with the following rules applying specifically to on-line commercial communications:

- Commercial communications must be clearly identifiable as commercial communications.
- The natural or legal person on whose behalf the commercial communication is made must be clearly identifiable.
- Promotional offers, such as discounts, premiums and gifts, where authorised, must be clearly identifiable as such, and the conditions which are to be met to qualify for them shall be easily accessible and be presented accurately and unequivocally.
- Promotional competitions or games, where authorised, must be clearly identifiable as such, and the conditions for participation must be easily accessible and be presented accurately and unequivocally.



- Where it concerns unsolicited commercial communication by electronic mail, they must be clearly and unequivocally identifiable as such as soon as the recipient receives it.

Commercial communications emanating from a service provider established in the European Community would be subject to the country of origin control. This means that the service provider will have to comply with the rules of the country in which he is established and will benefit from the free provision of services throughout the Community. The expectation that consumers are adequately protected by the legislation of the country of origin of the service provider reflects the high level of integration among Member States of the European Community. The right to free provision of services in the European Community on the basis of home country control does not apply to service providers established in third countries.

*Directive 97/7 of 20 May 1997 on the protection of consumers in respect of distance contracts*<sup>140</sup>, contains provisions that are relevant as regards the use of certain means of distance communication. Under these, the prior consent of the consumer is required for the use of automated calling machines without human intervention, as well as facsimile machines. As regards all other means of distance communication, these may only be used where there is no clear objection from the consumer. Almost identical provisions are set out in *Directive 97/66 of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector*<sup>141</sup> and the proposal for Directive concerning distance marketing of consumer financial services.<sup>142</sup> The latter two clarify that the choice between a requirement of prior consent ('opt in') or the possibility for the consumer to indicate that he does not wish to receive unsolicited messages ('opt out') is a matter to be determined by each Member State through national legislation.

#### *Information to be provided before the conclusion of the contract*<sup>143</sup>

Pre-contractual information, as well as information on the contract itself is crucial for the consumer to enable him to take informed decisions. In EU legislation there is a distinction in the legal obligations as regards the information that must be provided, depending on whether the contract is negotiated at a distance, or outside the premises of the seller, or not. In fact, where the transaction takes place at a distance, the explicit information obligations are higher. This is justified on the basis of the fact that when the contract takes place with the simultaneous presence of both parties, or in the premises of the seller, the information obligation on a number of elements would be superfluous as they are immediately clear or obvious to the consumer.

The following Directives and initiatives are the most relevant:

- *Directives 97/7 of the Council and the European Parliament of 20 May 1997 on the protection of consumers in respect of distance contracts.*<sup>144</sup>
- *Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers.*<sup>145</sup>
- *Proposal for a European Parliament and Council Directive on certain legal aspects of Electronic Commerce in the Internal Market.*<sup>146</sup>

In this respect there are also a number of sector or product/service specific obligations and requirements. It would lead too far to list them all, as for the purposes of this paper it is preferable to limit the listing to the generally applicable principles.

In the information obligation, a distinction can be made between three kinds of information:

- Information on the identity of the seller.
- Information on the goods or services on offer.
- Information on the contract (contract formation, contractual rights and obligations, etc.)<sup>147</sup>

These three types of information must, generally speaking, comply with the provisions on the ‘quality of the information’. In this respect, *Directive 97/7 on the protection of consumers in respect of distance contracts*, specifies that the information, the commercial purposes of which must be made clear, must be provided in a clear and comprehensible manner in any way appropriate to the means of distance communication used, with due regard, in particular, to the principles of good faith in commercial transactions, and the principles governing the protection of those who are unable to give their consent, such as minors.<sup>148</sup>

(i) *Identity of the seller*

*Directive 97/7* provides that in good time, prior to the conclusion of any distant contract, the consumer must be provided with information on the supplier, and in case of contracts requiring payment in advance, his address.

In the case of telephone communications, the identity of the supplier and the commercial purpose of the call must be made explicitly clear at the beginning of any conversation with the consumer.

The European Commission believes that as regards information society services, additional provisions on the identification of the supplier should apply. The *proposal for a Directive on certain legal aspects of electronic commerce in the Internal Market*<sup>149</sup> establishes general information to be provided by the service provider regardless of whether a contract is going to be concluded or not. In this respect it complements and further specifies Community provisions dealing with the identity of the seller. The proposed Directive stipulates that information society services will have to render easily accessible, in a direct and permanent manner the following information:

- The name of the service provider.
- The address at which the service provider is established.
- The particulars of the service provider, including his electronic mail address, which allow him to be contacted rapidly and communicated with in a direct and effective manner.
- Where the service provider is registered in a trade register, the trade register in which the service provider is entered and his registration number in the register.
- Where the activity is subject to an authorisation scheme, the activities covered by the authorisation granted to the service provider and the particulars of the authority providing such authorisation.
- With regard to regulated professions.
- Any professional body or similar institution with which the service provider is registered.
- The professional title granted in the Member State of establishment, the applicable professional rules and the Member States in which the services are regularly provided.
- Where the service provider undertakes an activity that is subject to VAT, the VAT number under which he is registered with the fiscal administration.

This information obligation would be more stringent than that applying to off-line (distance) commerce. In view of the need to ensure consumer confidence in electronic commerce, and bearing in mind the special characteristics of the technology and of information society services, this is justified. It should be noted that the additional cost of providing the information to consumers is, due to the advantages of the information technology, only a fraction of what would have been the cost in more traditional means of commerce.

(ii) *Information on the goods and services on offer*

In this regard *Directive 97/7 on the protection of consumers in respect of distance contracts*<sup>150</sup> provides that in good time, prior to the conclusion of any distant contract, the consumer must be provided with information on:

- The main characteristics of the goods or services.
- The price of the goods or services including all taxes, bearing in mind that consumption tax should be imposed in the jurisdiction of consumption, as agreed at the OECD Ottawa Ministerial Conference in October 1998.
- Delivery costs, where appropriate.
- The cost of using the means of distance communication, where it is calculated other than at the basic rate.
- The period for which the offer or the price remains valid.
- Where appropriate the minimum duration of the contract in the case of a contract for the supply of goods or services to be performed permanently or recurrently.

*Directive 97/7* is not applicable to financial services. The proposal for a Directive on distance marketing of financial services does not contain comparable information obligation provisions on the financial services being offered, as these requirements tend to be covered by the sector and product specific regulations.

*Directive 98/6* on consumer protection in the indication of the prices of products offered to consumers stipulates the indication of the selling price and the price per unit of measurement of products offered by traders to consumers. The objective is to improve consumer information and to facilitate comparison of prices.

In addition to this obligation on the price indication of products offered to consumers, the European Commission proposed in the *proposal for a Directive on certain legal aspects of electronic commerce in the Internal Market*<sup>151</sup>, that also the prices of information society services be indicated accurately and unequivocally.

(iii) *Information on the contract and contractual obligations*

As regards the ‘contractual information’, *Directive 97/7* also contains, over and above the elements referred to under the previous two points, the obligation to provide information on:

- The arrangements for payment, delivery or performance.
- The existence of a right of withdrawal.

In view of the nature of the technology used and bearing in mind the need to enhance and ensure consumer confidence, the *proposal for a Directive on certain legal aspects of electronic commerce in the Internal Market* includes additional information obligations as regards the technical aspects of the formation of the contract.<sup>152</sup> With electronic commerce, technically new means to conclude contracts are becoming available. In order to ensure that consumers can benefit from these opportunities, these new means of concluding contracts, with which they are not familiar, should be explained to them.

The proposed information obligation on the conclusion of (electronic) contracts provides that the service provider must explain the manner of the formation of a contract by electronic means. This must be done clearly and unequivocally, prior to the conclusion of the contract, in such a way as to ensure that parties can give their full and informed consent. This information would include:

- The different stages to follow to conclude the contract.
- Whether or not the concluded contract will be filed and whether it will be accessible.
- The expedients for correcting and handling errors.

For the three types of information (identity, the nature of the goods and services and the contract itself) to be provided prior to the conclusion of the contract, *Directive 97/7* also contains important provisions as to the written confirmation of the information that is provided. It states that “the consumer must receive written confirmation or confirmation in another durable medium available and accessible to him of the information, in good time during the performance of the contract, and at the latest at the time of delivery (...) unless the information has already been given to the consumer prior to the conclusion of the contract (...)”. In any event the following information must, except for services performed through the use of a means of distance communication, supplied on only one occasion and invoiced by the operator of the means of distance communication, be confirmed to the consumer in writing or in another durable medium:

- Information on the conditions and procedures for exercising the right of withdrawal.
- The geographical address of the place of business of the supplier to which the consumer may address any complaints.
- Information on after-sales services and guarantees which exist.
- The conditions for cancelling the contract, where it is of unspecified duration or a duration exceeding one year.

#### *Conclusion of the contract and contractual obligations*

The most relevant Directives and initiatives in this respect are:

- *Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.*<sup>153</sup>
- *Directives 97/7 of the Council and the European Parliament of 20 May 1997 on the protection of consumers in respect of distance contracts.*<sup>154</sup>
- *Proposal for a European Parliament and Council Directive on certain legal aspects of electronic commerce in the Internal Market.*<sup>155</sup>

The overall principles of *Directive 93/13* on unfair contract terms is that unfair terms used in a contract concluded with a consumer by a seller or supplier are not binding on the consumer.

An unfair contract term is defined as:

- A contractual term that has not been individually negotiated, which, contrary to the requirement of good faith, causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.
- A term is always regarded as not individually negotiated where it has been drafted in advance and the consumer has therefore not been able to influence the substance of the term, particularly in the context of a pre-formulated standard contract.
- Where a seller or supplier claims that a standard term has been individually negotiated, the burden of proof in this respect is incumbent on him.

Furthermore, *Directive 93/13* stipulates that in the case of contracts where all or certain terms offered to the consumer are in writing, these terms must always be drafted in plain, intelligible language. Where there is doubt about the meaning of a term, the interpretation most favourable to the consumer will prevail.

*Directive 97/7*, contains a number of provisions that should be highlighted with regards to contractual obligations, namely the right of withdrawal, and inertia selling.

(i) *Right of withdrawal*

For any distance contract the consumer has a period of at least seven working days in which to withdraw from the contract without penalty and without giving any reason. The only charge that may be made to the consumer in relation to the exercise of his right of withdrawal is the direct cost of returning the goods. Any sums paid in advance by the consumer must be reimbursed fully, as soon as possible and in any case within 30 days.

A number of exceptions to the right of withdrawal are foreseen. These concern in particular:

- The provision of services if the performance has begun, with the consumer's agreement, before the end of the seven working day period.
- The supply of goods and services of which the price is dependent on fluctuations in the financial market, which cannot be controlled by the supplier.
- Goods made to the consumer's specifications or clearly personalised or which, by reason of their nature, cannot be returned or are liable to deteriorate or expire rapidly.
- Audio or video recordings or computer software which were unsealed by the consumer.
- Newspapers, periodicals and magazines.
- Gaming and lottery services.

In this respect it is again useful to stress that this *Directive* does not apply to financial services and that the proposal for a Directive on distance marketing of financial services contains specific provisions in this regard that will, subject to approval by the Council of Ministers and the European Parliament, apply for financial services sold at a distance.

(ii) *Inertia selling*

Under *Directive 97/7* the supply of goods or services to a consumer without their being ordered by the consumer beforehand, where such a supply involved a demand for payment, is prohibited. The consumer is exempted from the provision of any consideration in cases of unsolicited supply, the absence of a response not constituting consent.

Also the moment at which the contract is concluded, and thus binding on both parties, is a relevant question. For information society services, the European Commission considers it would be important to ensure that, in view of the fact that the consumers may not be familiar with the way in which the contract is concluded, it would be important to harmonise the rules on this. Therefore the *proposed Directive on certain legal aspects of electronic commerce in the Internal Market*<sup>156</sup> includes a provision in this respect, which stipulates that in the case where a recipient, in accepting a service provider's offer, is required to give his consent through technological means, such as clicking on an icon, the contract is concluded when the recipient of the service:

- Has received from the service provider, electronically, an acknowledgement of receipt of the recipient's acceptance.
- Has confirmed receipt of the acknowledgement of receipt.

The proposed Directive also includes the obligation for the service provider to make available to consumers appropriate means allowing them to identify and correct handling errors during the process of concluding a contract and provide information to consumers about the availability of such means.

*Payment*

Even more than in other means of commerce, the payment and the rules governing it, are crucial elements in consumer confidence in electronic commerce.

As regards the payment itself there is no specific European community consumer protection legislation.<sup>157</sup> Some Directives or other initiatives do, however, contain relevant provisions. This is the case for:

- *Directive 97/7 of 20 May 1997 on the protection of consumers in respect of distance contracts.*<sup>158</sup>
- *Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit.*<sup>159</sup>
- *Commission Recommendation 97/489/EC of 30 July 1997 concerning transactions by electronic payment instruments and in particular the relationship between issuer and holder*<sup>160</sup>

For payment by card – the predominant way of making payments in a business-to-consumer electronic commerce environment – Directive 97/7 provides that a consumer should be allowed:

- To request cancellation of a payment where fraudulent use has been made of his payment card in connection with distance contracts covered by the Directive.

- To be re-credited with the sums paid or have them returned, in the event of fraudulent use.

If the price of goods or services is fully or partly covered by credit granted by the supplier, or if that price is fully or partly covered by credit granted to the consumer by a third party on the basis of an agreement between the third party and the supplier, the credit agreement will be cancelled, without penalty, if the consumer exercises his right to withdraw from the contract.

In addition to rules covering the payment itself, particular concerns exist among consumers with regard to the safe use of payment instruments (over the Internet). Given that the integrity of communications over the Internet is not (yet) guaranteed, the transmission of payment data is an issue of great concern. In this respect it may be useful to refer to *Commission Recommendation 97/489/EC* of 30 July 1997 concerning transactions by electronic payment instruments and in particular the relationship between issuer and holder.

This Recommendation addresses a number of issues that are relevant in the context of the contractual relationship between the issuer and the holder of the payment instrument, such as information obligations on the terms and conditions and the use of electronic payment instruments and obligations and liabilities of both parties.

As regards losses in consequence of the loss or theft of the electronic payment instrument, the European Commission recommends that the consumer's liability should be limited.

- Up to the notification of the loss or theft, his liability should not exceed 150 Euro, except where he/she has acted with extreme negligence or fraudulently.
- After notification the consumer should not longer be liable for any losses, except where he/she has acted fraudulently.
- Where the payment has taken place without the physical presentation or electronic identification of the instrument itself, the consumer should not be liable for any losses.

To balance this limitation of liability, the consumer must respect his obligation to take all reasonable steps to keep his electronic payment instrument safe (including the means which enable it to be used, such as the PIN code), and must notify the issuer after becoming aware of:

- The loss or theft of the electronic payment instrument.
- The recording on his/her account of any unauthorised transaction.
- Any error or other irregularity in the maintaining of his account by the issuer.

### *Guarantees*

The following European Commission initiative will lead to an harmonisation of certain aspects of the sale of consumer goods and associated guarantees.

- *Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees.*<sup>161</sup>

The principles set out in the Directive state:

- Under the legal guarantee, the seller must deliver goods to the consumer which are in conformity with the contract of sale (*e.g.* comply with the description given by the seller, fit

for the purpose the consumer made known to the seller, show the quality and performance which are normal in goods of the same type, taking into account *inter alia* any public statement on specific characteristics of the goods in advertising or labelling, etc.) The seller is liable to the consumer for any lack of conformity that exists at the time the goods were delivered, and which become apparent within two years from the delivery of the goods.

- The consumer may require the seller to repair the goods or to replace them in either case free of charge. If the repair and the replacement are impossible or disproportionate, or if the seller has not completed the remedy within a reasonable time and without any significant inconvenience, the consumer may require an appropriate reduction of the price or have the contract rescinded. Unless proven otherwise, any lack of conformity, which becomes manifest within six months of delivery of the goods, shall be deemed to have existed at the time of delivery.
- As regards commercial guarantees, a guarantee is legally binding on the offerer under the conditions laid down in the guarantee statement and the associated advertising. The guarantee must state that the consumer has legal rights under applicable national legislation governing the sale of consumer goods and make clear that those rights are not affected by the guarantee. Moreover, the guarantee must set out in plain intelligible language the contents of the guarantee and the essential particulars necessary for making claims under the guarantee, notably the duration and territorial scope of the guarantee as well as the name and address of the guarantor.
- On request from the consumer, the guarantee must be made available in writing or feature in another durable medium available and accessible to him.



**ANNEX  
ADDITIONAL MEMBER COUNTRY INFORMATION**

**I. CANADA**

The following table summarises the current state of the law in regard to major consumer protections. The presence of a “√” under a given rubric indicates that the issue is dealt with in the applicable jurisdiction’s legislation. In addition, links to applicable Web sites indexing the legislation of the applicable jurisdiction are included for ease of reference.

<b>Jurisdiction</b>	<b>Unfair Business Practices</b>	<b>Warranty Requirements</b>	<b>Privacy and other electronic Commerce-related (including proposed legislation)</b>	<b>Links to Web sites for legislation</b>
<i>Federal</i>	√		√	<a href="http://canada.justice.gc.ca/ftp/en/laws/index.html">http://canada.justice.gc.ca/ftp/en/laws/index.html</a>
<i>Alberta</i>	√	√		<a href="http://www.gov.ab.ca/qp/acts.html">http://www.gov.ab.ca/qp/acts.html</a>
<i>British Columbia</i>	√	√		<a href="http://qp.gov.bc.ca/bcstats/">http://qp.gov.bc.ca/bcstats/</a>
<i>Manitoba</i>	√	√		<a href="http://www.gov.mb.ca/chc/statpub/free/index.html">http://www.gov.mb.ca/chc/statpub/free/index.html</a>
<i>New Brunswick</i>		√		<a href="http://www.gov.nb.ca/justice/asrlste.htm">http://www.gov.nb.ca/justice/asrlste.htm</a>
<i>Newfoundland</i>	√	√		Unavailable online
<i>Nova Scotia</i>		√		<a href="http://www.gov.ns.ca/legi/legc/acts.htm">http://www.gov.ns.ca/legi/legc/acts.htm</a>
<i>Ontario</i>	√	√		<a href="http://209.195.107.57/en/index.html">http://209.195.107.57/en/index.html</a>
<i>Prince Edward Island</i>	√	√		Unavailable online
<i>Quebec</i>	√	√	√	<a href="http://doc.gouv.qc.ca/html/lois_regle_tele_mots_cles.html">http://doc.gouv.qc.ca/html/lois_regle_tele_mots_cles.html</a>
<i>Saskatchewan</i>	√	√		<a href="http://www.qp.justice.gov.sk.ca">http://www.qp.justice.gov.sk.ca</a> (by subscription)
<i>Northwest Territories</i>		√		<a href="http://legis.acjnet.org/TNO/index_en.html">http://legis.acjnet.org/TNO/index_en.html</a>
<i>Yukon</i>		√		<a href="http://legis.acjnet.org/Yukon/index_en.html">http://legis.acjnet.org/Yukon/index_en.html</a>
<i>Nunavut</i>		√		<a href="http://pooka.nunanet.com/~ncjlib/legislation.html">http://pooka.nunanet.com/~ncjlib/legislation.html</a>

## II. NORWAY

### THE NORDIC CONSUMER OMBUDSMEN'S POSITION PAPER ON TRADING AND MARKETING ON THE INTERNET

#### **Nordic Consumer Ombudsmen**

The Nordic Consumer Ombudsmen's position paper on trading and marketing on the Internet and in similar communication systems (December 1998)

#### **Introduction**

The Nordic consumer ombudsmen have noted the rapid development in the use of information technology. In that connection, the consumer ombudsmen have ascertained a need to adopt a common position in connection with trading and marketing on the Internet and in similar communication systems.

The consumer ombudsmen have found it desirable to express their views at a common Nordic level. These views are intended to form the basis of a common Nordic position in national as well as international contexts. National negotiation situations may, however, make it necessary to modify the principles in the spirit of compromise.

This common position reflects the current knowledge of and expectations about the Internet. The rapid development of the Internet may necessitate an adjustment from time to time of some of the views expressed. The common position should therefore be considered a dynamic work intended to ensure the consumers a good legal position in the information society.

The consumer ombudsmen note that the consumers' confidence is a prerequisite for regarding the Internet as a serious medium. Moreover, the consumers' confidence is an important prerequisite for realising the potential for electronic trading. Consequently, it is very much in the interest also of trade and industry that trade and industry observe the principles expressed in this common position.

The term "should" is used consistently in this common position. The reason for this is in part that what is expressed is a joint recommendation and in part that not in all cases is the legal position the same throughout the Nordic countries. In some cases, a "should" may thus cover a "shall" in national legislation.

The consumer ombudsmen further note that within the EU a number of initiatives have been taken to regulate areas comprised by this common position. Among other measures, a *Directive on the Protection of Consumers in Respect of Distance Contracts (97/7EC)*, a *Directive on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data (95/46EC)*, a *Directive on Treatment of Personal Information in the Telesector (97/66EC)* and a *Directive on Injunctions for the Protection of Consumers' Interests (98/27EC)* have been adopted. These Directives will be implemented as part of the legislation of the Nordic countries and thus - like any other legislation - have to be complied with by businessmen using the Internet for trading and marketing.

#### **1. Scope of application**

- The common position comprises trading and marketing on the Internet and in similar communication systems.

- The common position comprises cases in which it must be assumed that the trader through his/her marketing intends to affect supply and demand on the Nordic market.

This common position shall thus apply to *e.g.* the use of World Wide Web, to the transmission of e-mails and to the use of news groups, etc. This common position comprises marketing, which from an overall point of view is directed at the Nordic market. Especially the following criteria can be taken into account in connection with the evaluation: which languages, currencies or other national characteristics are used, to what extent the business or the service in question is otherwise being marketed in the Nordic country concerned, whether there is a connection between marketing on the Internet and other marketing activities in the Nordic market concerned, whether the businessman accepts concluding contracts with consumers resident in the Nordic country concerned.

The marketing laws of the Nordic countries apply in accordance with case law when the marketing is directed at the market in question. The provisions applying to trading and marketing in the physical world, including existing legislation governing contracts, purchases, distance selling, marketing, electronic data processing, etc. shall also apply to trading and marketing on the Internet. Provisions governing international choice of law also apply to the Internet. Pursuant to the Rome Convention, a mandatory civil regulation cannot be derogated from if this is detrimental to the consumer, when a contract is concluded on the basis of marketing directed at the consumer. As Norway is not a member of the EU, Norway has not acceded to the Rome Convention. Internet suppliers have to allow for the fact that in certain situations they may also be held liable for unlawful marketing material deriving from their purchasers. Such liability might arise especially in cases where the Internet supplier is aware of the infringements (*e.g.* as a result of a complaint made by one of the Nordic consumer ombudsmen), but allows such infringements to continue. Among other remedies, the consumer ombudsmen have the possibility of issuing different types of prohibitions. If occasion should arise, such prohibitions may also be issued to the Internet suppliers.

## **2. Identification**

- Marketing material should be elaborated and presented in such a way that it is obvious to the consumer that it is marketing. It should be possible to separate marketing material from other material.
- Information about the businessman's name, physical address, form of organisation and e-mail address, if any, should be easily accessible to the consumer in a clear and comprehensible manner.
- When a businessman uses hyperlinks to material other than his/her own, the businessman is, basically, liable also for the content of such material.
- Businessmen should not use hyperlinks to material that does not comply with the legislation of the Nordic country in question and with the recommendations put forward in this common position.

When hyperlinks are used, it should furthermore be made clear to the consumer when the businessman's marketing material is being left. When marketing material is transmitted by use of a technique whereby a sender address is naturally generated (especially newsgroups and e-mails), the sender address should be the same as the address to be used by the consumer for getting in touch with the businessman or his/her representative.

### 3. Information obligations

- In connection with trade and marketing, the businessman should in a clear and comprehensible form provide all relevant information in order to enable the consumer to evaluate the marketed service and any offers made.
- The marketing material on the Internet should be updated on a constant basis and be dated. If the marketing material is valid for a limited period of time, this should appear clearly from the material.
- The businessman should retain for a sufficient period of time relevant marketing material that has been published on the Internet.
- The businessman should provide sufficient information to enable the consumer to evaluate both the product and the offer. The information to be provided by the businessman should include the following: the price of the product/service including all taxes and duties, the main characteristics of the product/service, limitations, qualifications or conditions, if any, applying to the product, terms of payment, existence of a right of withdrawal from the contract, including information on how to exercise such right, costs and terms of delivery, and the normal time of delivery, guarantee, if any, terms of guarantee and after-sales services, how and where the consumer can complain, duration of the contract in case of contracts to be performed recurrently, any other information necessary for evaluating the service or the offer, how the consumer can get into contact with the businessman prior to ordering, if the consumer has questions he/she wishes to ask the businessman.

### 4. Electronic conclusion of contracts

- The contract function should be clearly separated from other functions.
- The businessman should give proper and reasonable directions about the properties of the product/service, including its useful qualities, its durability, safety risks and maintenance.
- Prior to an electronic conclusion of a contract, the consumer should be fully aware of all terms and conditions of the contract, including what the consumer orders and at what prices (including costs of transportation, taxes, duties, etc.). Furthermore, the businessman should fully and clearly inform the consumer whether he/she has any agreed or statutory right of withdrawal.
- The businessman should give the consumer an order confirmation. The order confirmation should be sent by ordinary or electric mail, if the consumer so requests.
- The consumer should be able to easily access and keep all the information supplied in a physical or machine-readable form.

It is up to the complaint boards and the law courts to establish when a contract has been concluded and how much it takes to regard the contract terms as having been agreed upon. It should be noted that standard conditions especially can be of such an extent, be formulated in such a way or can enter into the material (*e.g.* through hyperlinks) in such a way that the contract terms are not binding on the consumer. The businessman should thus ensure that the consumer is provided with all relevant information in respect of the contract prior to the conclusion of the contract. This may be ensured *e.g.* by requiring the consumer to "pass" and "accept" a page of information prior to the conclusion of the contract.

## **5. Binding communication**

- Businessmen should send binding electronic communication - *i.e.* notices, orders, etc. that may contain a duty to act or a legal obligation on the part of the receiver - to the consumers only when it appears unambiguously from the circumstances that the consumer has accepted it.
- Businessmen using electronic mail as means of communication should ensure that any messages received from consumers are collected from the electronic mailbox and made accessible to the business as soon as possible. This also applies when the addressee because of holidays, illness or for any other reason is absent from the business.
- The businessman should not regard an e-mail as having been received by the consumer until the consumer has collected the e-mail from his electronic mailbox with the Internet supplier.

When messages are allowed to be sent by e-mail, and when these can be said to have a binding effect, must be determined by the complaints boards or by the courts of law on the basis of a number of concrete circumstances. It should be noted that the person sending binding messages *prima facie* bears the risk of the message reaching the receiver. In relation to the transmission of e-mail to the consumers, the businessmen should pay special attention to the fact that consumers do not necessarily collect their e-mail from their electronic mailboxes as often as consumers collect their physical mail from their ordinary mailboxes. This entails that consumers do not necessarily react as quickly to electronic mail as the businessman might expect in the case of traditional, physical mail.

## **6. Payment**

- Payment via the Internet presupposes that the consumer has expressly accepted that the businessman can debit the consumer's account and that the security requirements set up by the country in question in respect of such payment are complied with.
- Payment on the Internet should not entail bigger risks to the consumer than the risks connected with other means of payment.
- The fact that the consumer uses electronic payment should not make it more difficult for the consumer to have defects, if any, remedied or the contract cancelled.
- If the consumer has paid before the product/service is delivered, the businessman should return the whole amount immediately if the consumer claims not having received the purchased item or if the consumer uses his/her agreed or statutory right of withdrawal.

It should be noted that in certain cases consumers may address their claims for having an amount charged back to the issuer of the credit card for defects in the services/products for which the consumer has paid by means of the credit card. The consumer can thus raise a claim against the supplier of credit if the seller fails to fulfil his obligations.

## **7. Performance and complaints procedure**

- Businessmen should execute an order within the time period agreed upon or as quickly as possible. Digital services to be supplied electronically should be supplied on receipt of order, unless otherwise agreed.
- If, within a reasonable time, a consumer claims that a digital product to be supplied electronically has not been received or does not function, the businessman should take

measures immediately to remedy or to redeliver. The fact that the businessman has remedied or redelivered, however, does not exclude the consumer from pleading other remedies for breach of contract.

- It should be possible for the consumer to give notice to exercise his right of withdrawal or right of complaint in a way that is not any more difficult than the procedure for ordering the product, and immediately upon receiving such notice, the businessman should issue receipt for the notice.
- The seller should pay all reasonable mail expenses connected with the return of defective products/services.

Exercising a right of withdrawal or a right of complaint need not involve the use of the same technique as the technique used for concluding the contract. The decisive factor is whether the technique indicated is relevant in the situation in question. When consumers have access to concluding contracts via the Internet, it should generally be expected, however, that their right of withdrawal and right of complaint can be exercised electronically.

## **8. E-post, etc.**

- Businessmen should send marketing material via e-mail or by similar means of distance communication only when the consumer has given his/her consent.
- Marketing material to a consumer should be clearly identified as marketing. As a minimum, this should appear from the heading.
- Businessmen should not encourage consumers to send on the businessman's marketing material to other consumers.
- Businessmen should not send marketing material via systems set up with a view to exchanging information between private parties (*e.g.* news groups and list-servers). This does not apply, however, if it appears explicitly from the circumstances that the system may be used for transmitting or exposing such material.

The request for consent should be formulated in such a way that the consumer knows what forms and amount of marketing material he/she can expect to receive. The businessman should set up the system in such a way that the consumer could easily decline to receive further marketing material.

## **9. Registration and processing of data**

- Consumers should be able to operate freely on the Internet. Data concerning identified or identifiable persons should only be registered if the consumer (the data-subject) has specifically consented to this.
- Businessmen registering data on the Internet should give information on the Internet about how the businessmen register and process data on consumers. This information should be provided for registering and processing of data concerning identified and identifiable persons as well as for data concerning non-identified and non-identifiable persons.
- This information should include information about what data are registered, how the data are registered, what the registered data are used for, for how long the data are retained, whether the data are passed on and, if so, to whom, as well as other information of relevance to the consumer.

- Businessmen registering data on the Internet concerning identified and identifiable persons should enable the consumers to exercise electronically the rights they have pursuant to data-processing legislation. Businessmen should provide adequate information on the Internet about these rights (right of objection, right of erasure etc.).

The provisions of the electronic data processing legislation in force at any time in the Nordic countries should be complied with. It is recommended that businessmen see to it that data concerning identified and identifiable persons to be used for specially adapted marketing are primarily collected from the consumer (the data-subject) directly. Hereby, it is ensured that the consumer him/herself has influence on the criteria according to which data on the consumer are processed.

## **10. Marketing directed at children and young persons**

- The recommendations expressed in sections 1 to 9 of this common position apply to marketing directed at children and young persons subject to the more rigorous rules contained in this section. Moreover, specific provisions of the country in question apply.
- The marketing should be elaborated in such a way that it is obvious to that age group - which is the target group - that it is a question of marketing.
- The businessman should take into account the development stage of the target group and therefore should not take advantage of children's and young persons' credulity and lack of experience. If entertainment features form part of the marketing - in the form of, *e.g.* play, games and the like - this entertainment should not be combined with or interrupted by advertising features.
- Children and young persons should not be encouraged to give information about themselves, the household or about any other persons. Giving information may not be made a condition of gaining access to contents.
- Children/young persons should not be offered rewards (money, gifts or anything else of a monetary value) for staying on or participating in activities on the Internet. This rule does not prevent the holding of prize competitions that neither directly nor indirectly have the effect that the child/young person stays longer on the businessman's homepage.
- Businessmen should use the techniques available at any time for allowing parents to limit the material to which their children have access via the Internet.
- Children and young persons should not be encouraged to buy goods or conclude contracts via the Internet, and appropriate precautions should be taken to ensure that children and young persons do not make purchases or conclude contracts via the Internet.
- Businessmen, whose marketing is directed at children and young persons should not use hyperlinks to places containing material that is not suited for children and young persons, or which do not comply with existing legislation.

Interactive marketing on the Internet is especially problematic in relation to children and young persons. Interactive advertising is more than just product presentation and product orientation. It is sophisticated forms of advertising such as games, play instruments and competitions where animal figures, dolls and other images and trade marks affiliated with the products typically form part of the marketing. This marketing method has a tendency to be hidden to the child, and trademarks, etc. are thus played into the child's sub-consciousness. Businessmen should not use techniques fit for affecting children's and young persons' sub-consciousness. Businessmen should bear in mind that marketing targeted to adults might also be of interest to children. Furthermore, contracts entered by minors are *prima facie* not valid.

## NOTES

- 1 <http://www.oecd.org/dsti/sti/it/consumer/prod/guidelines.htm>
- 2 Inventory of Instruments and Mechanisms Contributing to the Implementation and Enforcement of the OECD Privacy Guidelines on Global Networks (DSTI/ICCP/REG(98)12/FINAL). 11 May 1999.
- 3 *Approaches to Content on the Internet* (DSTI/ICCP(97)14/FINAL). 7 August 1999.
- 4 *Inventory of Approaches to Authentication and Certification in a Global Networked Society* (DSTI/ICCP/REG(98)3/REV3). 30 September 1998.
- 5 *Guidelines for Consumer Protection in the Context of Electronic Commerce* (C(99)184/FINAL). 9 December 1999. <http://www.oecd.org/dsti/sti/it/consumer/prod/guidelines.htm>
- 6 *Inventory of Instruments and Mechanisms Contributing to the Implementation and Enforcement of the OECD Privacy Guidelines on Global Networks* (DSTI/ICCP/REG(98)12/FINAL). 11 May 1999.
- 7 *Approaches to Content on the Internet* (DSTI/ICCP(97)14/FINAL). 7 August 1999.
- 8 *Inventory of Approaches to Authentication and Certification in a Global Networked Society* (DSTI/ICCP/REG(98)3/REV3). 30 September 1998.
- 9 <http://www.oecd.org/dsti/sti/it/consumer/>
- 10 <http://www.treasury.gov.au/>
- 11 <http://www.consumer.gov.au/copy/mcca.html>
- 12 <http://www.treasury.gov.au/self-regtaskforce>
- 13 <http://www.treasury.gov.au/consumer/consumeraffairs1.asp>
- 14 <http://www.treasury.gov.au/publications/ConsumerAffairs/ElectronicCommerceAndConsumerProtection/Aa>
- 15 <http://www.accc.gov.au/>
- 16 [http://www.accc.gov.au/ecom2/Inter\\_net\\_Sweep.htm](http://www.accc.gov.au/ecom2/Inter_net_Sweep.htm)
- 17 1997 Financial System Inquiry (the Wallis Report). <http://www.asic.gov.au/>
- 18 <http://www.asic.gov.au/policy/index.cfm-id65C50B45-EC09-11D3->
- 19 An Act relating to certain Trade Practices (Trade Practices Act 1974). (Available at: <http://scaleplus.law.gov.au/html/pasteact/0/115/top.htm>.)
- 20 *Trade Practices Act 1974*, Part V, Division 1.



- 21 *Trade Practices Act 1974*, Part V, Division 2A.
- 22 <http://www.jus.uio.no/lm/un.limitation.period.sog.convention.1980/11.html>
- 23 And likewise, territorial governments. The difference is that territorial powers are derived from the federal government, rather than being constitutionally inherent (as in the case of the provinces). In practice, however, the federal government has devolved legislative powers to the territories that are similar to the provinces' powers, and in the case of consumer issues, identical.
- 24 For example, in British Columbia, there is the *Sale of Goods Act* (R.S.B.C. 1996 c. 410, *Class Proceedings Act* (R.S.B.C. 1996 c. 50) and the *Consumer Protection Act* (R.S.B.C. 1996 c.69).
- 25 By sectoral issues we mean, for example, direct sellers, auctioneers, pawnbrokers, collection agencies and credit reporting agencies.
- 26 For example, see discussion in Roger Tassé and Kathleen Lemieux, April 1998 "Introduction," *Consumer Protection Rights in Canada*, A Report to the Office of Consumer Affairs, Industry Canada. Available at: <http://strategis.ic.gc.ca/SSG/ca01028e.html>
- 27 See Office of Consumer Affairs Internet page: <http://consumerconnection.ic.gc.ca>.
- 28 Principles available at: <http://strategis.ic.gc.ca/SSG/ca01180e.html>.
- 29 The CMC was created under Chapter Eight of the Agreement on Internal Trade, signed in 1995 by the federal government and every province and territory. The CMC has a representative from the federal government as well as every province and territory. The CMC provides a federal-provincial-territorial administrative forum for national co-operation to improve the marketplace for Canadian consumers, by developing proposals for the harmonisation of laws, regulations and practices and through actions to raise public awareness.
- 30 [http://strategis.ic.gc.ca/sc\\_cons/consaffairs/engdoc/oca.html](http://strategis.ic.gc.ca/sc_cons/consaffairs/engdoc/oca.html)
- 31 [http://strategis.ic.gc.ca/sc\\_mrksv/spectrum/engdoc/spect1.html](http://strategis.ic.gc.ca/sc_mrksv/spectrum/engdoc/spect1.html)
- 32 S.C., 2000, c. 5. Royal Assent received April 13, 2000. The Privacy Commissioner of Canada will administer those provisions of the Act related to the handling of personal information. (Web site: [www.privcom.gc.ca](http://www.privcom.gc.ca)).
- 33 <http://strategis.ic.gc.ca/SSG/ct01250e.html>
- 34 Competition Act, R.S.C., 1985, c. C-34. (Available at: <http://canada.justice.gc.ca/STABLE/EN/Laws/Chap/C/C-34.html>).
- 35 <http://canada.justice.gc.ca/STABLE/EN/Laws/Chap/C/C-34.html>
- 36 R.S.C. 1985, c. B-1. (Available at: <http://canada.justice.gc.ca/STABLE/EN/Laws/Chap/B/B-2.html>).
- 37 R.S.C. 1985, c. I-15. (Available at: <http://canada.justice.gc.ca/STABLE/EN/Laws/Chap/I/I-15.html>).
- 38 R.S.C. 1985, c. C-38. (Available at: <http://canada.justice.gc.ca/STABLE/EN/Laws/Chap/C/C-38.html>).
- 39 R.S.C. 1985, c. T-10. (Available at: <http://canada.justice.gc.ca/STABLE/EN/Laws/Chap/T/T-10.html>).
- 40 R.S.C. 1985, c. P-19. (Available at: <http://canada.justice.gc.ca/STABLE/EN/Laws/Chap/P/P-19.html>).

- 41 R.S.C. 1985, c. W-6. (Available at: <http://canada.justice.gc.ca/STABLE/EN/Laws/Chap/W/W-6.html>.)
- 42 R.S.C. 1985, c. F-27. (Available at: <http://canada.justice.gc.ca/STABLE/EN/Laws/Chap/F/F-27.html>.)
- 43 *Supra*, note 19.
- 44 *Supra*, note 19.
- 45 <http://strategis.ic.gc.ca/SSG/cp00003e.html>
- 46 <http://strategis.ic.gc.ca/SSG/cp01031e.html>
- 47 <http://strategis.ic.gc.ca/SSG/ca00611e.htm> and <http://strategis.ic.gc.ca/SSG/ca00880e.html>
- 48 Consumer Protection Act, R.S.Q., c. P.40.1, ss. 215-253.
- 49 *An Act Respecting the protection of personal information in the private sector*, R.S.Q., c. P.39.1.
- 50 For instance, Alberta specifically regulates time-share contracts: *Fair Trading Act*, (Alberta), S.A. 1998, Part 3, and *Time-Share Contracts Regulation*. Quebec, to provide another example, regulates physical fitness studio membership contracts: *Consumer Protection Act*, R.S.Q., c. P.40.1, ss. 197-205.
- 51 See Tassé and Lemieux, *op. cit.* (Available at: <http://strategis.ic.gc.ca/SSG/ca01028e.html>)
- 52 *Canadian Commercial Law Guide*, CCH, para. 13-000: “Such legislation is aimed at filling the gap between fraud in business transactions, as proven beyond a reasonable doubt pursuant to federal criminal law, and standard ethical business practice.”
- 53 See *Fair Trading Act* (Alberta), S.A. 1998, c. F-1.05, ss. 5-19; *Trade Practice Act* (British Columbia), R.S.B.C. 1996; *The Business Practices Act* (Manitoba), S.M. 1990-91, c. B120; *Trade Practices Act* (Newfoundland), R.S.N. 1990, c. T-7; *Business Practices Act* (Ontario), R.S.O. 1990, c. B.18. *Business Practices Act* (Prince Edward Island), R.S.P.E.I. 1988, c. B-7; *the Consumer Protection Act* (Saskatchewan), S.S. 1996, c. C-30.1, ss. 3-38.
- 54 *Business Practices Act* (Ontario), R.S.O. 1990, c.B.18.
- 55 *Business Practices Act* (Ontario), R.S.O. 1990, c.B.18, paras. 2(1)(v), (vii) & (x).
- 56 *Consumer Protection Act*, R.S.Q., c. P.40.1.
- 57 *Consumer Protection Act*, R.S.Q., c. P.40.1., s. 219.
- 58 *Consumer Protection Act*, R.S.Q., c. P.40.1., s. 220; see also generally ss. 215-253.
- 59 For example, up to CAD 500 000 in the case of a corporation committing a second or subsequent offence in Saskatchewan: *The Consumer Protection Act*, S.S. 1996 c. C-30.1, para. 23(3)(b).
- 60 For example, up to three years for a second or subsequent offence in Manitoba: *The Business Practices Act*, *op. cit.*, para. 33(1)(3).
- 61 See, for example, Prince Edward Island’s *Business Practices Act*, *op. cit.*, s. 4.
- 62 The term “Common Law province” refers to those provinces other than Quebec, which has codified its civil law into the *Civil Code of Quebec*, S.Q, 1991, c. 64.

- 63 Such warranties and conditions are contained in the various, though quite similar, sales of goods statutes; see, for example, Ontario's *Sale of Goods Act*, R.S.O. 1990, c. S-1. In the interest of concision, important distinctions between warranties and conditions are not explored here. Please consult the various applicable statutes.
- 64 *Civil Code of Quebec* (C.C.Q.), S.Q. 1991, c. 64, arts. 1716-1731. See, more generally, C.C.Q., Title Two, Chapter One, "Sales".
- 65 The *Consumer Protection Act* (Manitoba), R.S.M. 1987, c. C200, ss. 58-58.2; *Consumer Protection Act* (Nova Scotia), R.S.N.S., 1989, c. 92, s. 26; *Consumer Protection Act* (Northwest Territories), R.S.N.W.T. 1988, c. C-17, ss. 70-79; *Consumer Protection Act* (Yukon), R.S.Y. 1986, c. 31, s. 58.
- 66 *Consumer Protection Act* (Nova Scotia), paras. 26(3)(d), (h) & (j).
- 67 *Consumer Protection Act* (Ontario), R.S.O. 1990, c. C.31, s. 34.
- 68 See *Consumer Product Warranty and Liability Act* (New Brunswick), S.N.B. 1987 c. C-18.1; *The Consumer Protection Act* (Saskatchewan), S.S. 1996, c. C-30.1, ss. 39-71; *Consumer Protection Act* (Quebec), R.S.Q., c. P-40.1, ss. 151-181.
- 69 *Fair Trading Act*, S.A. 1998, c. F-1.05, s. 42.
- 70 See Bill-11, introduced in Legislative Assembly of Saskatchewan, 17 December 1999, available at: <http://www.legassembly.sk.ca/bills/default.htm>.
- 71 See Uniform Law Conference Web site: <http://www.law.ualberta.ca/alri/ulc/eindex.htm>.
- 72 Regarding forum, see: C.C.Q, art. 3149; regarding applicable law, see C.C.Q, art. 3117 and *Consumer Protection Act*, R.S.Q., c. P.40.1, s. 19.
- 73 See: Alberta's *Fair Trading Act*, S.A. 1998, c. F-1.05, especially, s. 5; Saskatchewan's *Consumer Protection Act*, S.S. 1996, c. C-30.1, especially s. 69. In addition, both jurisdictions explicitly protect consumers based outside the province from unfair practices by businesses within their respective borders: *Fair Trading Act*, *ibid.* *Consumer Protection Act*, s. 29.
- 74 See, for example, Ontario's *Consumer Protection Act*, R.S.O. 1990, c. C.31, s. 31.
- 75 [http://wwwold.mpo.cz/english/mpo\\_uk.htm](http://wwwold.mpo.cz/english/mpo_uk.htm)
- 76 Government Resolution No. 813/1998 (9 December 1998).
- 77 <http://wwwold.mpo.cz/english/d/db/dba/dbab.htm>
- 78 Government Resolution No. 813/1998, Part Two (Art. 8).
- 79 Government Resolution No. 813/1998, (Art. 13).
- 80 Government Resolution No. 813/1998, (Art. 9-14).
- 81 The Executive Summary and Concluding chapter from the report is available in English at <http://www.fs.dk/uk/acts/misc/emintuk.htm>.
- 82 <http://www.fs.dk/uk/acts/ukprosaf.htm>

- 83 <http://www.fs.dk/uk/acta/ukmfl.htm>
- 84 Act No. 414 of 31 May 2000 [FS – GF1]. The Act is intended to implement Art. 8 of Directive 97/7 on the protection of consumers in respect of distance contracts, OJ 1997 No. L 144, pp. 19-28. (Available at: <http://www.fs.dk/uk/acts/ukbtf.txt>).
- 85 <http://www.fs.dk/uk/acts/ukfbl.htm>
- 86 Consumer Protection Act, 20 January 1978/38.
- 87 <http://www.kuluttajavirasto.fi/englanti/index.html>
- 88 <http://www.kuluttajavirasto.fi/englanti/guidelines/list/postieng.html>,  
<http://www.kuluttajavirasto.fi/englanti/guidelines/list/takeung.html>,  
<http://www.kuluttajavirasto.fi/englanti/guidelines/list/lapseng.html>
- 89 <http://www.legifrance.gouv.fr>.
- 90 *Code on Consumer Protection*: <http://www.legifrance.gouv.fr>
- 91 *Decision No. 1161/1998* (XII. 17).
- 92 *1995 Act on Public Procurement* (amended by the *Act LX. of 1999*) section e) of § 96 (1) of the *Act XL*.
- 93 *The Consumer Protection Fundamental Act* (Law No. 78, enacted 30 May, 1968).  
<http://www.apeccp.org.tw/doc/Japan/Comlaw/jpiss01.html>
- 94 *Act No. 54* of 14 April 1947 as amended by *Fair Trade Commission Notification No. 15* (18 June 1982).  
<http://www.jftc.admix.go.jp/e-page/acts/gd.htm>
- 95 <http://www.jftc.admix.go.jp/e-page/front.htm>
- 96 Act No. 134 of 15 May 1962. <http://www.jftc.admix.go.jp/e-page/acts/pr.htm>
- 97 <http://www.jadma.org/org/c/c6e.html>
- 98 Act No. 159 established on 1 July 1961 as amended in 1999.
- 99 Paper: “Towards the Legislation of the Consumer Contract Law” (tentative name), Reported by the Consumer Policy Committee, Social Policy Council (January 1999). (Available at: <http://www5.cao.go.jp/99/c/shouhi/keiyaku.html>)
- 100 [http://www.kokusen.go.jp/jcic\\_index\\_e.html](http://www.kokusen.go.jp/jcic_index_e.html)
- 101 Revised 1999, available at: <http://www.cpb.or.kr/sobi/engdoc/elaw01.htm>
- 102 *Law No. 3320*, December 31, 1980 as amended, available at:  
<http://www.ftc.go.kr/ftc10/owa/ftc410e?no1=011&subject=Law>
- 103 *Law No. 4515*, (revised 1997), available at:  
<http://www.ftc.go.kr/ftc10/owa/ftc420e?no1=031&subject=Law>
- 104 <http://www.cpb.or.kr/sobi/engdoc/elaw01.htm>
- 105 <http://www.ftc.go.kr/ftc10/owa/ftc410e?no1=011&subject=Law>

- 106 <http://www.ftc.go.kr/ftc10/owa/ftc410e?no1=011&subject=Law>
- 107 Law 5814, 5 February 1999, available at: <http://ftc.go.kr/english/htm1/label.htm>
- 108 *Ley Federal de Proteccion al Consumidor* (LFPC); available at: [http://www.profeco.gob.mx/mj\\_ley.htm](http://www.profeco.gob.mx/mj_ley.htm) (Spanish).
- 109 <http://www.consumer-ministry.govt.nz/>
- 110 [http://www.consumer-ministry.govt.nz/dp\\_ecommerce\\_statusreport.htm](http://www.consumer-ministry.govt.nz/dp_ecommerce_statusreport.htm)
- 111 Fair Trading Act 1986 121, available at: <http://www.rangi.knowledge-basket.co.nz/gpacts/public/text/1986/an/121.html>. A non-legal summary with practical examples can be found at <http://www.consumer-industry.govt.nz/fairtrad.html>
- 112 *Consumer Guarantees Act 1993 091*, as amended in 1999, available at: <http://rangi.knowledge-basket.co.nz/gpacts/public/text/1993/an/091.html>. A non-legal summary with practical examples can be found at: <http://www.consumer-ministry.govt.nz/cgagoodsd.html>.
- 113 <http://www.med.govt.nz/irdev/elcom/transactions/bill/index.html>
- 114 *Act No. 47* of 16 June 1972 relating to the Control of Marketing and Contract Terms and Conditions, available at: <http://www.forbrukerombudet.no/html/engelsk/themcact.htm>
- 115 <http://www.frobrukerombudet.no/>
- 116 Available for download at: <http://www.forbrukerombudet.no/html/engelsk/bam&unge-engelsk.doc>.
- 117 938 Act of 22 October 1998 on Amendments to the Action Counteracting Monopolistic Practices, available at: <http://www.uokik.gov.pl/przepisy/PKTang.01.HTM>
- 118 <http://www.uokik.gov.pl/>
- 119 Full text versions of most legislative and judicial consumer protection texts are available (in Spanish) at: <http://www.consumo-inc.es/rware/consumo.html>
- 120 <http://www.konsumentverket.se/coinSwed.htm>
- 121 <http://www.konsumentverket.se/summary.htm>
- 122 [http://www.iccwbo.org/home/statements\\_rules/menu\\_rules.asp](http://www.iccwbo.org/home/statements_rules/menu_rules.asp)
- 123 [www.consommation.admin.ch](http://www.consommation.admin.ch)
- 124 [www.consommation.admin.ch/frloisconso.htm](http://www.consommation.admin.ch/frloisconso.htm)
- 125 [www.consommation.admin.ch](http://www.consommation.admin.ch)
- 126 [www.admin.ch/ch/f/rs/c784103.html](http://www.admin.ch/ch/f/rs/c784103.html)
- 127 For an in-depth analysis of the relevant provisions, use should be made of the actual sources as well as European Court of Justice case law in this respect. Furthermore, it is important to bear in mind that the European Community contributes to the level of protection afforded by the Member States and that therefore many EU consumer protection rules are 'minimum' requirements. The Member States are,

within the limits of the Treaty, in many cases free to introduce or maintain provisions aiming at a higher level of consumer protection.

- 128 *Official Journal* L 290, 23/10/1997 p. 0018 – 0023 (with corrigendum in *Official Journal* L 194, 10/07/1998 p. 0054). [http://europa.eu.int/comm/consumers/policy/developments/adve/adve02\\_en.html](http://europa.eu.int/comm/consumers/policy/developments/adve/adve02_en.html)
- 129 *Official Journal* L 250, 19/09/1984 p. 0017 – 0020.  
[http://europa.eu.int/eur-lex/en/lif/dat/1984/en\\_384L0450.html](http://europa.eu.int/eur-lex/en/lif/dat/1984/en_384L0450.html)
- 130 *Official Journal* L 202, 30/07/1997 p. 0060 – 0071.  
[http://europa.eu.int/eur-lex/en/lif/dat/1989/en\\_389L0552.html](http://europa.eu.int/eur-lex/en/lif/dat/1989/en_389L0552.html)
- 131 *Official Journal* L 113, 30/04/1992 p. 0013 – 0018.  
[http://europa.eu.int/eur-lex/en/lif/dat/1992/en\\_392L0028.html](http://europa.eu.int/eur-lex/en/lif/dat/1992/en_392L0028.html)
- 132 *Official Journal* L 213, 30/07/1998 p. 0009 – 0012.  
[http://europa.eu.int/eur-lex/en/lif/dat/1998/en\\_398L0043.html](http://europa.eu.int/eur-lex/en/lif/dat/1998/en_398L0043.html)
- 133 *Official Journal* L 144, 04/06/1997 p. 0019 – 0027.  
[http://europa.eu.int/eur-lex/en/lif/dat/1997/en\\_397L0007.html](http://europa.eu.int/eur-lex/en/lif/dat/1997/en_397L0007.html)
- 134 *Official Journal* L 024, 30/01/1998 p. 0001 – 0008.  
[http://europa.eu.int/eur-lex/en/lif/dat/1997/en\\_397L0066.html](http://europa.eu.int/eur-lex/en/lif/dat/1997/en_397L0066.html)
- 135 COM(98)121 final.
- 136 COM(98)586 final; *Official Journal* C 030, 05/02/1999 p. 0004.
- 137 [http://europa.eu.int/eur-lex/en/lif/dat/1997/en\\_397L0036.html](http://europa.eu.int/eur-lex/en/lif/dat/1997/en_397L0036.html)
- 138 Surreptitious advertising and tele-shopping is defined as the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the broadcaster to serve advertising and might mislead the public as to its nature. Such representation is considered to be intentional in particular if it is done in return for payment or for similar consideration.
- 139 [http://europa.eu.int/eur-lex/en/com/dat/1998/en\\_598PC0586.html](http://europa.eu.int/eur-lex/en/com/dat/1998/en_598PC0586.html)
- 140 *Official Journal* L 144, 04/06/1997 p. 0019 – 0027:  
[http://europa.eu.int/eur-lex/en/lif/dat/1997/en\\_397L0007.html](http://europa.eu.int/eur-lex/en/lif/dat/1997/en_397L0007.html)
- 141 *Official Journal* L24, 30/01/1998, p. 1-8. [http://europa.eu.int/eur-lex/en/lif/dat/1997/en\\_397L0066.html](http://europa.eu.int/eur-lex/en/lif/dat/1997/en_397L0066.html)
- 142 *Official Journal* C 385, 11/12/1998, p. 10.
- 143 The distinction between advertising/commercial communications and information that is to be provided before entering into a contract is not always clearly defined. In this respect it may be useful to bear in mind that information provided in advertising or other forms of commercial communications that has a determining influence on the consumer's decision to contract, may be considered as being information provided before the conclusion of the contract.
- 144 *Official Journal* L 144, 04/06/1997 p. 0019 – 0027.  
[http://europa.eu.int/eur-lex/en/lif/dat/1997/en\\_397L0007.html](http://europa.eu.int/eur-lex/en/lif/dat/1997/en_397L0007.html)

- 145 *Official Journal* L 080, 18/03/1998 p. 0027 – 0031 (With corrigendum in *Official Journal* L 190, 04/07/1998 p. 0086). [http://europa.eu.int/eur-lex/en/lif/dat/1998/en\\_398L0006.html](http://europa.eu.int/eur-lex/en/lif/dat/1998/en_398L0006.html)
- 146 COM(98) 586 final - *Official Journal* C 30, 05/02/1999 p. 0004.  
[http://europa.eu.int/eur-lex/en/com/dat/1998/en\\_598PC0586.html](http://europa.eu.int/eur-lex/en/com/dat/1998/en_598PC0586.html)
- 147 The distinction between the different types of information is not always clearly defined and in some respects it is theoretical. Arguably some elements covered in this paper under information on the goods and services on offer can also feature under the heading information on the contract.
- 148 [http://europa.eu.int/eur-lex/en/lif/dat/1997/en\\_397L0007.html](http://europa.eu.int/eur-lex/en/lif/dat/1997/en_397L0007.html)
- 149 [http://europa.eu.int/eur-lex/en/com/dat/1998/en\\_598PC0586.html](http://europa.eu.int/eur-lex/en/com/dat/1998/en_598PC0586.html)
- 150 [http://europa.eu.int/eur-lex/en/lif/dat/1997/en\\_397L0007.html](http://europa.eu.int/eur-lex/en/lif/dat/1997/en_397L0007.html)
- 151 [http://europa.eu.int/eur-lex/en/com/dat/1998/en\\_598PC0586.html](http://europa.eu.int/eur-lex/en/com/dat/1998/en_598PC0586.html)
- 152 [http://europa.eu.int/eur-lex/en/com/dat/1998/en\\_598PC0586.html](http://europa.eu.int/eur-lex/en/com/dat/1998/en_598PC0586.html)
- 153 *Official Journal* L 095, 21/04/1993 p. 0029 – 0034..  
[http://europa.eu.int/eur-lex/en/lif/dat/1993/en\\_393L0013.html](http://europa.eu.int/eur-lex/en/lif/dat/1993/en_393L0013.html)
- 154 *Official Journal* L 144, 04/06/1997 p. 0019 – 0027.  
[http://europa.eu.int/eur-lex/en/lif/dat/1997/en\\_397L0007.html](http://europa.eu.int/eur-lex/en/lif/dat/1997/en_397L0007.html)
- 155 COM(98) 586 final - *Official Journal* C 30, 05/02/1999 p. 0004.  
[http://europa.eu.int/eur-lex/en/com/dat/1998/en\\_598PC0586.html](http://europa.eu.int/eur-lex/en/com/dat/1998/en_598PC0586.html)
- 156 [http://europa.eu.int/eur-lex/en/com/dat/1998/en\\_598PC0586.html](http://europa.eu.int/eur-lex/en/com/dat/1998/en_598PC0586.html)
- 157 Enhanced general protection, by means of preventive and repressive measures to combat fraud and counterfeiting involving non-cash means of payment, is suggested in the Communication from the Commission: A framework for action on combating fraud and counterfeiting of non-cash means of payment (COM(98)395 final) which includes a legislative proposal in the field of criminal law protection.
- 158 *Official Journal* L 144, 04/06/1997 p. 0019 – 0027.  
[http://europa.eu.int/eur-lex/en/lif/dat/1997/en\\_397L0007.html](http://europa.eu.int/eur-lex/en/lif/dat/1997/en_397L0007.html)
- 159 *Official Journal* L 042, 12/02/1987 p. 0048 – 0053 (with corrigendum in *Official journal* No. L 278, 11/10/1988 P. 0033). [http://europa.eu.int/eur-lex/en/lif/dat/1987/en\\_387L0102.html](http://europa.eu.int/eur-lex/en/lif/dat/1987/en_387L0102.html)
- 160 *Official Journal* No. L 208 , 02/08/1997 P. 0052 – 0058.  
[http://europa.eu.int/eur-lex/en/lif/dat/1997/en\\_397X0489.html](http://europa.eu.int/eur-lex/en/lif/dat/1997/en_397X0489.html)
- 161 *Official Journal* L171, 07/07/1999 p. 0012 – 0016.  
[http://www.europa.eu.int/eur-lex/en/lif/dat/1999/en\\_399L0044.html](http://www.europa.eu.int/eur-lex/en/lif/dat/1999/en_399L0044.html)