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**OECD CONFERENCE ON EMPOWERING E-CONSUMERS: STRENGTHENING CONSUMER
PROTECTION IN THE INTERNET ECONOMY**

SUMMARY OF KEY POINTS AND CONCLUSIONS

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FOREWORD

This document contains a summary of the key issues addressed at the OECD Conference on *Empowering E-Consumers: Strengthening Consumer Protection in the Internet Economy*, hosted by the US Federal Trade Commission on 8-10 December 2009 in Washington, D.C. The report reflects suggestions for future work that were provided by stakeholders at the concluding session of the event to advance the review of the 1999 Guidelines.

The report, which was approved and declassified at the Committee on Consumer Policy's 79th Session in April 2010, was prepared by Brigitte Acoca, of the OECD Secretariat.

OECD CONFERENCE ON EMPOWERING E-CONSUMERS: STRENGTHENING CONSUMER PROTECTION IN THE INTERNET ECONOMY

SUMMARY OF KEY POINTS AND CONCLUSIONS

I. Introduction

In light of the significant developments in the Internet Economy over the past decade, and the conclusions reached at the 2008 OECD Seoul Ministerial meeting on *The Future of the Internet Economy*, the OECD's Committee on Consumer Policy launched a review of the 1999 *OECD Guidelines on Consumer Protection in the Context of Electronic Commerce* ("the 1999 Guidelines"), in 2009. As part of the project, a conference on *Empowering E-Consumers: Strengthening Consumer Protection in the Internet Economy* was held on 8-10 December 2009, in Washington, D.C.

The event, hosted by the US Federal Trade Commission, brought senior government officials from member and non-member economies together with business leaders, and representatives from civil society, academia and other international organisations to discuss ways to address emerging consumer challenges in the Internet economy. A background report was prepared to support the discussion [DSTI/CP(2009)20/FINAL]. The report and presentations provided by the panellists at the conference are available on the conference website (www.oecd.org/ict/econsumerconference). Both a full transcript and a webcast of the event are also available on the website (until January 2011).

II. Impact of the 1999 Guidelines on the Internet economy

The 1999 Guidelines are seen as continuing to provide an effective framework for consumer protection. They have been used extensively by governments and business to develop laws, regulations and practices to ensure that markets are transparent and fair and that consumer rights are preserved. To date, e-commerce has proved highly beneficial to consumers as it has fuelled competition and innovation, while providing consumers with enhanced capacity to research, compare and purchase products, oftentimes at lower prices.

Participants noted that despite the economic downturn, online sales have continued to rise in a number of countries. There was however general agreement that in order for e-commerce to reach its full potential, in particular across borders, consumer confidence would need to be strengthened. This might require further elaboration or modification of the principles in the 1999 Guidelines. The importance of engaging all stakeholders in the process was stressed; such engagement would help ensure an effective outcome. International co-operation was also regarded as essential from both a policy and enforcement perspective.

III. B2C: Business as sellers

Discussion focused on the opportunities and challenges that the development of the digital economy has brought to both consumers and business. SMEs, it was noted, have especially benefitted from the expanded platform for selling their products. Participants, however, identified a number of issues that would need to be addressed, including fraud, payment security and privacy, which have continuously impeded e-commerce growth, in particular across borders.

Strengthening payment protection

While important progress has been made in providing consumers with a variety of online payment mechanisms, consumer confidence is still an issue. In particular, stakeholders need to ensure that

consumers have access to adequate redress mechanisms that enable them to address problems when they arise (for example, when products are not delivered, or do not conform to their order). Consumer education about the various redress options attached to specific payment mechanisms also needs to be improved so that consumers understand the various levels of protection that are available to them.

Fraud is another factor that continues to undermine consumer confidence in online payment solutions. In Italy, for example, some 65% of consumers feared that online payments were unsafe in 1999; that level has dipped, but only to 52% currently. Secure payment mechanisms, it was noted, would also benefit traders who themselves are considerably affected by fraud. It is important to recognise the strong protection that is provided voluntarily by payment services institutions, as well as by law, to limit consumer liability in case of unauthorised transactions. However, the level of such protection, it was noted, may vary from one institution to another, and from country-to-country's regulation.

It was suggested that the 1999 *Guidelines* could be strengthened by highlighting the need for securing consumer payments in all circumstances and to put in place effective redress mechanisms that would allow consumers to get their money back in case of non-delivery or non-conformity of ordered products. Specific focus could be made in that regard on related mobile commerce issues.

Behavioural advertising and personal data protection

Online behavioural advertising has become a more important force on the Internet. This technique, which consists of tracking consumer activities and related information on line, aims to provide consumers with advertising tailored to their needs and interests. There was recognition that such a technique provided a number of benefits to consumers as they are often able to get free content in exchange for allowing targeted advertising. Participants however also noted concerns about privacy. There appears to be *i*) a lack consumer of information about the collection and storage of personal data online; *ii*) a potential risk of unexpected use of personal data by third parties, without consumer knowledge or consent; and *iii*) unfair commercial practices (including, for example, commercial usage of personal information).

Further study of issues related to the forms and use of behavioural advertising was suggested. One of the key areas that could be explored is transparency in the way that personal information is being collected, shared and used; the importance of consumer consent was mentioned in this regard. Further, consumer education of both adults and children on the use of data was identified as an area to be explored. Finally, it was suggested that issues deriving from the use of personal data, described as an online "currency," in the context of C2C transactions and social networking, should be explored.

Contracts

Participants stressed that in many instances, contract terms are difficult to understand and potentially unfair. It was suggested that the principles in the 1999 Guidelines on fair business practices (Part II, Section II) and information disclosure about the transaction (Part II, Section III) should be elaborated both to enable consumers to make informed decisions and to more clearly proscribe unfair terms.

It was suggested that the legal concept of "unfairness," which is used in most OECD countries' legislation, be explored further. Examples illustrating terms that may be regarded as unfair could be included in the 1999 *Guidelines* (in an Annex) as was done in EC Directive 93/13 on Unfair Contract Terms. End-user licence agreements were cited as an example of contracts in which typical terms are considered by many as unfair. Disclosure alone does not solve the problem as contract terms are in many instances too long and complex for consumers to read and understand. Participants suggested in that regard that contract terms, in particular those relating to consumer rights and obligations, should use plain

language that would be understandable to the average consumer. It was highlighted that this should particularly be applied to the purchase of digital content products.

IV. C2C: Consumers as sellers and participative web issues

It was reported that C2C transactions on line have grown in importance in recent years. In addition to e-mail, individuals are using the online marketplace to advertise and sell items through their personal websites, social networking sites, online auctions and classified advertisement platforms. Despite the considerable benefits such developments have brought to consumers, a number of concerns have been identified in recent years.

Fraud

While trust between the seller and the buyer were seen as particularly essential in C2C transactions, participants noted a growing level of fraud. Auction fraud was mentioned in that regard by some participants. In the United States, out of some 275 000 complaints referred to the US Internet Crime Complaint Centre in 2008, Internet auction fraud was the second most reported offense (25.5%). Other types of fraud included identity theft, and the selling of counterfeit products. It was noted, however, that fraud might be increasing proportionally or less than the growth of C2C transactions as such.

Education

Some participants noted a strong need to educate consumers and other concerned stakeholders on the rights and obligations of the parties involved in C2C transactions, including buyers, sellers, and the Internet intermediaries, which often provide the platform for such transactions. Governments should also take measures to ensure that online sellers are aware of applicable tax laws.

Scope of the Guidelines

In many instances, the distinctions between consumers and sellers, and commercial and non-commercial online activities, have blurred. Consumers may, for example, have difficulty determining whether the party to a transaction is a professional seller, or not. As a result, the applicability of consumer-specific protection laws (traditionally applied to B2C transactions only) is becoming unclear in the C2C context. Defining the consumer protections that are needed in C2C transactions was seen as an essential step by some participants to ultimately determine the role and responsibilities of all the parties concerned, including Internet intermediaries.

The current scope of the 1999 *Guidelines* is limited to B2C e-commerce. Some felt that the scope should be extended to cover C2C transactions. There was general agreement that the basic disclosure obligations applicable to businesses in the 1999 *Guidelines* should apply to anyone selling on line, regardless of whether these are individuals or businesses. It was suggested that the 1999 *Guidelines* could be revised with a new definition of “businesses;” alternatively, new guidelines could be developed to address C2C issues.

Analytical work

It was suggested that an analytical report be prepared on C2C (and perhaps C2B) transactions which would track the forms C2C is taking on line and examine how it would likely evolve in the future. The analysis would also examine issues related to the definition of consumers as sellers and would identify which parties in C2C transactions deserve specific protection (*i.e.* sellers and/or buyers).

V. Digital content products

Participants noted the dramatic rise in digital content product offers and consumer purchases over the past years. These include films, music, videos, news, e-books, and games. In the United Kingdom, for example, some 38% of online purchases are digital content products. Both consumers and content providers have benefitted significantly from the development of such an expanding range of digital products. There are, however, a number of areas that need to be addressed, including piracy, restrictions placed on the use of digital products and limited access to such products based on the location of consumers.

Transparency

Contract clarity and unfair contract terms

As indicated earlier (Section II), participants noted that contracts associated with the purchase of digital content products are often long and difficult to understand. Moreover, it was noted, end-user licence agreements often contain unfair contract terms, such as rights for providers to remove digital content services or products or terminate contracts without giving notice to consumers, and/or substantial exclusion of liability.

Restrictions on the usage of digital content products

Concern was expressed about the lack of transparency and/or clarity in contracts with respect to products which are sold with restrictions on use (*e.g.* playing, copying, and/or distribution). Some participants noted that consumers should further be informed about any changes in the terms of use of products that they had previously purchased. It would, for example, be beneficial for consumers to be able to clearly identify how the terms changed. The need to look at the issue of fairness of restrictions to the usage of digital products was also highlighted.

Interoperability

There was also interest in exploring questions concerning interoperability; some products can, for example, only be accessed on a limited number of devices. In Norway, the Consumer Ombudsman has intervened on this point, requiring one vendor of music to eliminate DRMs that limited the playing of purchased music to certain devices. It was also suggested that a workshop be conducted, possibly with the OECD's Competition Committee, to address current and emerging consumer issues related to DRMs and interoperability.

Strengthening enforcement and redress mechanisms

Fighting counterfeit and pirated digital products

Some believed that more should be done to fight against illegitimate websites selling counterfeit and pirated digital products. Civil society noted however that the enforcement of intellectual property rights should be balanced with user rights, noting that in instances where consumers are accused of piracy, due process rights should be offered to them.

Remedies

As indicated by civil society, more effective redress mechanisms attached to the purchase of digital content products should be put in place. It was noted, for example, that in the case of digital content

products, consumers do not benefit from the same level of rights attached to physical goods, such as right of return of faulty products.

Analytical work

It was suggested that a study be carried out to identify the types of key information consumers should receive when purchasing a digital product. The study could examine the extent to which consumers effectively understand the information that is being provided to them.

VI. Children

There was general agreement that the nature of the protection of children on line has evolved, as children's activities on line have changed. Children, including those at a very early age, have become Internet savvy: they are using the web not only for research but also for engaging in text-messaging, playing games, participating in social networking activities, watching TV on line. In addition, as highlighted in the US Federal Trade Commission's 2009 report on *Virtual Worlds and Kids: Mapping the Risks*, children are increasingly participating in virtual worlds. It was noted that the development of new products and new technology, including smart mobile devices, has required policy makers to continuously adapt their approaches to children's protection to address new challenges.

The 1999 *Guidelines* address children's protection issues in Part II, Section II, which call for special care in advertising and marketing to children on line. Further elaboration is contained in the 2008 *OECD Policy Guidance for Addressing Emerging Consumer Protection and Empowerment Issues in Mobile Commerce* ("policy guidance on mobile commerce") [DSTI/CP(2007)5/FINAL]. Some suggested that additional measures be taken by business and government. Development of effective technical solutions such as authentication and age verification tools, for example, is required; these tools would need to be adapted to different platforms (mobile devices, for example, posed challenges that are unique as compared to other platforms).

There were significant concerns about behavioural advertising targeting children. Participants took the view that there are a number of other issues to be addressed in this context. It was suggested that a study be undertaken to examine advertising targeting children on line more generally; this would include ads for games and those associated with social networking and virtual worlds. The study would explore *i)* how such advertising is covered by existing consumer protection laws, and *ii)* how those laws are being applied to areas where the distinction between commercial and non-commercial activities is not always clear, such as blogging activities. The US Federal Trade Commission, it was noted, tackled this issue in its recently updated guidelines on endorsements and testimonials.

VII. Mobile commerce

Participants noted the exponential growth in consumer involvement in mobile commerce worldwide, including in developing countries. Some 60% of the world's population now had mobile phones. In North America, the sale of physical goods *via* mobile devices was expected to amount to USD 750 million in 2009, compared to USD 346 million in 2008.

As pointed out in a recent survey conducted by Consumer Focus in the United Kingdom, *Pocket Shopping, International Consumer Experiences of Buying Goods and Services on their Mobile Phones*, a number of challenges have been identified in the mobile market place. These include restricted market choice (including lack of software interoperability), inadequate information disclosure, poor complaint handling and redress, privacy concerns, and lack of confirmation options offered in payment procedures. Stakeholders called for the mobile industry to develop best practices and standards, and for public-private

sector co-operation in the development of guidelines addressing these and other issues, including age verification and authentication.

It was generally agreed that most mobile commerce issues are adequately covered by the 1999 *Guidelines*, and that the 2008 policy guidance on mobile commerce had provided useful elaboration in a number of key areas. It was however suggested that a study be undertaken to examine: *i)* the payment systems being used in different countries, *ii)* consumer protection under such systems, and *iii)* related consumer challenges, with a possible focus on authorisation and age verification.

VIII. Accountability

Strengthening enforcement co-operation, within countries and across borders, was a central theme addressed during the conference. Issues including business accountability and transparency, dispute resolution and redress, and enforcement challenges, were discussed in that context. As highlighted in a number of panels, consumers need to have confidence *i)* in the seller, through information about his identity and location, *ii)* that in case of problems, adequate dispute resolution and redress systems are in place and *iii)* that consumer protection mechanisms will be enforced, in particular in cross-border cases.

Participants underscored the importance of strengthening the enforcement capacity of governments to address cross-border issues. This would include the collection and exchange of information and expertise, as well as a continuous dialogue between enforcement agencies. It would also include expanding the scope of enforcement. For example, it was suggested that agencies should have the ability to prosecute wrongdoers in their own country, even when their own citizens were not affected.

It was noted that much has already been achieved in strengthening co-operation through the International Consumer Protection and Enforcement Network (ICPEN), but there is further need to develop institutional mechanisms that agencies worldwide could use to facilitate co-operation. One suggestion was to explore the development of a formal multilateral instrument on enforcement co-operation. While the 1999 Guidelines provided a solid basis for promoting cross-border co-operation, the challenge has been to act on the principles, develop best practices and secure their effective adoption by as many agencies as possible. This would help to reduce the exploitation of jurisdictional boundaries.

IX. E-commerce regulatory frameworks

Institutional approaches to e-commerce regulation differ, it was noted, across jurisdictions. The differences were recognised as a possible barrier for consumers and business to engage in online transactions across borders. The various approaches to choice of law and rules on jurisdiction complicate the matter. Consumer rights and obligations may vary considerably from one jurisdiction to another. Instruments developed to address the issues may be e-commerce specific or generic by nature. As a result, in the European Union, for example, only 7% of the transactions are concluded across jurisdictions. Small business was described as being particularly affected by the diversity in frameworks.

The issue of open access to all the content and services available on line was addressed. The question on whether consumers should be able to purchase a product outside the country of residence arose in that context. Examples were given of cases where consumers are unable to purchase a digital product (including music or e-books) or service due to geographic limitations imposed by a vendor. In the European Union, more than 60% of the transactions that consumers wanted were refused because the trader refused to sell in their countries.

More generally, it was noted that in those cases where e-commerce transactions involve small amounts of money, consumers tend not to go to court when things go wrong. Effective, low-cost and adaptive online dispute resolution and redress mechanisms might help to address this.

X. Cyber fraud

The business community urged that more be done to tackle fraudulent commercial activities on line, which continue to be a major challenge for business, governments, and consumers alike. In many countries, e-commerce was reported as topping the list of consumer complaints. It was important that a distinction be made between illegitimate commercial activity and other types of fraud and that the scope of the Guidelines be expanded to cover non-commercial fraud. Today, it was noted, some 40% of Internet users are reluctant to buy on line for fear of identity theft and other malicious activities.

It was suggested that, building on the 2003 *OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices across Borders* (“the 2003 Cross-border Fraud Guidelines”) and the 2008 *Policy Guidance on Online Identity Theft* [DSTI/CP(2007)12/FINAL], the Committee should consider further exploring the issue of cyber fraud.

XI. Internet intermediaries

Although not addressed by participants as a specific theme, the issue of the role played by Internet intermediaries in e-commerce was discussed at various times during the conference, including the discussions on B2C, C2C, and the participative web. The important role that payment intermediaries play in providing consumers with effective redress mechanisms in case of delivery or non-conformity problems was highlighted. It was suggested that Internet intermediaries should be involved in the deterrence of online fraud in a proportionate and reasonable manner, and assist in that regard law enforcement authorities. The extent to which they could or should be responsible for policing content posted by other parties was however seen as an issue that needed further attention, particularly with respect to content that is alleged to be defamatory. Further, it was noted that information presented by the Internet intermediaries to consumers should be transparent, in particular in the context of price comparison websites, search engines, and customer ratings/feedback sites; sponsorship or support for these sites by parties with vested interests should be made clear to consumers.

Reference was made to the work being carried out by the OECD’s Committee for Information, Computer and Communications Policy (ICCP) on the social and economic role of Internet intermediaries and related policy issues. It was hoped that the CCP would be involved in areas of mutual interest in this work.

XII. Approaches to strengthening e-commerce

As discussed at the outset of the conference, the 1999 *Guidelines* were seen as still adequate to address most of the ongoing and new consumer challenges identified in the Internet economy. However, there was recognition that in some places, it could be helpful to elaborate or revise them, to address issues that were either not covered, or not adequately addressed. Some suggested that an explanatory text could be included in an Annex to the 1999 *Guidelines* to clarify some concepts and provide concrete examples. Others recommended that some principles should be revised or completed. It was for example suggested that the scope of the 1999 *Guidelines* (Part I) be expanded to include C2C transactions. In other cases, thought could be given to the development of new instruments, as was done in the case of the OECD’s 2003 *Cross border Fraud Guidelines* and 2007 *Consumer Dispute Resolution and Redress Recommendation*.

In support of the review, it was suggested that the interaction of the 1999 *Guidelines* with other related OECD instruments be studied. This would include the 2003 *Cross-border fraud Guidelines*, the 2007 *Consumer Dispute resolution and Redress Recommendation*, as well as the 2008 online identity theft and mobile commerce policy guidance. In this context, in light of the important privacy issues raised

during the conference, it would also be beneficial for the CCP to work with the ICCP in its review of the 1980 OECD *Guidelines on the Protection of Privacy and Transborder Flows of Personal Data*.

In strengthening the 1999 *Guidelines*, it would also be important to take other related international instruments into account. This includes e-commerce standards developed by the International Organisation for Standardization (ISO) upon recommendations made by its Committee on Consumer Policy (COPOLCO), and the United Nations Commission on International Trade Law's model law on electronic commerce, currently being reviewed. Co-ordination and co-operation would be highly beneficial and should promote a stronger, more coherent result. It would also be important to engage non-OECD economies in the process, which would help to develop more comprehensive approaches to the challenges being addressed. The participation of the United Nations Conference on Trade and development (UNCTAD) and a number of non-OECD economies in the conference was seen as a positive step in this regard.

In addition to intergovernmental guidelines, business and other stakeholders were seen as playing a significant role in addressing e-commerce issues. They would, for example, be well placed to respond to certain technical issues, such as authentication and age verification. At the same time, they could play an important consultative role in the development of governmental and intergovernmental instruments.

XIII. Future work

The Chairman of the Committee on Consumer Policy summarised the suggestions that had been made for areas that could be covered in the review of the 1999 *Guidelines* (Box 1). He noted that the Committee would be considering these, as well as other possibilities, at its meeting in April 2010. Given the Committee's limited resources, the scope of the work would most likely have to be limited and carried out in stages, over time.

Box 1. Summary of issues that could be addressed in the CCP review

- **Strengthening payment protection/mobile commerce:** examining the effectiveness of mechanisms in protecting consumers from fraud and in providing consumers with adequate redress in payment systems (looking at the role that payment intermediaries play in that regard). Particular focus could be made on consumer challenges arising from payments systems in the mobile commerce area.
- **Behavioural advertising:** exploring ways to enhance transparency in the collection, storage, sharing, and use of consumers' personal information, in particular in the context of C2C transactions and social networking.
- **Contracts:** exploring ways to enhance transparency and clarity; identifying unfair contract terms, with particular focus on contracts relating to the purchase of digital content products. A non-exhaustive list of typical unfair contract terms may be ultimately included in an Annex to the 1999 *Guidelines*.
- **C2C transactions:** identifying trends, and consumer challenges, with a focus on the rights and responsibilities of all parties (including Internet intermediaries) involved in such transactions. The scope of the 1999 *Guidelines*, which is currently restricted to B2C transactions, could ultimately be expanded to cover C2C transactions.
- **Digital content products:**
 - Identifying the type of information needed by consumers to make informed choices in the purchase of digital content products. This would notably entail providing clear information on the restrictions of the usage of digital content products (including post-purchase restrictions).
 - Developing adequate redress mechanisms for consumers.
 - Exploring the consumer protection implications resulting from interoperability. A workshop could be organised jointly with the OECD's Competition Committee in that regard.
- **Children:** the work would look at the applicability of consumer protection laws to advertising targeting children, with particular focus on situations where children engage in participative activities, such as social networking.
- **Enforcement:** Exploring ways to enhance consumer protection and other relevant agencies' enforcement capacity, in particular at the international level. Co-operation with the ICPEN on this issue would be needed.
- **Cyber fraud:** understanding further the trends and impact of cyber fraud in e-commerce. The scope of the 1999 *Guidelines* could be expanded to cover commercial and non-commercial illegitimate activities.

Consultation with stakeholders (including ISO, UNCTAD, the United Nations Commission on International Trade Law (UNCITRAL and ICPEN) would continue throughout the process, as would co-ordination with other OECD bodies including, in particular, the ICCP, in order to ensure consistency with work being carried out on children, privacy and Internet intermediaries. There would also be scope for exploring ways to enhance the collection of statistical information on Internet commerce (with the ICCP).