

CONSUMER REDRESS IN THE GLOBAL MARKETPLACE: CHARGEBACKS

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

Paris 1996

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CONSUMER REDRESS IN THE GLOBAL MARKETPLACE: CHARGEBACKS

Report From the Roundtable on Consumer Redress in the Global Marketplace Held in London, 10 June 1996	5
Roundtable program	5
Executive Summary	7
Summary of remarks.....	8
Opening speeches	8
Session I.....	11
Session II	16
Session III	22
Session IV	26
Session V	29
 Report from Meeting Held With Consumer Organisations on Consumer Redress in The Global Marketplace Held at the OECD in Paris, 12 June 1996	 35
 Annex 1: List of London Roundtable Participants.....	 39
 Annex 2: Consumer Redress In The Global Marketplace: Chargebacks (amended)	 43

REPORT FROM THE ROUNDTABLE ON CONSUMER REDRESS IN THE GLOBAL MARKETPLACE HELD IN LONDON ON 10 JUNE 1996

I. Roundtable Program

OPENING SESSION

CHAIRMAN:

Mr Roscoe Starek
Commissioner, United States Federal Trade Commission

WELCOME ADDRESS

Mr John Bridgeman
Director General, United Kingdom Office of Fair Trading

KEYNOTE ADDRESS

Mr William Witherell
Director, OECD Financial, Fiscal and Enterprise Directorate

SESSION I: OVERVIEW OF THE INTERNATIONAL CREDIT CARD INDUSTRY

CHAIRMAN:

M. Jean-Pierre Camelot
Directeur, Particuliers et Professionnels, Groupement des Cartes Bancaires

INTRODUCTORY SPEAKER:

Ms Elizabeth Phillips
Director, Credit Card Research Group, United Kingdom

SESSION II: RISK AND REDRESS IN CYBERSPACE - NEW POLICIES FOR A GLOBAL ENVIRONMENT

CHAIRMAN:

Mr Roscoe Starek
Commissioner, United States Federal Trade Commission

INTRODUCTORY SPEAKER:

Mr James J. Hilt
Vice President and Division Head, Electronic Commerce, Product Development Europe
Visa International

SESSION III: HOW CHARGEBACKS FUNCTION -- THE UNITED STATES MODEL

CHAIRMAN:

Mr Toru Matsutani
Corporate Planning Department
The Sumitomo Credit Service Co. Ltd

INTRODUCTORY SPEAKER:

Ms Sally Cowan
Group Counsel, American Express Company

SESSION IV: REGULATION VERSUS INDUSTRY-DRIVEN SOLUTIONS -- THE EUROPEAN PERSPECTIVE

CHAIRMAN:

Mr Peter Casey
Assistant Director, Consumer Affairs,
United Kingdom Office of Fair Trading

INTRODUCTORY SPEAKER:

Mrs Diane Iannucci
Advisor, Banking Federation of the European Union

SESSION V: INDUSTRY CONCLUSIONS AND CHAIRMAN'S SUMMARY

Mr Peter Casey
Assistant Director, Consumer Affairs,
United Kingdom Office of Fair Trading

Mr Richard Poynder
Chairman, United Kingdom Smart Card Club

II. Executive Summary

1. The OECD Committee on Consumer Policy, within the context of its ongoing project on Consumers in the Global Marketplace, invited government regulators and industry representatives to convene at a Roundtable in London on 10 June 1996. The purpose of this meeting was to identify issues in consumer redress in cross border transactions, and to determine under what circumstances an industry code of conduct could be developed which would guarantee redress and promote consumer confidence in the global marketplace.

2. The format of each session began with a presentation by an industry representative of issues to be considered, followed by an open discussion from the floor. An edited transcription of these sessions is included in the Summary of Remarks which follows. An amended version of the Roundtable background document, including a description of the mechanics of chargebacks and chargeback regimes in OECD countries, is included in Annex 2.

3. Comprehensive presentations were followed by spirited debate which suggested that on many important issues there is no consensus on either the efficacy of present mechanisms nor on the appropriate response of industry and market regulators. During the roundtable, the following points emerged which form the subject for further discussions in this area.

- Despite suggestions from industry representatives that international chargeback regimes are already in place, there are significant differences among the card companies in the redress they offer.
- In certain cases chargeback protection is still restricted by underlying national law.
- Chargebacks are more likely in cases of fraud or billing disputes. Some card companies still appear reluctant to offer chargebacks in cases of dispute about misrepresentation or non-conformance of goods.
- Technologies such as the Internet offer the opportunity for continued growth in distance sales, but at this time represent only a small part of the market.
- Payment card companies are investing heavily in systems which will protect consumers and merchants from electronic fraud. Some of these systems may in the future offer more secure protection than current authentication methods.
- New technologies and the paradigm shift towards international electronic commerce, cybershopping, and prepayment cards will create problems but also opportunities for addressing these issues.
- Because of the challenges and time lag involved in harmonising legislation, certain participants agreed that a voluntary code which extended to all international transactions would be the fairest and most effective method of increasing consumer confidence.

III. Summary of Remarks

I. Opening Session

Chairman: Roscoe Starek, Commissioner, United Federal Trade Commission

- 1.1 Through agreements reached on a worldwide basis such as GATT and NAFTA, governments had made large strides toward removing traditional barriers to international trade (tariffs, quotas and domestic product subsidies). These changes were going to benefit consumers through lower prices and a greater selection of goods and services.
- 1.2 But removing these trade barriers was not sufficient to achieve a completely borderless market. Governments must also consider the non-tariff barriers such as product labelling requirements, product specifications, advertising standards and restrictions on transactions.
- 1.3 The roundtable discussions would focus on some of the non-tariff barriers to trade, and on what governments could do to encourage industry to rectify these problems.

Welcome Address by Mr Bridgeman, Director General, United Kingdom Office of Fair Trading

- 1.4 Discussions would focus on how to increase the confidence of consumers when they use payment cards for cross-border purchases. Transactions of this kind would grow rapidly in the next few years, but their potential would only be realised if consumers had **confidence** operating in the global marketplace.
- 1.5 Competition and consumer affairs were closely linked. In most situations, competition was the best protection for the consumer. But for competition to be effective, consumers had to be able to exercise choice which was real, practical and informed. This was as true in the global marketplace as it was nationally.
- 1.6 Much of consumer affairs work was concerned with information, about ensuring consumers could find out about the choices available to them. But real practical choice also involved having the confidence to choose, and particularly the confidence to try a new product or supplier. Without consumer choice markets could not function successfully, and without functioning markets we could not expect to see economic growth and prosperity.
- 1.7 One important element of confidence was **redress** -- the knowledge that if something went wrong, there were ways to get it put right. The main responsibility for redress lay with traders, most of whom saw the value of satisfied customers. However, transactions did go wrong, either because of a problem with the underlying purchase or the payment process. Trade and commerce had never been a zero defect activity -- at best it could only be fail safe.
- 1.8 If redress was not always easy in a normal local purchase, it was even more difficult in a cross-border international purchase. But the payment card networks did have a global reach, hence the interest in what card companies could do to protect the consumer in a way consistent with card companies' own commercial interests.
- 1.9 At the very least, consumers should be able to obtain rapid resolution of any problems in the payment process itself, even where the payment was made across borders. And often consumers could go

beyond this to address faults in the underlying transaction, either as a matter of legal right or of the card issuer's commercial practice. This was all to the benefit of greater international consumer trade.

- 1.10 This was an area where OECD member countries had very different laws. Seven had laws broadly along the lines of the UK's Section 75 of the Consumer Credit Act 1974, though often less exacting. In contrast others, like France, had a principle of irrevocability where chargebacks were only allowed for billing and merchant errors. Other countries' laws were silent on the subject, while still others relied on codes of practice. In this situation, harmonisation of laws was unlikely to be a practical way forward.
- 1.11 Voluntary action by industry could often be more, not less, effective than regulation by governments. The roundtable meeting was being held to explore whether there was a voluntary way forward, bringing together national delegations to the OECD and representatives of the banking and card issuing industry.
- 1.12 Mr Bridgeman hoped the meeting would be seen as a significant contribution to establishing consumer confidence in the global market by helping consumers to buy in the confidence that problems could be put right.

Keynote Address by Mr William Witherell, Director, OECD Financial, Fiscal and Enterprise Directorate

- 1.13 The world had become much more complex, and would continue to change at an accelerated pace. The OECD was trying to anticipate these changes, and provide the 27 Member governments with information, analysis and policy recommendations which would allow them to harmonise their approach to more open international markets.
- 1.14 The OECD was in a unique position to accomplish this task, because it served as a bridge between the highly industrialised economies of Europe, North America, and Asia-Pacific Region. Its unique structure of inter-Governmental committees span a wide range of policy areas.
- 1.15 Recognising the importance of reduction in barriers to trade, and rapid advancements in telecommunications, electronic technologies, transportation and payment cards services, the OECD Directorate for Financial, Fiscal and Enterprise Affairs initiated its "Consumer in the Global Marketplace" project in 1994. The purpose of this project was to:
- identify consumer concerns which might serve as obstacles to market access and stability in the global marketplace;
 - discuss those concerns with market regulators and leading industry representatives throughout the OECD;
 - discover, working together, under what conditions the interests of consumers, market regulators and industry could converge to address those concerns in the fairest, most efficient, and most cost-effective manner on a **broad international scale**.
- 1.16 What were the incentives for payment card companies?
- In the UK, over £1,100 was spent every second with a credit card.

- From 1991-1993, cross-border spending increased by 24%.
- The Internet places global shopping at the fingertips.
 - 41% of all British households had access to a computer, and nearly 10 % of those were now on the Internet.
 - Internet shopping in the UK could reach £7.25bn within a few years, and 90% of top European retailers were already on-line or considering it.
 - In the United States, Internet commerce could reach \$45bn by the year 2000.

Most of those on-line transactions would be settled by payment card.

- 1.17 Payment card companies, because of the stakes, must have an interest in the growth of cross-border transactions. In their function as an intermediary in those types of transactions, payment card companies might be in the best position to help ensure consumer redress in the case of legitimate consumer grievances. The discipline imposed by intermediary payment card institutions -- for example, the revocation of a merchant's affiliation with a card company -- would help make merchants more solicitous towards cardholders, and increase consumer confidence. This could become a "**virtuous circle**", where all parties recognised their interests and reaped the benefits of increased market access.
- 1.18 The roundtable provided a unique opportunity for regulators and industry to identify and propose solutions for those issues. The OECD's vision was the development of an **industry-wide voluntary code of conduct**, applicable to all transactions throughout the OECD countries, which would offer payment card users an assurance of fair, predictable and simple redress in the case of a legitimate grievance. The code should be applicable to the greatest extent possible to all types of payment cards, both present and future.
- 1.19 Consumers would welcome such a code. Regulators, in the current atmosphere of regulatory reform, would also welcome it. It was seen to be clearly in the interests of the payment card companies to seek to extend the boundaries of this "virtuous circle" to ensure continuing consumer confidence in the new technologies.
- 1.20 The stakes were high:
- The volume of payment card transactions would increase, meaning more business for the payment card companies;
 - The regulatory challenges presented by globalisation would decrease, meaning less expense for government in a period of resource constraints; and
 - The consumer would be presented with the opportunity to choose from a broader variety of goods, at more competitive prices, from all around the world.

2. *Session I: Overview of the International Credit Card Industry*

Chairman: M. Jean-Pierre Camelot, Directeur, Particuliers et Professionnels, Groupement des Cartes Bancaires

2.1 The ISO 9000 standard did not distinguish between credit card and debit cards in international transactions. It would be difficult to modify the standard because the definition of debit and credit card differed between countries.

2.2 There were four actors involved in an inter-bank system -- the consumer, issuer, acquiring bank and merchant. In an international card scheme, there were contracts between the merchant and acquiring bank, and the issuing bank and the customer, as well as international rules.

2.3 **Was it is possible for consumers to contest a transaction if there is a problem with the goods or service?**

In France, and under the EC Recommendation of 1988, payment could not be revoked. However, in some Visa and Mastercard schemes, there was some possibility to contest a transaction.

2.4 The balance at the moment was seen as fair. If the consumer were to be further protected, it was possible that some merchants in France and Europe might refuse cards from countries where transactions could be contested.

Introductory Speaker: Ms. Elizabeth Phillips, Director, Credit Card Research Group, United-Kingdom

Introduction

2.5 **Issues to be addressed:**

- **the scale of the problem:** how much trade was there using cards? How did this relate to other payment methods? What was the value and likely growth in cross border shopping?
- **the types of problems** likely to occur for the consumer and when did they need protection?
- the extent to which card scheme **chargeback rules could provide a solution;**
- were there **alternative solutions** which would be able to provide redress mechanisms for consumers who shopped in the world market?.

Scale of the Problem

2.6 Was there really a problem? All the evidence pointed towards increasingly card-literate consumers, who were happy to use their cards with the same amount of confidence abroad as at home. But the industry was **not complacent** -- enormous amounts of resources were devoted to providing customer services and resolving customer disputes. Concerted efforts by the industry had a positive effect on fraud levels and leading edge technology was being introduced worldwide to verify and authenticate commerce via card payments.

- 2.7 In the UK, more than **£2,000 per second** was spent using credit and debit cards. Overseas traffic by UK cardholders accounted for approximately 8% (in 1994) of all credit card transactions and was growing.
- 2.8 Debit cards were mostly used at home, with usage overseas still only 1% of total volume and value of debit card turnover. ATM's have taken much of the aggravation and time waiting out of getting local currency while abroad.

Growth in cross-border Transactions

- 2.9 Cross-border transactions were still relatively small, but were growing.

Where would growth come from?

- continued growth in tourism and international travel;
- expansion of credit card usage driven by: (i) consumer knowledge of their convenience in the global marketplace, and (ii) wider acceptability, particularly in the third world and former Communist states;
- marketplaces were expanding, whether real or virtual, via the **Internet** and as a result of **free trade zones**;
- home shopping over the Internet, via TV or personal computer; although still extremely limited, the **potential was huge**.
- the EU was moving towards a **Single Market**. Reduced trade barriers would enable consumers to **shop around** for best prices and services more easily outside their home country. Monetary Union would create one large marketplace. Other trade alliances such as the Pacific Rim would facilitate cross-border commerce.

Avenues for Redress

What did we want to achieve?

- 2.10 For the payment card industry, the main issue in the customer services area was to **protect consumers against faulty transactions** - this meant that they were not wrongly charged or victims of fraud.
- 2.11 However, the OECD papers implied extending that protection to cover the **quality and standards** of the goods or services bought with a card and the reputable behaviour of the vendor. Was this reasonable or even feasible in the global marketplace? The **decal** on the shop door stating that payments were taken and processed by a particular card scheme network was **not an endorsement** of the merchant or the merchant's products.
- 2.12 In the UK, section 75 of the Consumer Credit Act -- "Connected Lender Liability" -- was unique. Even within the European Union, the protection provided by Article 11 of the Consumer Credit Directive only placed the credit provider **second in line** to the retailer. More importantly, it only applied in the credit environment, and most European countries usually excluded credit cards from that definition.

- 2.13 Care must be taken to avoid **over-protection**, to avoid **moral hazard**. While the industry was happy to ensure **confidence** in the payment system, customers' levels of **expectation** had to be managed to ensure they took at least some **responsibility** for their actions.

Could Card Scheme chargeback rules provide a solution?

- 2.14 **Chargeback rules** were directed at addressing **specific problems** with **specific types of cards** within specified parameters of commercial activities. It was amazing to realise the complete variety of problems that chargeback rules were addressing in domestic situations.

- 2.15 **With the newcomers to the card market in particular, how could Chargebacks apply to them?** With stored value cards, the card was simply replacing cash in your pocket and the card issuer had no real need to know where you spent with it.

How would chargeback rules apply here?

- 2.16 The OECD was looking for **industry-driven solutions**, but was it the job of the card schemes to develop **surrogate consumer redress** legislation? The Chargeback rules were not designed necessarily for this purpose. What would happen if the schemes want to **drop certain rules** or rewrite them? Would this kind of solution inhibit flexibility and progress?

- 2.17 There were variances between **domestic** chargeback rules and **international** ones, designed to accommodate local needs. Would it be possible, probable or even problematic to try and create harmonisation in the Chargeback rules?

- 2.18 If we went too far down this road, we might have a danger of developing internationally the unhappy situation we have in the UK as a result of Section 75 -- there was a danger of creating a **referee role** for the card issuer in the far more complex world of international commerce.

- 2.19 Chargeback rules had held the payment cards industry in good stead for 20 years, but would they provide a **general enough solution** to the range of consumer redress issues being addressed by the OECD?

Alternative Solutions

- 2.20 What about alternative solutions? We could have redress through (a) **merchant networks**, (b) **via codes of practice**, or (c) **bonding and insurance schemes** (the UK had a very effective system with the travel industry).

Redress through IT Networks

- 2.21 You could have redress through **IT networks**, which had as great a need to establish their integrity and encourage people to have confidence to use them as the payment industry. Shopping over the Net, for instance, could involve as many as five or six countries - in which country, if something went wrong, would you seek redress? An Internet community standard had been developed called PGP - Pretty Good Privacy.

Redress through cross-border legislation

- 2.22 You could have redress through cross-border legislation. There are many examples in the EU - Unfair Contract Terms, Distance Selling Directive, Cross-Border Transactions.

Conclusion

- 2.23 We were looking at chargebacks to provide a possible framework for solutions to ways in which consumers could get redress. But was it reasonable to expect the industry to **self-regulate** beyond the boundaries currently operating, or should we expect **national and international rule** to build upon the established framework and expand to other payment methods?

Summary of Floor Discussion

Chargebacks and Moral Hazard

- 2.24 John Rothchild of the United States Federal Trade Commission asked if there was **empirical evidence** to justify concerns about **moral hazard** associated with **connected lender liability**. Elizabeth Phillips responded that such claims did indeed exist, but beyond that card companies already made an **assessment of the merchant's behaviour** before signing the merchant up, and in light of constantly changing commercial cycles and practices, was it really reasonable to expect the payment industry to **assume long term guarantees** for the viability or products of a merchant?

ISO standards and card appearance

- 2.25 Peter Casey of the United Kingdom Office of Fair Trading asked **if the ISO standards**, which do not distinguish between debit and credit cards, **restricted commercial practices**. Jean-Pierre Camelot responded that **differences in definition from country to country** make it difficult to modify the ISO standards.
- 2.26 Diane Iannucci of the European Banking Federation suggested that whether the client is using credit has nothing to do with the merchant, and it may indeed **be preferable to have cards which look identical**.

Comparative shopping based on card regimes

- 2.27 Joe Phillips of the OECD asked which laws actually apply in a case where, for example, a cardholder resides in France (with irrevocability of payment) and purchases in the UK (with connected lender liability), and observed that **differences in regimes may induce consumers to shop for their payment cards across borders**. Elizabeth Phillips responded that legally this question is still being disputed in the UK, but that card companies have a **voluntary policy to honour international claims in cases of payment with credit cards**. She also noted that this application of Section 75 was somewhat ironic, as the law was designed for motor finance transactions rather than transactions with credit cards, and that card companies were disproportionately affected.

Differences between service and good-related disputes and extent of liability

- 2.28 Joe Phillips asked if there was **greater difficulty in settling service-related disputes** than those related to goods. Linda Radford of Barclaycard responded that this was not a particular problem, but rather that **credit card companies were not always in a good position to determine** if a good or service had been delivered. She stated that Barclaycard research suggested that (a) customers know how to use cards and have confidence in them; and (b) credit card transactions may not be stimulated by a code of industry conduct. In addition, **merchant acquirer liabilities could be hugely onerous**, particularly in the case of healthcare. Christoph Baert of Europay International added that exposure for malrepresentation is one reason why lawyers do not accept credit cards. Lynn Nostrant of Visa International stated that generally **the amount of acquirer or lender liability is limited to the value of the underlying transaction**, and that the card company would not be required to pay the costs of an associated lawsuit.

Role of customer service and competition

- 2.29 Toru Matsutani of Sumitomo Credit Service pointed out the in many cases domestic rules are not applicable to international transactions, but even in cases where customers rights were uncertain, they should be extended **every possible customer service**.
- 2.30 Andrew Konstantaras from Visa International cited **growth in card use** as an indication that consumers are sufficiently comfortable with them. Christoph Baert supported this with anecdotal evidence suggesting that solutions are already provided for in the rules. Christian Udechukwu of the Office of Fair Trading suggested that this may not necessarily be so, citing differences in national legislation and difficulties in adopting EU legislative proposals which support the argument that **consensus does not necessarily exist** on these issues. Andrew Konstantaras countered by maintaining that legislation may end up hurting the consumer if it discourages card use, and that competition in international rules among card associations may be most effective. The card industry should not be expected to solve all of the problems of fraud. Joe Phillips acknowledged that chargebacks will not solve all problems, but that based on the experience of the US and the UK, there is **no reason to believe that chargeback schemes will discourage card use**.
- 2.31 Jeff Hilt of Visa suggested that the appropriate area for government involvement may be in **labelling and information**, so that consumers really understand the underlying obligation, and that payment should not be used as a leverage for the merchant and the consumer and their obligation. This will narrow redress issues to those where there is fraud or a real problem. Elizabeth Phillips supported this, and emphasised that the concept of passing problems back to the issuer increased administrative costs. Firms are sufficiently motivated to provided good customer service, and this is only impeded by unclear laws.

Issues surrounding connected lender liability in the United Kingdom

- 2.32 Philip Barker of British Retail Consortium asked if issuers in the UK actually saw a **distinction between domestic and international transactions**, since redress was open in both situations through the rules. Ann Conaty responded that while the relationship between the cardholder and the issuer was governed by UK Section 75, the underlying contractual relationships between other parties to the transaction were subject to a different set of rules. She clarified that a cardholder had two claims: one against the bank, and another against the merchant. But the claim against the foreign merchant depended upon the interpretation of Section 75.

2.33 Elizabeth Phillips agreed that UK law was pertinent to the debate if the transaction occurred within the UK jurisdiction, but that card scheme rules were applicable elsewhere. It is difficult to apply laws internationally, as the experience of the European Union in harmonising legislation has shown. The card industry has **extended protections voluntarily**, but has denied a legal obligation and this issue never been properly tested in court.

2.34 Ann Conaty added that the **problem with standardised chargeback rules worldwide** is that they give consumers a redress option that may not exist in the country in which the transaction occurs.

Pros and cons of harmonising chargeback rules

2.35 Bernice Friedlander of the US Office of Consumer Affairs suggested that this was a **customer service issue** that might be addressed by competition within the industry. Elizabeth Phillips underscored this point, saying that harmonisation denies card companies the opportunity to compete for customers' business.

2.36 Bernice Friedlander recognised that it was necessary to have the **same high standard** for everybody. Card companies may be more likely to compete for the business of the elite customer, but that it was also necessary to ensure that everyone gets the same service, and that **universal legislation** may be one way to promote this.

Importance of transparency and information for consumers

2.37 Peter Robinson of the UK Department of Trade and Industry noted that the complexity of UK Section 75 could provide an unfortunate digression. Confidence is important, and consumers and card companies should gain advantages from effecting transactions without much problem. But from a consumer policy point of view, **transparency was also necessary** so that people understand their rights. Different regimes in a complex and sophisticated world work against consumers' interests. Christian Udechukwu supported this by noting that there are real distinctions between the way card companies structure their relationships with merchants and customers.

2.38 Kim Sparlund of the Danish Consumer Agency added that customer services may not be enough, because the **consumer does not have sufficient information** to comparatively evaluate the quality of these services. He acknowledged that while technical and legal problems may arise, in Denmark and other countries redress mechanisms are working smoothly, and there is no reason not to focus on solutions which also work internationally.

3. *Session II: Risk and Redress in Cyberspace -- New Policies for a Global Environment*

Chairman: Mr Roscoe Starek, Commissioner, United States Federal Trade Commission

3.1 There were four ways in which consumers could engage in distance selling:

- mail order;
- telephone;
- television; and
- cyberspace

- 3.2 Marketing was expanding in all of these mediums, as more consumers took advantage of the convenience. Consumers often used payment cards to complete the transaction.
- 3.3 New payment mechanisms were being developed -- Digital cash, smart cards, pre-paid cards, debit cards and credit cards. There were even cards that on-line were like an ATM card, but off-line could act as a debit card. Many of the new payment mechanisms were applicable to the Internet.
- 3.4 40% of American households had personal computers, and the facility to engage in transactions on those computers was available, but not without some risk.

Introductory Speaker: Mr James J Hilt, Vice President and Division Head, Electronic Commerce, Product Development Europe, Visa International

Introduction

- 3.5 There were no cross-borders in cyberspace -- "national boundaries are speed bumps on the information super highway". When people surfed on the worldwide web, they didn't really know where they were.
- 3.6 Electronic commerce was defined as a general concept of business where one or more of the following elements in a value chain took place electronically:
- By this definition, we had been doing electronic commerce for many years -- for example, electronic terminals at the point of sale.
- 3.7 Cyberspace provided the prospect for the **whole** value chain to take place completely electronically - it was possible to shop, download (for example software), interact, and pay, on the Internet.

What drives the electronic commerce market?

- 3.8 There were three drivers:
- **Technology**: most people had access to PCs, screenphones, and television sets.
 - **Network delivery**: BT in Europe, with other on-line networks, was connecting people to either the Internet or some sub-set of the Internet.
 - **Content providers**: Information could be accessed on the Internet -- home pages, Government information.

Security of Electronic Commerce Transactions

- 3.9 An expansion in electronic commerce would mean increased sales volume for card issuers if payment cards were the preferred payment mechanism. Payment cards would be used just as they are now at the point of sale. However, there were problems in terms of risk, and **anti-fraud** measures were needed to ensure secure electronic commerce transactions.
- 3.10 **How much did P.C. users trust making payment or giving their account number out?** In the US, research by SIMBA revealed that only about 5% of people felt secure in giving their credit card

number out over the Internet. At the other end, about 77% of people felt secure going to an ATM machine. The disparity was a consequence of the security and infrastructure associated with those different environments.

Visa's goals in electronic commerce

Creation of an open standard

- 3.11 Visa formed an alliance with Microsoft to create an open standard -- in the public domain -- for secure bank card transactions. In the early 1980s, Visa, in collaboration with others, created an open standard for the Dow terminals at point of sale locations. The technology used was put in the public domain. Visa were following that model.

Preservation of cardholder, issuer, merchant relationship

- 3.12 Visa wanted to preserve the card holder/issuer/merchant/acquirer relationships. These relationships made the payment industry work -- the card holder, issuer, merchant and acquirer interacted collectively through a system of rules put together by card associations.

Business requirements for developing a framework for international commerce on the Internet

- 3.13 Visa and Mastercard agreed upon the following set of business requirements for developing international commerce on the Internet.

Privacy

People wanted to ensure that (i) their **account number was protected**; and (ii) **payment data couldn't be altered**.

Authentication

When surfing the Net, how did you know who you're talking to at the other end? Buyers needed to know that the seller accepted a Visa card for payment and the seller needed to know that the buyer had a valid Visa card. This led to the notion of **authentication** -- a card holder sitting at home surfing the Net would recognise that a merchant anywhere in cyberspace was "credible", to the extent that an acquiring bank has sponsored them for acceptance of payment. And that merchant would know that the buyer was a legitimate cardholder, because of the card networks process of authenticating merchants and card holders to each other. Visa's approach was to create an open standard.

Development of secure electronic processing standard

- 3.14 Visa and Mastercard had combined their respective standards - **Secure Transaction Technology** and **Secure Electronic Processing (SEPP)**. The second version of this standard had been recently published and was based upon **public key cryptography**. The underlying technology had been around for over 15 years and was just now being taken advantage of.
- 3.15 There would be one documented set of definitions describing how buyer and seller software would communicate, and any developer of merchant software would be able to inter-operate. All buyers and sellers would use set compliance software. Visa banks would be "certificate issuing entities", issuing digital certificate to secure account information transmitted over the Internet.

Benefits of secure processing standard in terms of risk and redress

Encryption

- 3.16 **Encryption** ensured privacy of payment information. This would give people confidence and therefore allow commerce to take place over the Internet.

Authentication

- 3.17 **Digital signatures** tie together the messages from the sender, or the originator of the transaction, and the buyer, and acts as contractual confirmation that the buyer agrees to the terms and conditions. The transaction could not be revoked because the cardholder had digitally signed the order.
- 3.18 **Digital certificates** would authenticate the relationship between the merchant and their bank, and the issuer and cardholder, thus allowing inter-operability in cyberspace. Not only would the transaction be secure, but the identity of the other party would be endorsed by a trusted third party, the banks. This would significantly reduce fraud and provide consumer confidence.
- 3.19 Visa wanted to expand this industry standard beyond consumer work. The Internet might be a tremendous opportunity for small and medium enterprises -- this technology could be extended to authenticate businesses to each other in commercial products and micropayments. When this technology was put on a chip card, rather than confined to the hard disc of a computer, the portability would allow its use virtually anywhere in the world.

Additional action needed to facilitate growth in electronic commerce

Redress Process

- 3.20 We had the capability to sign transactions with the use of digital certificates. The transaction could not be revoked because it had been digitally signed by the cardholder. **Would this add to the redress process?**

Managing expectations

- 3.21 How could the expectations of consumers and merchants be managed? Consumer's might have the same level of expectation when transacting with merchants in cyberspace as they had at their local store. And what did merchants expect for payment?

Cryptography of purchase order information

- 3.22 The purchase order and the payment instruction are separated in the technology, partly because of the cryptography. For many years, Government's had allowed strong encryption to protect account number and PIN details. Visa wanted to encourage Government's to allow an "acceptable" level of cryptography for confidentiality of the purchase order information.

Summary of Floor Discussions

Applications for cryptography

- 3.23 Peter Casey of the UK Office of Fair Trading asked to what extent cryptography can be used not only to ensure confidentiality but also to guarantee the **integrity of the order**, so that there is no argument as to what the consumer ordered and what the merchant agreed to supply for their payment. Jeff Hilt responded that the technology was also designed to digitally protect the order and detect alteration.

Access for technologically illiterate and universal access

- 3.24 William Fagan of the Irish Consumer Affairs Office expressed concern that less technologically literate consumers, particularly the aged population, may have trouble using this technology. Jeff Hilt answered that within a few years he anticipates that chips in the form of a digital certificate will facilitate use of this with interactive media such as television. Joe Phillips of the OECD observed that one should not confuse teleshopping with the Internet, because the Internet offered shoppers greater selection potential. William Fagan clarified his position by expressing his desire for some type of **intermediate technology** to ensure that the technologically illiterate are not handicapped by lack of access to these media.
- 3.25 Rachel Larabie-Lesieur of Industry Canada asked if it is fair to expect that these systems will have universal application. Jeff Hilt responded that this will enable large manufacturers as well as small merchants and cottage industries to display their wares.

SET technology and fraud

- 3.26 Joe Phillips asked if there was anything in the digital signature technology or SET to **prevent basic fraud** and unauthorised use, as for example if someone acquires the card and PIN numbers. Andrew Kostantaras of Visa responded that if the private key code (analogous to a PIN) remains secret, it is impossible for an unauthorised consumer to use the SET system. Jeff Hilt added that in order to do this successfully it would be necessary to know the code and to steal the consumer's computer, because current technology only allows use of this system from an individual's personal computer. He added that this will change with the introduction of a chip card which will allow for portability anywhere in the world.
- 3.27 Peter Casey expressed concern that this may allow anyone who has access to a certain PC, such as a family member, to use the system for transactions. Jeff Hilt acknowledged that anyone who had the computer password access and the card registration number would have access to the account.

"Cooling-off" period

- 3.28 An unidentified speaker asked about non-repudiation of contract and the option of a "cooling-off" period. Jeff Hilt answered that this would depend on the underlying terms and conditions of the contract and on market expectations. He acknowledged that this was an important policy issue which his company intended to address.

Responses to technological developments

- 3.29 Toru Matsutani of Sumitomo Credit Agency asked what steps the OECD was taking to address electronic transactions with new technologies which didn't fit in to the Visa-Mastercard framework,

and expressed the need to establishing standard rules in this area. Jeff Hilt cited papers by the EC and the US Federal Reserve as evidence that these issues were beginning to be addressed, and Joe Phillips added that different committees in the OECD were also initiating projects in this area, including a conference on electronic money.

Digital money

- 3.30 Jeff Hilt expressed his personal opinion that with this new technology it may be possible to access both “token” paper money and electronic “account” money, which may actually make the former obsolete. Andrew Kostantaras elaborated that digital money issues are related to **government monetary policy**, but that SET technology allows access to these funds at the front end, and he anticipated that there may be room for problems in the applications in a few years.
- 3.31 Peter Casey asked about the electronic purse and prepayment card systems, and whether cards will be developed which integrate an electronic cash and a credit function, and to what extent redress will also be available with these cards. Jeff Hilt responded that one advantage of credit cards is the redress option, but that he expected it would take some time to determine how this could be integrated into **prepayment cards**, and what the value added component of such schemes would be for users and issuers.

Role of service charge

- 3.32 Steve Worthington of Staffordshire University observed that merchants would also play a role in deciding which payment methods were used based on the service charge they would be asked to pay, and it was still unknown what the payment would be for stored value applications.

Potential for growth in Internet transactions

- 3.33 Joe Phillips clarified the OECD position on redress by stating that the OECD, based on tremendous growth of direct marketing and catalogue sales in recent years, was anticipating the continued development of this market through the use of new technologies. He cited the model of the US, where the willingness of card intermediaries to put pressure on merchants to satisfy legitimate consumer problems led to phenomenal growth. He believed that there was a parallel situation now internationally with the Internet, and suggested that this is a win-win situation for all parties if they can arrive at a reasonable set of responsibilities.
- 3.34 Elizabeth Phillips of the Credit Card Research Group pointed out that the Internet was actually a subset of home shopping, and agreed that this was an **opportunity for co-operation** between technology firms to create a new commercial environment that solved potential problems and gave the consumer confidence.

4. *Session III: How Chargebacks Function -- The United States Model*

Session Chairman: Mr Toru Matsutani, Corporate Planning Department, The Sumitomo Credit Service Company, Ltd.

Introductory Speaker: Ms Sally Cowan, Group Counsel, American Express Company

Overview

4.1 US chargeback practices were governed by:

- consumer protection law;
- contract and industry operating regulations;
- rules governing the relationship between the credit grantor and the merchant/merchant bank.

4.2 The **Truth in Lending Act** set forth the disclosure requirements for the terms of credit, provided consumers with protection against fraud and a mechanism for the resolution of disputes.

4.3 The **Fair Credit Billing Act**, which was added as part of Truth in Lending, defined billing error disputes and set forth rules and timeframes for handling disputes.

US Consumer Protection Laws

Truth in Lending Act 1968

4.4 The Truth in Lending Act was passed in 1968 as part of broad consumer protection legislation, and was enacted in response to the growing use of credit cards. The original enactment contained only disclosure requirements about the cost and terms of credit to foster consumer confidence and promote the use of credit. The Act did not really deal with billing error disputes.

4.5 The Truth in Lending Act was amended in 1974 by the addition of the Fair Credit Billing Act and a provision to afford consumers with substantive claims and defences against the card issuer.

Fair Credit Billing Act

4.6 The Fair Credit Billing Act established a procedure for the fair and timely resolution of billing disputes. The Act was enforced by US bank regulatory agencies and the Federal Trade Commission (for non-bank creditors).

4.7 The **consumer** must assert a billing error within 60 days of the billing statement containing the transaction in question.

4.8 The **credit grantor** must:

- acknowledge the consumer's dispute within 30 days;
- conduct a reasonable investigation; and
- resolve the inquiry and adjust the account (if appropriate) within two full billing cycles.

4.9 The credit grantor must not:

- attempt to collect the amount in dispute while it is investigating the consumer's inquiry;
- report the disputed amount as delinquent to consumer credit bureaux.

"Reasonable Investigation"

4.10 When the credit grantor could not immediately resolve the billing dispute, it had to turn to the merchant for further information. The merchant had to provide this information within a specified period, governed by the contract between the credit grantor and its merchant.

Claims and defences under the Truth in Lending Act ("TILA")

4.11 When a merchant failed to resolve to the satisfaction of a consumer certain types of disputes regarding goods or services purchased with a credit card, TILA allowed the consumer to assert against the card issuer all claims and defences arising out of the transaction (except tort).

- The cardholder must first have made a reasonable effort to resolve the dispute with the merchant.
- The transaction must have occurred in the consumer's home state or within 100 miles of his/her billing address;
- The creditor must have conducted a reasonable investigation into the dispute.

The creditor might resolve the matter by negotiating a settlement, issuing a chargeback, or removing the charge from the consumer's account.

Relationship between Credit Grantor and Merchant

4.12 Bankcard associations had detailed operating regulations and rules governing the relationship between the card issuing and merchant banks.

4.13 The merchant contract was American Express' primary mechanism for assuring that merchants were aware of their obligations regarding disputed charges. American Express also provided its merchants with materials explaining the chargeback process, reasons for chargebacks and how they can be minimised.

Common reasons for chargebacks

4.14 Some of the more common reasons for chargebacks were:

- The merchant did not meet the terms of the contract or industry rules;
- The merchant authorised a chargeback (for example, if duplicate charges were submitted in error, or if merchandise was not available for shipping).

Consumer redress issues in the global marketplace

4.15 Lack of, or inconsistent laws and/or self-regulation on the part of credit grantors provided inadequate consumer protection for dispute resolution in the global marketplace.

4.16 Insufficient disclosure by merchants of refund and exchange policies could lead to consumer frustration and lack of confidence in the use of cross-border payment systems.

4.17 Efficient world trade and economic development was not going to be possible without obtaining the consumer's confidence in the effective use of credit card payment systems.

Responsibilities for promoting consumer confidence

4.18 In order to promote consumer confidence in the global marketplace, responsibility should be shared among the credit grantors, consumers and merchants.

4.19 **Credit grantors** should be providing consistent procedures for dispute resolution. Credit grantors also carried responsibility to help educate the consumer and the merchant.

4.20 **Consumers** needed to be aware of consumer protection law and the credit grantors' policies and rules, as set down in the agreement between the card holder and the card issuer.

4.21 **Merchants** also had an obligation to provide adequate notice of refund and exchange policies.

4.22 An international card member inquiry was more complex, and hence costly, for bank card issuers and acquiring banks. From a consumer perspective, it could be quite timely to resolve this inquiry because you could be dealing with different languages and different timeframes in order to co-ordinate a response from a merchant.

Recommendations

4.23 To promote the free movement of goods and services purchased by consumers with credit (via various media) for the benefit of consumers, credit grantors, and merchants, an appropriate balance must be struck in terms of the rights and obligations of each one of those parties to the transaction.

4.24 Creditors should provide consistent worldwide procedures, at a self-regulatory level, for resolving consumer complaints, including the establishment of reasonable timeframes for the resolution of billing disputes.

4.25 Merchants should be required to provide effective disclosure of their refund and exchange policies, so that the consumer is aware of the refund/exchange policy of the merchant.

4.26 Consumers should be required to lodge their billing disputes within a reasonable timeframe. Consumers also have an obligation to provide the credit grantor with adequate information about their billing disputes to enable the credit grantor to conduct a reasonable investigation.

Summary of Floor Discussion

Questions of law

4.27 Jean-Pierre Camelot of Groupement des Cartes Bancaires asked what would happen in a commercial dispute between an American consumer and a French merchant. Sally Cowan responded that that depended on the investigation of the dispute, but that probably the record would be stamped that the transaction was non-refundable, and therefore the consumer was on **constructive notice**.

Fairness and the role of information

- 4.28 Joe Phillips of the OECD acknowledged that this was sufficient in a face-to-face transaction where the customer has seen the goods. But in the case of a telephone or Internet transaction, he expressed concern about the fairness of a no-refund policy for goods the consumer had never seen. Sally Cowan responded that such a policy was not unbalanced against the consumer if the consumer had sufficient information about the non-refund policy. In such cases the commercial marketplace -- **consumer choice** -- would put pressure on merchants to change their policies.

Application of chargeback rules in international situations

- 4.29 Joe Phillips inquired about the American Express policy in direct marketing situations, where for example, a consumer received a good which was the wrong colour. Sally Cowan responded that her company will ask for evidence about the **legitimacy of the dispute** first from the consumer and then from the merchant in order to settle the dispute in a timely fashion according to the provisions of the Fair Credit Billing Act. She clarified that this was an extremely complex regulation which provides the consumer with certain substantive rights and obligations. The obligations include not having paid for the good before lodging the claim, and having completed the transaction in or within 100 miles of their home state. In policy and practice, her company treats every customer question as a billing error dispute which must be **investigated and resolved** within two billing cycles no matter where the card member is.

Dealing with cardholders and merchants with excessive claims

- 4.30 Joe Phillips asked how her company deals with consumers who chargeback too often and merchants who have too many billing error disputes. Sally Cowan responded that consumers are not cancelled for a number of reasons, included **legal protection under the ECOA consumer protection law**, which states that you cannot cancel a consumer for asserting their rights under law. Merchants whose chargebacks exceed a certain percentage level are investigated to determine if they are fraudulent or if they simply require additional education. If this continues, the **merchant is cancelled**.

Choice of law

- 4.31 William Fagan of the Irish Consumer Affairs Office asked if American Express, a worldwide company, applied its standards outside of the US. He used a number of illustrations of international transactions where the choice of underlying national law was not necessarily clear. Sally Cowan responded that her company had **worldwide operating procedures** which followed FCBA procedures. She emphasised that these procedures did not guarantee a credit, but rather ensured an investigation within a certain time frame, and she acknowledged that the particular challenge in international cases was resolving the dispute within two billing cycles.
- 4.32 Peter Bird of the United Kingdom Office of Fair Trading asked if Visa had similar practices. Lynn Nostrant of Visa International responded that her company had **two sets of rules**: disputes where both cardholder and merchant was located in the US followed FCBA rules; but transactions outside of a US jurisdiction were subject to other rules.

Frequency and expense of chargeback claims

- 4.33 Kim Sparlund of Norway asked if there was any statistical information on the frequency with which consumers were awarded chargebacks, as well as on the expense of dispute settlement. Sally Cowan

did not have specific statistics on the first question, and cited a figure of approximate **US\$ 35 to carry out an investigation** and get back to a customer.

- 4.34 Joe Phillips asked for more specific information on Visa policies in domestic transactions, and in particular wanted to know the chargeback rates in direct marketing transactions and the cut-off level for merchants with excessive chargebacks. Lynn Nostrant answered that some disputes were extraordinarily complex and difficult to resolve. In general there has not been a chargeback right internationally because of the **difficulty in dealing with foreign merchants**. However, Visa **banks work very closely together** and try to resolve the situation to both the cardholder's and merchant's satisfaction. In purely domestic transactions, the underlying law of the country is generally applicable. Concerning the chargeback rates for all Visa transactions, she said that they are **approximately one fifth of one percent**, and even less for direct marketers. Her company has a policy of insisting that acquiring banks perform **due diligence with merchants** before they sign them up, and expects that acquirers will monitor the transactions. A merchant having an excessive number of fraudulent transactions of any type is also closely monitored by the acquiring bank.

5. *Session IV: Regulation Versus Industry Driven Solutions -- The European Perspective*

Chairman: Mr Peter Casey, Assistant Director, Consumer Affairs, United Kingdom Office of Fair Trading

Introductory speaker: Diane Iannucci, Advisor, Banking Federation of the European Union

European Community Law on Chargebacks -- Principle of Irrevocability of Payment

- 5.1 In Europe, there was a general acceptance of the principle of "irrevocability" of payment. It was not only in France that irrevocability was the principle but also in European Community law.

European Community recommendations

- 5.2 There were two EC recommendations, adopted in 1987 and 1988, concerning the principle of irrevocability of payment.

Recommendation of 1987: this set up a code of conduct in respect of electronic payments, governing in particular the relationship between financial institutions, traders, service establishments and consumers. The recommendation provided that an order given by means of a payment card should be irrevocable, and hence could not be countermanded.

Recommendation of 1988: this concerned *payment systems* and, in particular, the relationship between cardholder and card issuer. It emphasised that the contracting holder was under an obligation not to countermand an order he had given by means of his *payment device*. This recommendation is broader in scope than just card payments. The principle of irrevocability remains unchanged in the latest draft revisions of the 1988 recommendation.

- 5.3 The recently adopted proposal for a directive on distance selling also confirmed the principle of irrevocability, with the exception of fraud.

5.4 The principle was also acknowledged by the European Banking Industry and the retail sector, in self-regulatory codes which to a large extent took their inspiration from the Commission's recommendations. The code of practice which the European credit sector Associations (including the Federation, the European Savings Banks Group and the Co-operative Bank Groups) adopted in 1990 faithfully reproduced the wording of the 1988 recommendation on this matter.

Chargebacks

5.5 Despite general acceptance of the principle that payment is irrevocable, cases where revocations occur do exist. Payment might be cancelled for:

- **commercial** reasons -- for example, where a merchant invoiced a cardholder for tickets not received.
- **security** reasons -- for example if the merchant failed to ask for authorisation.
- **technical** reasons -- for instance, if the wrong account number had been entered by the merchant at the point of sale.

5.6 To accommodate these situations, credit institutions and card schemes had developed a procedure called "**Chargeback**". It was a debit operation initiated by the issuer (the cardholders bank) which had to be complied with by the acquirer (the merchant's bank). The acquirer could sometimes, in his turn, automatically debit the account of his merchant. This operation amounted to a reversal of the initial payment operation.

5.7 Given that different rules existed at the national level, it was impossible for an international system of Chargeback rules to accommodate all differences in legislation in domestic markets. Card schemes had, in some cases, found their own solutions to allow some form of Chargeback to take place. They endeavoured to reflect legislative trends as far as possible but where the law of one country conflicted with the international trends, it was both for the payment system in that country and the banks therein to find a compromise.

5.8 Chargebacks were intended to protect all parties in a card payment system:

- **cardholders** were protected against errors and fraud on the part of merchants, thereby encouraging a high level of merchant integrity.
- **Merchant's** were protected from abusive or unreasonable claims by cardholders -- if Chargeback conditions were not fulfilled, the Chargeback would be presented by the acquirer to the issuer.
- **Acquirer's** could identify fraudulent or suspect merchants

5.9 Chargebacks were a highly efficient way of dealing with claims. Claims were processed by the system electronically and amounts due between issuers and acquirers cleared alongside normal transactions.

5.10 Chargebacks generally applied to all card-based payments, irrespective of whether a card was actually presented, including payments made using a system such as the Internet.

Conclusions

The need for a Code of conduct for all merchants, irrespective of payment method

- 5.11 Perhaps the real issue was the need for a rigorous procedure applicable to any transaction where the merchant has committed fraud, or where there was any sort of commercial problem, **irrespective of the means of payment**.
- 5.12 **Why should the refund practice be different for cardholders?** At the European level, cards were not always the most used payment system - in Belgium and Germany, for example, Eurocheques were still used. Also, the customer was not always completely independent in his choice of payment system; if the customer was faced with a surcharge for paying by card, they might propose cash or cheque instead.
- 5.13 Could we not therefore think about a **code of conduct for merchants**, as a means of ensuring they provided effective means of redress to their customers, irrespective of the means of payment used.
- 5.14 It was important not to focus on Chargebacks as the solution for redress for the cardholder. This was only one industry-driven solution, which although effective, was only there to help and not to, in principle, solve the problem. The problems still lay with the merchant in the first place.

Summary of Floor Discussion

Merchant responsibility

- 5.15 Peter Casey of the UK Office of Fair Trading asked what procedures should be included in redress mechanisms if the merchant refuses to address the problem with the cardholder. Diane Iannucci suggested **transparency** on the conditions for the exchange of goods, and a provision which required merchants to answer claims with a reasonable time and to make a **good faith effort** to resolve the dispute. She added that merchant representative organisations and banking associations may be able to take a lead in promoting this.
- 5.16 Philip Barker of the British Retail Consortium noted that most reputable retailers and honourable consumers will resolve disputes quickly, and that it was important not to take excessive regulatory measures which restricted other solutions. Diane Iannucci responded that it was not necessary to change practice but rather to **enhance the good practice** already on the market.
- 5.17 Bernice Friedlander of the US Office of Consumer Affairs said that while the number of fraudsters is certainly small, credit card fraud was a growing issue, and it was an expensive problem no matter how large the community.

Market mechanisms for flagging dishonest merchants

- 5.18 Jeff Hilt of Visa International pointed out that there were market mechanisms for monitoring the Internet, including a procedure called a “**flame**” where abusers can be cited publicly on the net. This could function to flag dishonest merchants. Andrew Kostantaras of Visa International added that the Internet is not only a medium for advertising and selling, it is also an **interactive medium of communication**, which could help to solve some of these problems. Peter Casey offered the reminder that this was a double-edged sword: **positive reputations could also be fraudulently created** by

collusion on the Internet. John Rothchild of the US Federal Trade Commission added that there may be limits to the ability of this medium to serve as a forum for publicising reputational issues, at least under US **defamation law**.

Reducing liability and expense

- 5.19 Peter Robinson of the UK Department of Trade and Industry said that it was important to remember that mistakes in the payment process system were equally important, and that it was also necessary to focus on this issue. Elizabeth Phillips agreed with this, and said that anti-fraud mechanisms were in place in many countries which also protected consumers by placing a **cap** on their liability. While costs for combating fraud are eventually passed onto consumers, initially card companies bore the expense, and it may be advantageous to encourage cardholders to **promptly report** if a card is lost or stolen to reduce these expenses.

6. Session V: Industry Conclusions and Chairman's Summary

Mr Peter Casey, Assistant Director, Consumer Affairs, United Kingdom Office of Fair Trading

Mr Richard Poynder, Chairman, United Kingdom Smart Card Club

- 6.1 Peter Casey began by reminding the audience of the purpose of the roundtable: To find an industry-driven consensus on an approach to consumer redress in card payments in the global marketplace. He then **recapitulated the discussion** with the following points:

- It appeared that technological advances would offer greater security and authentication.
- These advances might offer better information on reputation.
- The scope for fraud and error will be reduced.
- Issues were raised which required further discussion, including the legal admissibility of digital signatures.
- In the immediate future, Internet transactions will continue to be a small proportion of transactions, and for the time-being cross-border transactions will be comprised mainly of those where consumers physically go from country to country, or as the result of more conventional mail order.
- There was little indication of distinguishing legally between different types of cards, with the possible exception of prepayment cards and electronic purses in which the transaction is not mediated through the banking system.
- There was no argument for laws where redress exceeded the value of the underlying transaction.
- There was general agreement that there should be consistent procedures for resolving disputes and that they should be transparent to consumers.
- It appeared that all card networks will attempt to resolve billing errors in instances of fraud.

-- It was less clear to what extent networks were willing to intervene in a distance selling situation where the delivery of value is disputed.

6.2 Sally Cowan of American Express clarified that non-delivery was generally charged back with sufficient documentation, but the disputes about the **quality of goods presented a different issue**. Lynn Nostrant of Visa International added that it is very difficult to prove non-delivery absent a delivery receipt by the merchant. If a chargeback was made in such a case, it would be up to the merchant to determine what happened to the goods. Philip Barker of the British Retail Consortium suggested that this was fundamentally unfair to the merchant. Lynn Nostrant responded this was a difficult issue, but that the **asymmetry of information and power** put the merchant in a better position than the consumer to determine what happened to the shipment. David Sloan of Royal Bank of Scotland said that acquiring banks would not wish to deal with merchants who were consistently unable to satisfy chargeback requirements.

6.3 From this, Peter Casey concluded that the principle of non-delivery is a cause for redress, but that the **evidence** required to establish non-delivery remains a concern. This issue remained about what happened to merchants against whom the allegations of non-delivery were made. At this point he turned to Richard Poynder for his synthesis regarding the creation of a foundation of a global system.

Edited Text of Richard Poynder's speech

6.4 I choose my own credit and debit cards based on the **service** I get from my card issuer. And when I go to Hong Kong and buy my shirts and pay with a credit card I feel a much closer relationship with AMEX or Visa than I do with the Hong Kong shirtmaker and I'm certainly not going to phone Hong Kong if I have a problem.

6.5 I don't think we have a problem at the moment, but I think we're going to have some problems in the future. We don't have a problem today -- apart from the odd crook and I mean by that merchants, acquirers and the occasional consumer -- because we're either governed by national legislation or the credit card companies and others have got their own policies.

6.6 What the credit card companies have failed to do, as a community, is convey all of this information to the card holder. I would like to see from my card issuer, some form of categorical statement. I want to see statements from the only global players in this whole game, which are the card issuers. Merchants aren't by and large global. I'm only global when I take a trip abroad. I think there needs to be certainty, and I did detect today some lack of clarity.

6.7 It seems to me that the whole discussion should be on the one hand about arguments between the customer and the merchant because he didn't deliver, didn't deliver the right colour, didn't deliver on time, he charged me too much, or whatever. And on the other hand, technical glitches. As an avid credit card holder and user for the last 27 years, I have only ever come across two errors on four different credit card statements. I may be unusual and I think you can count the phantom withdrawals from ATMs on the fingers of about half a hand if you really analyse them and take out the cases where fathers gave their sons PIN numbers. So I don't think there is a big technical problem.

6.8 Let me go on to the discussion that I have heard today. Today's market is mature. We've been using credit cards abroad for years and years. You can't honestly tell me that you pause to ponder and worry before you hand over your Visa card, whether it's in Hong Kong, Australia, Ireland or London. We really don't see it as a major problem, nor by indication of the numbers concerned is it a big problem financially.

6.9 I think that everybody here today has a vested interest. I have one as a consumer, the lawyers have a vested interest as do the card issuers and of course the merchants. And pity the poor merchant, because he's the one in the middle that does tend to suffer when there's a Chargeback and when there is a query arising from a card holder. He may be in Hong Kong and I don't want to talk to him but conversely I'm in England and he has a lot of trouble getting back at me and we consumers are very well aware of that nice, comfortable distance between us.

6.10 We heard several pieces of national legislation. It seems that in France they don't allow you to have a Chargeback or refund of any sort. I see eminently sensible legislation in the United States, typically federal state legislation, and clearly American Express has put all of its local procedures and policies around that legislation.

6.11 So there are rules, and there are also rules between the card issuer and the acquirer, the acquirer and merchant, and card holder and card issuer. Indeed, the card holder and the merchant. There is a lot of national legislation, very little of which really caters for global markets.

6.12 We have a problem and an opportunity, because we happen to be sitting on two emerging technologies which will change the way that we live:

-- The first is the use of **remote networks** for the conduct of business and information gathering -- full of hype, as yet really unstarted, and faltering primarily because there is no secure method of payment.

-- Secondly, the advent of a piece of technology that's been around for 20 years, the **Smart card**.

The combination of those two technologies is actually a potentially unassailable solution, if you think you have a problem, and I'm not sure we as a community yet believe that we have a problem.

Internet -- need for a secure payment mechanism

6.13 The Internet really is an opportunity to shop in the global village. One day the technologists will invent software that will mean that I can actually get into the system, make the modem work and go shopping. We are light years from that at the moment for Mr & Mrs Ordinary. Let's assume that we would like to do that from the comfort of our own homes. We're going to use credit cards primarily as the payment mechanism, possibly debit cards, but certainly in the international domain we shall have credit cards.

6.14 Credit card companies are getting together to create secure payment standards for that to happen. Why are they doing it? Because the lack of secure payment is the single biggest barrier preventing electronic commerce from taking place and vested interests from the likes of Visa and Mastercard want to dominate the market, sell you the software and control it.

6.15 In this new world, we are shopping with people we don't know. We're used to shopping with Kays of Worcester, we know them, we get their catalogue, they issue 50m a year and they get 50m phone calls a year from people with a long term relationship with Kays. Most mail order, I would suggest, is with people with whom you have a relationship.

6.16 In tomorrow's world when you key in "camera, £100, who sells them?" you're faced with a plethora of suppliers that you don't know, they're resident anywhere in the world. They may be in a different place

from where their site is on the Internet and you'll be doing business with people you don't know. Neither do they know you.

- 6.17 And that is an overpowering argument for there to be a global secure payment mechanism. And that I believe will come and anybody who wants to be political, could say "well it's all very well this SET that Visa and Mastercard are inventing for us" -- in it's embryonic stage at the moment -- "what's this European project called `SEMPER`?" Isn't that trying to do exactly the same thing. I think we should all assume that SET is the one that is going to dominate. Look at it's authors.

Electronic Purse Cards

- 6.18 However, credit cards, which leave quite a convenient audit trail, are going to be joined by some smart cousins very shortly called `**electronic purse cards**'. Purse cards are, by their nature, rather like cash so that when you use them to make a payment, it is anonymous, an instantaneous transfer of value. So really the Chargeback issue changes radically when you're paying by that method. It's rather like going into WH Smiths and paying cash over the counter, only you're doing it globally using electronic purse.
- 6.19 Which purse we don't know yet because any purse system has got to have the same methodology at both ends, and if you're in a global village it means that all the people who are trying to sell goods have to have the same sort of acceptance system and in most cases, except for Mondex, will have to be accredited merchants because most purse schemes in the world require the merchant to batch up his transactions and send them to his acquirer. It's almost like pre-paid debit.
- 6.20 Electronic purses are going to be used for **micropayments**. That means small value amounts -- 10p to £5 is generally regarded as the range. Now what is it that we're going to be spending 10p up to £5 over the Internet on? The answer is very simple - **information**.
- 6.21 So the new global marketplace is going to be about buying information for small amounts. The only product that we know of which is convenient, sensible and capable of being secure for that is electronic purse and I suggest you watch VisaCash, because when they've linked that into Visa cards and the Visa logo, they are a very hard global act to beat. Therefore one follows them.
- 6.22 That's the good news. The bad news is that sooner or later the card issuers, the banks, the acquirers are going to discover that electronic purse is a wonderful way to get everybody to pay because of things like float, for things like guaranteed payments without the need for an authorisation.
- 6.23 I could even see the day in 10 or 20 years where the debit card as we know it will disappear and become the **pre-paid debit card**. I'm in a minority with that view. When that happens we shall start to use purse for quite large value transactions. When we do that, then all the issues that you've debated today about the red and the blue shirt and the dress being the wrong shape and size, whatever, will come back home to haunt us.

Conclusions

- 6.24 So what's the solution? That's what you're here to debate, I'm simply trying to paint a picture for you to respond to. So we don't have a problem today in my opinion. I think that most of you have said that in your responses and questions. But we are going to have a problem unless Visa and Mastercard work with the merchants, with people who are offering sites on the Web and with consumers.

- 6.25 Until or unless all security for this is put within a Smart card, we will not have an effective global payment system for the future.

Summary of Floor Discussions

Technological problems

- 6.26 Peter Robinson of the UK Department of Trade and Industry emphasised that while technological advances were impressive, they were not infallible, and that particularly on the verge of the Smart Card/Internet revolution, it was necessary to have mechanisms in place to deal with consumer confidence issues. Richard Poynder responded that technical bugs have always and will continue to exist, and that it might be more important to settle the issue of the relationship between consumers, merchants, acquirers and issuers.

New Paradigms

- 6.27 Roy Pratt of Mondex stated that he believed that it will be necessary to **redefine the social and economic conventions** of using money based of these emerging technologies. Richard Poynder proposed the hypothesis that the reason fraud was not yet widespread on the Internet was that there was **not yet sufficient money circulating** on it, and asked participants what legislative or technical environment they would propose to prevent a proliferation of fraudulent sites. Jeff Hilt of Visa International responded that the SET technology would also serve as a **mechanism to authenticate** the merchants. He believed that once the authentication model is in place, this will not present a problem. Further, a mode of trust will be established based on consumer knowledge about the affiliation between merchants and card companies.
- 6.28 Richard Poynder pointed out that problems may emerge until the SET technology has reached every merchant in the world and the certification process functions globally. Jeff Hilt responded that he expected to see an **exponential compaction in technology** deployment in the next **2-3 years**, including chip cards with a mode of authentication that may exceed what exists today in the physical world. Philip Barker agreed that due to competitive pressures retailers would also be forced to accept this system if it achieves sufficient momentum. He recognised that this would be an extremely **difficult transition for merchants**, and they would have to change the fundamental way they carry out business. In the 90s, the way to differentiate one business from another is through service rather than products, and retailers will continue to see **customer service** as a particularly important issue.

Code of Practice

- 6.29 An unidentified participant observed that in order to promote commerce card issuers may want to create a **code of practice** that was independent of location and that was based on whatever principles it believed to be reasonable. This could be developed in concert with retailers, financial institutions and consumer organisations. These industry standards should be sufficiently **transparent** that consumers know that when they use a certain card they will receive the same treatment regardless of where the Web-site is located. These standards would be voluntary codes of practice and not mandatory legislation, and should establish a **basic framework** within which card companies could still compete for business. The codes would clearly express the **rights and obligations** of both cardholders and merchants.

Jurisdiction in cyberspace

- 6.30 Jeff Hilt clarified that Visa had an international set of rules which was broadly applied yet subject to different national standards in certain countries. He stated that his company was still uncertain how it would approach the Internet, but that one thesis was that the Internet would be its own “country” or “**cyber region.**” Richard Poynder asked who would perform the police function in “cyber city.” Jeff Hilt admitted that this was undecided but that jurisdictional issues were not a new problem. To illustrate this he cited the case of telemarketing, where ads on TV had several national phone numbers and the goods may be shipped from another country.
- 6.31 An unidentified participant posed the question whether **national laws would preclude the imposition of an international standard**, and what the effect would be of a “cyber city” regime which may conflict with national laws. Jeff Hilt responded that Visa does not sign merchants, the banks do. And countries have specific laws which cannot be superseded. In the absence of such laws, his company would like to have a generic set of rules or policy. The problems begin when it is unclear where a site is actually physically located, and for this reason it was logical to define a “space” where everyone is, which would be “cyberspace.”
- 6.32 Christian Udechukwu of the UK Office of Fair Trading said that one issue that emerged during the preparation of the background paper for the roundtable is that while there may be a set of international network rules, in many countries they were still developing domestic rules and regulations for applying the international network rules. Therefore, signing on with a card issuer did not automatically mean the these rules would be applied.
- 6.33 Joe Phillips of the OECD pointed out that the reason the OECD was looking for an industry response was that recourse to national legal systems may not be practical in international transactions. He reminded participants the there was no mention of the Internet during the 1994 OECD Global Marketplace conference, and that much of the discussion today was about this issue. Therefore, because of the rapidity of change, it was **imperative to create some mechanism for fair and efficient redress on a global scale.**

REPORT ON THE MEETING WITH CONSUMER ORGANISATIONS HELD AT THE OECD IN PARIS, 12 JUNE 1996

Consumer Delegates:

Mr Julian Edwards, Consumers International
Mr Stephen Locke, Consumers Association
Mr Jim Murray, BEUC
Ms Katrin Schere, BEUC
Mr Malcolm Hurlston, Foundation for Credit Counseling

I. Summary of Discussion

- 1.1 Consumer Delegates were welcomed by Chairman Roscoe Starek, Commissioner, United States Federal Trade Commission. On oral report was given by Peter Bird of the United Kingdom Office of Fair Trading to Consumer Delegates on the proceedings contained in the Report on the Roundtable on Consumer Redress held in London on 10 June 1996 as summarised *infra*.
- 1.2 Stephen Locke welcomed the study and acknowledged that this was unique and important for its global scope. He expressed his hope that non-delivery and product liability would also be addressed in the future. The background paper presented strong conclusions about the steps that were necessary, but expressed concern about how this would be implemented concretely, especially with regard to the following issues:
 - A Code of Practice was a good idea in principle, but required discussion in light of **mixed European experience** on the operation of these codes.
 - What was necessary is policy guidelines which included the following components:
 - **Transparency**. The background paper showed that this was extremely complicated, even for experts.
 - **Increased consumer choice**. Competition will help to strengthen protection, but it requires greater consumer information.
 - Consumer access to **dispute handling** must be improved, including considering ombudschemes or arbitration. One may choose to consult successful national schemes, which do not yet exist on an international scale.
 - Issues surrounding **connected lender liability**. When does it apply? How can one achieve a consensus on this issue? Is there a case for a degree of mutual recognition?
- 1.3 Jim Murray believed that the suggestions in the paper should be expanded to determine what types of rules and standards must apply, and address the legal or non-legal aspects of the suggestions. Even within EU national markets, level of consumer protection is highly variable. He recounted the bad

experience with Codes of Conduct in the EU, specifically citing EC recommendations which have been largely ignored in many EU countries, with only 80% of banks observing these regulations. If rules exist and are obeyed, his organisation will support them; but he expressed pessimism because of the large number of issuing banks. The hope with payment cards is that the small number of card networks may make this easier, as the card companies have licensing agreements and bylaws which they can use to oblige issuers to incorporate these proposals.

- 1.4 Julian Edwards suggested that it is implicit that **all types of payment cards** must have rules attached to them, including prepayment cards.
- 1.5 Britta Velleuer of Germany asked about the dimension of the chargeback problem. Jim Murray responded that the concerns have primarily been related to liability related to loss, and that there was **lack of systematic information**. This was especially true in the case of cardholders who give their number over the phone. Stephen Locke added that because of the connected lender liability laws in the UK, this did not present a problem for credit card holders in the UK. But there was enormous scope for dispute with debit or prepayment cards and with Internet transactions, which threatened to become much larger problem which would contract global transactions.
- 1.6 Joe Phillips of the OECD emphasised that this was not considered so much a current problem as a restriction of the potential for global shopping. He posed the question of how redress would work in an environment where national laws would be largely ineffective, and what framework is necessary to do business in this way.
- 1.7 Peter Bird of the UK Office of Fair Trading noted that UK concern with this reflected concern by national and regional government on this **sensitivity of this issue** from a political and economic situation. The ultimate purpose of this was to ensure consumer safety while at the same time promoting competition and international trade. An industry driven code may be the best course to take.
- 1.8 Vinita Watson of Canada said that according to the experience of her government it would be necessary to include financial institutions as well as card companies for the code to succeed. Roscoe Starek observed that card companies perceive chargebacks as a beneficial service for consumers, and that ultimately the reversal of the transaction occurred between the acquiring bank and the merchant. He noted that chargebacks were now being used as a competitive tool, and asked to what degree companies are actually performing a service.
- 1.9 Jim Murray responded that for the most part chargebacks were offered where there was a problem with the payment service rather than with the underlying goods, and that this was being rectified by the service provider. John Rothchild of the US Federal Trade Commission agreed that problems with the underlying transactions are the most important and difficult to address, and asked what **other issues** may serve as impediments to development of the global marketplace.
- 1.10 Stephen Locke responded that major differences in **product liability** systems remain a problem. He observed that the greatest problems arise when there are greater disparities between domestic and cross-border regimes, and that the element of “bad-surprise” was most dangerous. Jim Murray added that EC polls cited “**uncertainty about legal rights**” as the most important reason why consumers did not shop across borders.
- 1.11 Joe Phillips emphasised that the focus here was not on mistakes with the payment but rather on providing redress in cases of problems with the underlying goods. This element of uncertainty has

- been driving the OECD during this project. The focus has been on finding **arbiters** in the case of disputes, and that credit card companies have been very effective in doing this under the US model. He asked what the best way would be to create a workable system through industry-driven efforts, and what the best way would be to publicise these chargeback policies.
- 1.12 Jim Murray suggested that product-related dispute issues were not sufficiently addressed in the background paper. He added that what was initially necessary was **standards**, and that methods for implementing them would follow. Julian Edwards suggested that something more concrete than standards which may only be used by a limited number of firms were necessary.
- 1.13 Roscoe Starek asked for more precision in the **definition of standards**. Should they be legislative? Jim Murray responded that codes could be integrated into laws, but said that he was leaving open the question of how to implement this, and would like to first see the substance of the codes. This would include the merchant accepting some responsibility for the transactions. The standards could take a number of forms which can use building blocks which already exist.
- 1.14 Stephen Locke pointed out that the industry was in a state of flux, and that if industrial consortia could introduce anti-fraud protections in new technologies, this may offer an **opportunity for further dialogue** on consumer protection. He added that market-led solutions do not have to be left to fall out of the sky, and that it would be possible to influence them to meet public objectives such as **transparency, choice and information**. It is necessary to publicise and compare standards, and promote negotiation, dialogue, and ultimately persuade parties to adopt them.
- 1.15 Jim Murray observed that the EC is attempting to update recommendations on payment systems, but that BEUC was discouraging the simple issuing of recommendations, and instead was seeking **target goals to measure success** of implementation of the objectives. Ideally, this would include a credible threat if these goals were not met.
- 1.16 Joe Phillips emphasised that this was not adversarial, and that credit card companies are interested in this issue in order to **facilitate market growth**. It was necessary to identify common concerns and treat companies as partners. Tough legislation may not be a credible threat.
- 1.17 Malcolm Hurlston stated that as the paper pointed out, there were actually four parties to these transactions, and that it was natural for the issuer to take sides with the cardholder and the acquirer with the merchant. Some of the biggest problems came from rogue merchants who processed multiple payment slips, and it was difficult for card issuers to discipline merchants.
- 1.18 Britta Velleuer asked if it would be possible for a **“champion” company** to lead market-driven solutions. Jim Murray confirmed that this was a good idea, and was particularly effective if an agreement was concluded not with the market leader but rather with the number two company in the market. He wanted to emphasise that some type of expectation was necessary to ensure that the **target goals** of the code of conduct or standards were met.
- 1.19 Joe Phillips stated that the purpose of this effort was the creation of a **virtuous circle** where merchants and companies accepted more responsibility which in turn increased consumer confidence. Concrete measures might include lowering the threshold of acceptable levels of chargebacks which were used to cut off merchants who exceeded the threshold. The result would be merchants who were more oriented to customer satisfaction.

- 1.20 Roscoe Starek stated that the US Federal Trade Commission had spent a lot of time working with card companies to use high chargeback levels to detect fraud, and that this had been successful.
- 1.21 Stephen Locke approved of the idea of a virtuous circle, but may be difficult to implement because of card companies attitudes that it was difficult to control merchants located in other countries. He called this a “defeatist attitude” in light of technological advancements and supposedly coherent international systems of card companies. Joe Phillips said that it appeared that this attitude in the UK was a reflection of an adversarial relation based on disputes surrounding connected lender liability in the UK. He added that this seemed to be a issue because of exposure to **product liability** claims beyond the value of the **underlying transaction**.
- 1.22 Stephen Locke noted that a **restriction of the liability** to the size of the underlying transaction was probably an acceptable compromise, but responsibility should be extended beyond national frontiers.
- 1.23 Roscoe Starek concluded by noting the importance of **transparency, choice, and consumer information**, the extension of redress to disputes involving the **quality, characteristics, and non-delivery** of the product, and issues surrounding the **dispute resolution** procedures.

ANNEX 1

LIST OF LONDON ROUNDTABLE PARTICIPANTS

Organisation for Economic Co-operation and Development (OECD)

Mr WITHERELL
Mr J. PHILLIPS
Mr LINKE
Mr HORSTMANN
Mr WAGNER

United Kingdom Office of Fair Trading

Mr BRIDGEMAN
Mr CASEY
Mr BIRD
Mr LAMBOURNE
Ms GREASLEY
Mrs ROONEY
Mr UKECHUKWU

Canada

Mrs WATSON
Office of Consumer Affairs

Mrs LARABIE-LESIEUR
Industry Canada

Denmark

Mr SPARLUND
National Consumer Agency

France

Mme LETAVERNIER
DGCCRF, Ministère de l'économie

Ireland

Mr FAGAN
Consumer Affairs Office

Japan

Mr HATTORI
Economic Planning Agency

Mr FUKUI
Economic Planning Agency

Mr SHIRAISHI
Economic Planning Agency

Mr YAMADA
Japanese Delegation to OECD

New Zealand

Mr MANCH
Ministry of Consumer Affairs

Norway

Mr BJARKOY
Department of Consumer Affairs

Mrs FISKNES
Department of Consumer Affairs

South Korea

Mr KANG
National Consumer Protection Board

Mr HUR
National Consumer Protection Board

Mr KIM
National Consumer Protection Board

Sweden

Mr RINGSTEDT
National Board for Consumer Policies

Ms ABIHAMMAR
National Board for Consumer Policies

United Kingdom

Dr ROBINSON
Department of Trade and Industry

Mr MARSDEN
Department of Trade and Industry

Mr THORPE
Department of Trade and Industry

Ms GANE
Department of Trade and Industry

Mr ALEXANDER
Her Majesty's Treasury

United States

Ms FRIEDLANDER
Office of Consumer Affairs

Mr STAREK
Federal Trade Commission

Mr ROTHCHILD
Federal Trade Commission

European Union

Mr KOTSELIS
DG XXIV

Representatives of Private Sector

Mr ARMITSTEAD
Global Card Services

Mr BARKER
British Retail Consortium

Mr BAERT
Europay International

Ms BRIEN
Europay International

Mr BUCKLEY
Card Protection Plan

Mr CAMELOT
Groupement des cartes bancaires

Mr CAPLEHORN
Mondex

Ms COWAN
American Express Company

Ms CONATY
Arundel Hayes

Mr COOPER
Lloyds Bank

Mr HILT
Visa International

Ms GAUNT
GE Capital Ltd

Ms IANNUCCI
Fédération Bancaire de l'Union Européenne

Mr KOSTANTARAS
Visa International

Ms LEWIS
Visa EU Region

Mr MATSUTANI
Sumitomo Credit Service

Ms NOSTRANT
Visa International

Miss A. PHILLIPS
GE Capital

Ms E. PHILLIPS
Credit Card Research Group

Mr PRATT
Mondex

Mrs RADFORD
Barclays Bank

Mr SLOAN
Royal Bank of Scotland

Mr WARE
GE Capital

Professor WORTHINGTON
Staffordshire University

ANNEX 2

CONSUMER REDRESS IN THE GLOBAL MARKETPLACE: CHARGEBACKS

[Background Document prepared by the OECD Committee on Consumer Policy and the United Kingdom Office of Fair Trading for Use of Delegates and Industry Representatives at the Roundtable Discussions in London on 10 June 1996]

Amended and Updated by the OECD Secretariat in September 1996

- I. Introduction**
- II. Background and Objectives of this Project**
- III. Chargebacks: How They Work**

- 1. Card payment networks
- 2. Definition and function
- 3. Chargeback guarantees
- 4. Situations for invoking chargebacks
- 5. Chargebacks in electronic and distance selling
- 6. Chargeback rights and limitations

- IV. Conclusion**

Annex 1: Chargeback Mechanisms in OECD Member Countries

- 1. Austria
- 2. Australia
- 3. Belgium
- 4. Canada
- 5. Denmark
- 6. Finland
- 7. France
- 8. Federal Republic of Germany
- 9. Hungary
- 10. Japan
- 11. Korea
- 12. Mexico
- 13. Norway
- 14. Poland
- 15. Portugal
- 16. Spain
- 17. Sweden
- 18. Switzerland
- 19. Turkey
- 20. United Kingdom

21. United States
22. European Union

Annex 2: The Evolution of Payment Cards

Annex 3: Prepayment Cards

1. Introduction
2. Types of prepayment cards
3. Electronic cash
4. Conclusion

Annex 4: Diagrams and Definitions of Basic Terms and Concepts

1. Domestic card association formation process
2. Card payment structure
3. Payment authorisation flow
4. Structure of redress processes
5. Definitions of basic terms and concepts

CONSUMER REDRESS IN THE GLOBAL MARKETPLACE: CHARGEBACKS

I. Introduction

The global marketplace has become a reality. Cross-border transactions using payment cards in the United Kingdom alone increased by 24% from 1991 to 1993. The development of new electronic technologies and methods of payment, such as the Internet and prepayment cards, will further accelerate this development. But ultimately, the growth of the global marketplace depends on consumer confidence in transactions which occur outside of their own national or regional jurisdictions. Consumers must know that redress and dispute resolution mechanisms are available in cases of mistake, fraud or non-delivery of goods.

The OECD Committee on Consumer Policy recognises the need for consumers, industry, and national and international organisations to address this issue, acknowledging the challenges that financial institutions face and their position within particular markets. Currently in OECD countries there is a broad spectrum in law and practice regarding consumer redress. Payment card companies, as financial intermediaries, may be in the best position to address consumer concerns by performing a broad spectrum of "chargeback" redress functions, as they do for example in the United States. In line with current deregulatory policies, the Committee on Consumer Policy hopes these discussions can create an environment resulting in a voluntary industry code of conduct to increase consumer confidence and facilitate continued growth of cross-border transactions.

This is part of a multi-stage process where industry and consumer representatives will meet in June, 1996 under the auspices of the OECD, to express their concerns on this issue. The findings of these meetings will form the basis for a discussion between consumer representatives, industry, and government officials at the OECD conference "Gateways to the Global Marketplace: Electronic Money and the Internet" to be held at OECD Headquarters in Paris on 3-4 October, 1996.

This paper, based on research by the OECD and the United Kingdom Office of Fair Trading, forms background material for these roundtables. It describes in detail chargeback mechanisms, guarantees, rights and limitations, the legal regimes governing chargebacks in OECD Member countries, and the evolution and different types of payment cards.

The OECD Committee on Consumer Policy advises Member governments on major international policy issues arising in the areas of consumer protection, information, representation and redress. This project is a continuation of previous OECD work in this area.

II. Background and Objectives of this Project

Following the June 1994 conference on "A Global Marketplace for Consumers", the OECD Committee on Consumer Policy recognised the need, in the context of facilitating growth in international trade, for an assessment of the obstacles to creation of a global marketplace for consumer goods. One obstacle frequently cited was the lack of effective redress mechanisms for consumers who are confronted with fraud, delivery problems, defective merchandise, and billing complications in international transactions.

The rapid expansion of electronic transactions through media such as the Internet and smart cards has intensified this concern. In the global electronic marketplace, as well as in more traditional distance sales, the most convenient means of payment may continue to be through payment cards issued under agreement with international payment card companies like American Express, Diners Club, Japanese Credit Bureau, MasterCard, Mondex and Visa. While the use of such card payment systems offers the consumer and the merchant multiple advantages, it also raises a number of issues which could either encourage or undermine consumer confidence in the global marketplace. Within an environment of differing national legislation, asymmetrical information, and variation in cultures and attitudes, how can consumer-friendly redress options be made available in the case of cross-border transactions?

Three views of payment card redress mechanisms were presented at the 1994 OECD conference. First, a representative of the United Kingdom Office of Fair Trading proposed that it is essential to preserve competition between the major payment card networks and to encourage those networks to accept greater responsibility for transactions which take place over their payment systems. Card companies are in the best position to monitor the behaviour of merchants participating in their payment networks, especially in the case of cross-border transactions. This proposal would allow card companies to realise the benefits of the global marketplace while promoting confidence by reducing consumer risk.

Second, the Chairman of a card processing company in the United States suggested that increased consumer confidence could result from three regulatory models: (i) self-regulation, where market operators work together to establish practical guidelines based on market-driven criteria; (ii) pre-emptive regulation, where a regulatory agency formulates and promulgates rules to regulate a particular industry without the direct participation of market operators; and (iii) co-operative regulation, a blend of the pre-emptive and self-regulatory approaches in an environment that enables the regulating agency to design the processes while the market operators provide the mechanism to achieve the desired objectives of fair, predictable and simple redress options for the cardholder.

Third, another industry representative argued that existing self-regulatory rules and operating regulations of card payment networks have adequately served as an efficient consumer redress mechanism in domestic and international transactions.

The issue remains, however, that the spectrum of available redress mechanisms varies from country to country, as Annex 1 shows. The OECD hopes that this project will result in greater understanding of the following questions: To facilitate cross-border transactions, how can differences in national practices be made more uniform? If legislation which is either specific to or related to chargebacks does not exist in a country, can the cardholder seek redress by relying on the rules of international card companies? Under what circumstances is it possible to align consumer and industry interests in promoting a consumer code through the creation of voluntary, industry-driven redress mechanisms?

This project is concerned with the degree to which chargebacks, a process whereby card issuers perform an intermediary redress function in the case of legitimate disputes, can be used to promote consumer confidence in the global marketplace. It examines the degree of protection which domestic and international payment card companies afford the consumer within and beyond the provisions of existing national legislation. The scope of this study is restricted to the OECD Member countries' use of payment cards as a means of settlement for the purchase of goods or services. It examines relevant legal regimes, rules and operating regulations of card payment companies, and consumer awareness of the circumstances under which chargebacks are possible.

This effort reflects OECD concern with realising the benefits of a global market through the formulation of effective consumer protection policies which present alternatives to extensive legislation and regulation by Member countries. This project offers consumers and industry the opportunity to recognise common interests, and create a mechanism for ensuring that consumer redress options are simple, fair and predictable. This report and the results of roundtables scheduled with consumer and industry groups in 1996 will be presented to the OECD Committee on Consumer Policy for discussion and recommendation.

Throughout the paper, the term “payment cards” is used generically, and it makes no distinction between the various types of cards, such as credit, debit and prepayment cards, except where otherwise indicated. Additional information on the various functions and types of payment cards is found in Annexes 2 and 4. Interest in electronic money is stimulated by the fast-developing prepayment card, versions of which are now being introduced for trial in commercial use by card issuers. The prepayment card could offer the consumer either a complementary or competitive alternative means of payment in cross-border transactions. A brief description of prepayment cards, and the consumer issues which may accompany their use is included in Annex 3.

III. Chargebacks: How They Work

1. Card payment networks

There are generally four parties to card payment system: (i) the issuer, (ii) the cardholder, (iii) the merchant and (iv) the merchant’s acquirer. The relationships between these four parties are governed by rules, which may include some or all of the following:

- The agreement between the cardholder and the card issuer stipulates the credit limit, the terms and conditions of card use, and liabilities in the event of any form of abuse or breach of agreement.
- The agreement between the merchant and the merchant’s acquirer is based on a different agreement with the issuer which enables it to perform multiple functions, including accepting the transaction slips for value and receiving a discount or merchant service commission in return. It also regulates the authorisation and floor limits per transaction with a given cardholder based on status of the card, the negotiated credit limit, and the merchant’s rating.
- Rules of interchange governing the mutual exchange of services (accepting, clearing and settlement) between members who belong to the same or other card networks binds them by agreement to serve one another. All international and domestic transactions involving use of payment cards depend functionally on guaranteed reimbursement by the issuer to the acquirer who redeemed merchant transaction slips for value.
- International and domestic rules regulate the relations between the issuer and the acquirer. Such regulations are based on the rules of the card network to which partners to an agreement belong. It may also be based on the banking laws of the country of operation or on a blend of national laws and card company regulations where the agreement is transnational.

The general rules of international card companies provide that “rules for domestic transactions may supersede those for international transactions, authorisations, clearing, settlement, chargebacks and

retrievals” if the transaction and the arrangements governing the transaction are purely domestic and do not discriminate against members of the same network.

Explanatory diagrams showing these relationships and the mechanics of the chargeback process described in this section, together with definitions of terminology, are found in Annex 4.

2. Definition and function of chargebacks

A chargeback is a banking facility which enables a cardholder who paid for goods or services to dispute certain or all aspects of the transaction through the payment card issuer. This form of consumer protection is sometimes mandated in national laws which gives the consumer the right to claim against the card issuer.

In the event of disputes, chargebacks remove the burden of initiating law suits from consumers and may make the participating merchant more co-operative through the threat of potential penalties, including erosion of reputation or revocation of privileged business status with the card company. Chargebacks increase consumer confidence in distance sales through guaranteed consumer protection policies and remedies, and allow the consumer to rely on the merchant's description, representation and delivery of goods or services.

Arguments have been presented for and against chargebacks in both domestic or cross-border transactions. Arguments against emphasise the possibility of abuse and the potential cost of such abuse to the exposed card issuer. Those in favour contend that chargebacks promote card use by facilitating cardholders' ability to settle transactions with ease and confidence, while at the same time protecting them against potential fraud.

3. Chargeback guarantees

In most international payment card networks, chargebacks are broadly categorised under subheadings which stipulate reasons for initiating the retrieval of value from the payment recipient. These reasons set out the complaint procedures, rights and time limitations in securing redress, and relate to the points of dispute or address the underlying transaction failure which is the subject of dispute between the provider and the recipient of the goods or services. The focus here is on chargebacks relating to the cardholder, as separate from those which deal with the returns from the issuer to the acquirer.

Product- and service-related disputes are not fully provided for in the rules and operating regulations of payment card companies, and chargeback provisions do not, in general, address failures in the underlying transactions between a cardholder and a merchant. Card companies argue that the reason for this is that the operating rules and regulations relate to member card-issuing and card-acquiring institutions, not cardholders.

However, a margin of discretion is left to card issuers to settle disputes by direct intervention between a dissatisfied cardholder and a non-compromising merchant, especially in cross-border situations. This is called a “good faith collection” since the dispute resolution process, or negotiated agreement between the merchant and the issuer or cardholder, may not have provided for the issuers' mediatory role, and the cardholder's primary relationship is usually with the card issuing bank or credit organisation.

The card issuer is guided by the payment company's international bylaws and operating rules which govern its behaviour as a member of a given payment system. These provisions enable the card

issuer to exercise discretionary powers to protect the integrity of the payment card system, including chargebacks. But domestic card operating rules may sometimes dictate the nature of the relationship between a cardholder and issuer. This arrangement may affect the cardholder's capability to receive redress in the event of a dispute over a failed transaction. In this situation the consumer is only protected to the extent allowed by national law. As this study shows, there are substantial variations in the level of protection offered from country to country.

4. Situations for invoking chargebacks

Cancellation and merchant error

Situations in which chargebacks can be processed for consumers include timely cancellation of a guaranteed reservation or a cancelled recurring transaction, or merchant service error in transactions, especially in the travel and entertainment industry. It is possible to secure redress if a cardholder's complaint is registered in writing to challenge the validity of a periodic billing statement. A challenge is valid if it is made within the time limit allowed by the concerned card company's rules, except where the enforcement of such time frames has been made void through national legislation. The cardholder's case is stronger if proof of cancellation requests is provided, especially on recurring transactions.

Alteration or non-receipt of payment slip

The alteration of payment slip amount or non-receipt of credit transaction information are both reasons for chargebacks. If a cardholder receives a monthly statement and discovers that the amount has been altered by mistake or fraud at the point of sale, or results from an error from the card issuer's bill processors, the issuer assumes the risk of identifying the source or purpose of the alteration or error, and must accordingly restore credit to the cardholder.

If a bill for which the cardholder has no receipt is recorded on the periodic statement, the cardholder can withhold payment or request to see a valid transaction slip to ascertain the origin. While the right of a cardholder to withhold payment to the card issuer as a means of securing redress from the service provider or merchant are protected under national legislation in Finland, the United Kingdom, and the United States, countries like France, Korea, Mexico, and Turkey afford no such privileges.

Unauthorised multiple transactions

Unauthorised multiple transactions which appear on a cardholder's account statement can be reversed. Such chargebacks are resolved between the cardholder and the card issuer. The merchant becomes involved only when the issuer needs to reclaim the credit value from the merchant through the acquirer. Sometimes unauthorised multiple transactions can refer to a situation where a merchant splits down a single transaction into two or more sales with a cardholder in order to enable the amounts to fall below authorisation limits. This action can result in penalties being incurred by the merchant.

Non-receipt of cash from ATMs

Chargebacks are also possible for transactions with Automated Teller Machines (ATMs) where electronic systems failure results in the non-receipt of cash. Disputes may arise when the faulty delivery system debits the cardholder for an amount which was not received, or when an authorised withdrawal ends in uncompleted delivery of cash. The burden of proof lies with the card issuer to prove that the ATM

was functioning properly at the time a disputed transaction occurred. The cardholder may have the disputed amount credited by the card issuer in such circumstances.

Insufficient identification

Identification issues may also lead to chargebacks. For example, in face-to-face transactions where a merchant fails to note that the signature on the transaction slip does not conform with the control signature on the card, that the copy of the transaction slip is illegible, or that the signature is missing altogether, the payment card networks can grant chargeback rights to the cardholder. The potential cost of exposure can be absorbed by either the issuer or merchant.

Fraud

Chargebacks may be triggered by fraud as well as mistake or misunderstanding. The costs of fraud will ultimately be borne by cardholders, either through higher fees or interest rates if the immediate costs are borne by issuers, or through higher prices if they fall on merchants.

Loss or theft

Misuse of lost or stolen cards can also result in chargebacks. Within the United Kingdom alone, it is estimated that about 2 million cards are lost or stolen each year. Because the opportunity for fraud increases in the event of loss or theft of payment cards, voluntary rules within all card networks, and in certain instances statutory provisions, are designed to encourage careful handling of payment cards. For example, a cardholder can be penalised for negligence in Austria, or have limited liability by law in the United Kingdom and United States, or the issuer can charge the cost of fraudulent exposure back to the negligent cardholder in Korea, where the bill has to be paid by the cardholder pending the outcome of an investigation.

Within the card networks, there are time limits governing the period within which the cardholder must give notice of loss or theft of the card. These time limits are sometimes overruled by national legislation on the grounds that cardholders are often unable to determine rapidly whether their card has been lost, stolen, or simply misplaced. The acceptable time limits can range from *immediate notification*, or a *written notice of loss within 24 hours* to avoid the cost of exposure, to notice *as soon as possible*. If a cardholder reports the loss or theft of a card within the given time limits, the card issuer assumes the responsibility of issuing a card recovery bulletin, or electronically blocking the use of such a card in any financial transaction at all ATMs or point of sale terminals. The cardholder's liability and the issuer's exposure are thereby restricted.

5. Chargebacks in electronic and distance selling

Direct marketing and electronic transactions, such as those over the Internet, are more susceptible to fraud against the cardholder because of the disclosure of the cardholder's PIN or card number over the telephone line, on a computer network without adequate security, or on a mail order coupon. This information could easily be available to unauthorised persons who could make transactions using the same information. In the event of dispute, the card issuer exercises discretion on liability except if the law requires differently.

Non-receipt of a requested item can be an accepted reason for allowing chargebacks in distance selling situations. In this case, the issuer may refund the value of the transaction if the merchant did not

deliver value for payment to the cardholder at the location mutually agreed upon. This may include situations where the merchandise received is damaged or does not conform to its description, and it is returned by the cardholder to the merchant in a timely manner.

6. Chargeback rights and limitations

The rights and limitations to chargebacks within the card networks are governed by five factors: (i) the value of the transaction, (ii) the operating rules and regulations of the card payment networks, (iii) the time allowed for dispute registration or processing, (iv) the circumstances surrounding the dispute, and (v) existing national legislation.

Transaction value

With regard to value, at the time of this research the minimum chargeback which can be initiated is US\$ 25 or its currency equivalent, or 10% of the authorisation limit. Chargebacks can only be processed to the value of the disputed card transaction, except where a court of law or national legislation provides differently. If an authorisation was obtained for a value less than \$25 or less than 10% of the authorisation limit, the chargeback would be considered invalid since the cost of processing requests far outweighs the cost of disputed transaction.

Operating rules and regulations

Rights and limitations also extend to the application of network rules and operating regulations, and chargeback arrangements can vary based on the location of the parties to the transaction. For example, in the case of Europay and MasterCard, who have a strategic alliance, if both the issuer and the acquirer are located in the same domestic market anywhere in Europe, Europay domestic rules for that market would apply in the event of disputes. But if the dispute is one in which the acquirer or card issuer is located outside the domestic market, MasterCard International rules would govern the resolution of the dispute.

Time limitations

Time is a limitation in chargeback disputes within payment card networks. For example, the maximum time limit available for complaint and chargebacks relating to international transactions within MasterCard is 120 calendar days, and 180 calendar days for Visa. In domestic transactions, both MasterCard and Visa have a maximum time limit of 150 calendar days. Some other payment card systems have a maximum of 60 days for domestic or international transactions and in exceptional circumstances 365 days. The time limits take effect from either the date of the billing statement, the date of the transaction, or the date of endorsement, depending on which party is disputing an aspect of a given transaction. If it is a billing error, the time limit begins from the date the cardholder receives the monthly statement, unless the discovery is made prior to the receipt of statement. MasterCard initiates the time limit from the date the transaction was processed, while Visa begins from the day the voucher was presented for clearing. Therefore any delay in registering a complaint can erode the available time. However, it is standard practice within the industry that the period starts again following a delay of 30 days or more by the acquirer in presenting the transaction for clearance.

National legislation may mandate exceptions to the time limits. For example, in the United Kingdom, time limits laid out in the operating rules and regulations of card companies may conflict with section 75 of the Consumer Credit Act (1974) which protects credit card users against abuse. Section 75 is

governed by the Limitation Act 1980, which allows a statute of limitations of six years from the date of the disputed transaction.

Dispute resolution

Dispute resolution within payment card networks may involve very complex procedures. This report addresses this issue in very general and simplified terms in order to protect commercially sensitive information. The most common approach is when a cardholder complains about a given transaction or bill to the card issuer, following an unsuccessful attempt by the cardholder to obtain redress directly from the merchant. The card issuer may investigate the claims, and if appropriate initiate the chargeback process through the merchant's acquirer.

Some card networks require their members to charge back each transaction separately. While many disputes can be resolved immediately following the initial complaint, dispute resolution through the chargeback process of some card networks can be protracted. In some cases, the initial complaint may be rejected, meaning that the chargeback is invalid, improper or that credit has been processed already. In one example, the issuer is allowed to appeal to an arbitration committee comprised of card network members. The arbitration committee has the capability to resolve disputes between members and to determine who absorbs the costs in dispute. If the arbitration committee fails to resolve the dispute or the parties involved are dissatisfied with their decision, the matter can be taken to a court of law.

National legislation

Legal regimes governing consumer redress for disputed payment card transactions in OECD countries are at various levels of development, as Annex 1 describes. The differences are a function of market culture, level of sophistication and the available mechanisms by which to evolve, enact and enforce consumer protection policies. Legal regimes governing redress in payment card transactions do not exist in all OECD countries. Denmark, Finland, Sweden, the United Kingdom and the United States have a principle of connected lender liability which applies in circumstances differing somewhat from country to country. Others, like Austria, Belgium, France, Korea and Mexico operate on the principle of irrevocability if payment, which effectively excludes any redress or chargebacks through the payment card mechanism provided that the payment has been properly made. Hungary, Poland, Spain and Turkey have no relevant legal provisions; Japan and Switzerland are similar, but their particular market cultures result in some non-statutory rights being given.

IV. Conclusion

The voluntary rules of international payment card networks still appear governed by the notion of the sanctity of private agreements, without a concept of the issuer's liability or responsibility to intervene in the event of failures in transactions between the merchant and the cardholder. Since the card network rules are flexible, the issuer can exercise discretion about when or whether to intervene in disputes and in practice many do. The issuer in such difficult situations is, however, faced with the dilemma of taking sides in a dispute involving parties to the same payment system arrangement in which the issuer benefits from both parties. There is therefore a natural tendency to caution.

Simultaneously, the legal regimes governing payment cards, where they exist in OECD Member countries, appear inadequate for equitable consumer protection in cross-border transactions. In fact, legal systems in many Member states are inclined towards the traditional approach which requires the cardholder to first make a good faith effort to reconcile and resolve disputes with the merchant. This

approach is easier in domestic than cross-border transactions, and in practice, most consumers do raise disputes with the merchant first, and many are successful. In some countries the issuer has a "second in line" liability for claims after such an effort has been made. Other national legislation contains a principle of connected lender liability which allows the cardholder to seek redress through the card issuer without first negotiating with the merchant, especially in cross-border transactions.

Some members of the credit card industry have argued for the exclusion of issuers from liability in transactions over which they claim to have no control. However, it is exactly the question of accepting more responsibility and exercising more control over merchants that forms the crux of the chargeback debate and which may help to encourage confidence in an international payment system. Market imperfections may correct themselves over time by a natural selection process of voluntary adjustments and survival, because an issuer or merchant who does not satisfy customers will be eliminated by competition. However, it is not certain how long such an adjustment will take to reach an equitable balance, nor what it will cost the consumer in the interim. Rapidly changing conditions and expansion of payment card use into cross-border and electronic transactions suggests the need for a speedy and coordinated response.

Since the card issuer is the initiator and controller of the credit cycle and its concomitant agreements, it is possible for the card issuer to underwrite the primary obligations of the merchant to the cardholder and to hold the former accountable. The perspectives of market regulators generally rest on the approach that there is a triangular commercial relationship between the card issuer, the cardholder, and the merchant which is similar in form to a joint venture. This situation is one whereby the card issuer provides credit to enable the cardholder to purchase goods or services from a merchant, whose negotiated agreement is in turn reflected in the commission payable to the acquirer, which will also have negotiated an interchange fee with the issuer (except where the functions of issuer and acquirer are combined by one organisation). Consumer protection legislation which incorporates the principle of connected lender liability in Denmark, Finland, Norway, the United Kingdom, and the United States seems to be based on the premise of an existing commercial partnership between the issuer and the merchant.

Redress mechanisms are essential to the preservation of market stability and growth. Card companies, recognising that satisfaction is derived not just from the intrinsic value of goods or services, but also from the conditions in which they were acquired and delivered, may be in the best position to deter misrepresentation and fraud by unscrupulous merchants. In the absence of a simple, fair, predictable and orderly mechanism for the redress of consumer grievances, consumers will not feel emboldened to venture into cross-border markets. If this happens, the benefits and opportunities of the emerging global marketplace will have been lost.

In order to take advantage of new trans-border opportunities, the OECD is bringing together card companies and consumer representatives to discuss the feasibility of a voluntary industry-driven code of conduct on chargeback procedures as an alternative to extensive regulation in this area. These procedures should be fair, enforceable and to the benefit of card issuers, cardholders and merchants alike. They should guarantee a level of consumer protection which is functionally equivalent to regulation, and be applicable to every payment card network in every country. Agreement on chargeback mechanisms would fortify consumer confidence in the global marketplace, while still allowing card issuers to compete in such areas as customer service, product development, acceptability and pricing.

Annex 1: CHARGEBACK MECHANISMS IN OECD MEMBER COUNTRIES

1. Austria

There are no existing chargeback regimes in Austria. The routine chargeback procedures and processes as stipulated in the rules and operating regulations of international payment card companies form the background for the cardholder and card issuer relationships with third parties such as merchants of goods or services. Compliance with the rules of the international payment card networks in regards to chargebacks are subject to the prevailing general contract terms between the Austrian card issuer and the cardholder.

If a credit cardholder complains to the card issuer that a credit card has been fraudulently misused by an unknown person, there is no basis for chargebacks to the cardholder. However, the liability of the cardholder is limited by contractual terms to ATS 1 000 or ECU 80 before a report is lodged, and thereafter any sum in excess of this amount would be charged back. The card issuer assumes responsibility for card recovery or cancellation and invalidation of authorisation for use of the card.

With regards to cross-border transactions, if a cardholder disputes a transaction with a merchant through the card issuer, the card issuer may refund the value of the credit to the cardholder's account. In the event that the liability of the cardholder is established, the bill is then again charged to the cardholder's account.

ATM cards are the most popular cards used in Austria, and chargeback-related disputes may result from the use of ATMs. This can happen in either domestic or cross-border instances where the ATM fails to execute a given transaction through some electronic default, but records the value against a cardholders account.

General legislation relied upon to resolve credit cardholder-related disputes with the merchant or card issuer includes the Civil Code, the Austrian Banking Act, the Data Protection Act, the Consumer Protection Act and the Penal Code.

2. Australia

Very little information is publicly available on the chargeback policies of the various payment cards in Australia. According to the Education and Programme Development section of Visa International, such information is considered proprietary and confidential. It is discretionary to members of the Visa network to decide what, when, where, and why information of such nature should be given.

Nonetheless, the Australian Trade Practices Commission, and the State and Territory Affairs Agency were able to provide some information on chargebacks. According to the Commission, anecdotal evidence suggests that most chargebacks occur in situations of suspected or proven card misuse rather than in situations relating to disputes over goods or services. Where a chargeback does not relate to a case of misuse, the process might be protracted. Chargebacks are more likely to occur if the cardholder alleges that goods were not delivered, rather than in cases disputing the quality or other attributes of goods delivered.

Payment cards and chargebacks in Australia

The use of payment cards as a means of settlement of accounts is growing in Australia. The vast majority of retailers of goods and services, including government departments, accept one or more payment cards as a means of payment. While the operation of payment cards is principally determined by the terms and conditions of contracts between the parties to the payment system, there are laws which are applicable to payment cards. These include the State and Territory Consumer Credit Acts, Consumer Credit Code, Contract Law, the linked credit provisions of the Federal Trade Practices Act, State and Territory Consumer Protection legislation, and State and Territory Credit Acts which are soon to be replaced by the Uniform Credit Code legislation.

Although card issuers design competitively different terms and conditions of contracts for their cardholders and accepting merchants, there are also voluntary codes which apply to the regulation of the use of credit cards. These voluntary codes are the Code Banking Practice, the Building Societies Code, the Credit Union Code, and the Electronic Funds Transfer Code of Conduct.

Accounts which are operated by use of plastic payment cards and personal identification numbers are subject to written contracts called the "Conditions of Use". The conditions of use limit the cardholder's financial responsibility, but in Australia, there is generally no mention of chargeback arrangements or rules for provision of chargeback procedures in the conditions of use which issuers routinely provide to cardholders. Chargebacks are normally covered in the card issuer's merchant agreements.

Chargebacks in domestic consumer transactions

In Australia, there is no law on chargebacks in the absence of misuse. Where misuse has occurred, there may be rights and obligations between the cardholder and the card issuer, or between the merchant and the merchant's acquirer. These rights and privileges do not necessarily command complementary action among the parties to the card payment system as in the chargeback process.

According to the Australian Trade Practices Commission, Section 73 of the Trade Practices Act provides for a "linked credit provider", or a connected lender, which has the legal effect of making the supplier (the merchant) and the financier (the card issuer) both liable in certain circumstances where a cardholder suffers loss or damage as a result of goods or services from a supplier on the basis of credit.

Section 73(1) also provides that if a consumer who has purchased goods or services on credit suffers loss or damage due to misrepresentation, breach of contract, failure of consideration or a breach of one of the implied warranties, if the financier (the card issuer) comes within the definition of a "linked credit provider", it will be jointly and severally liable with the supplier.

The effect of these pieces of legislation is that it provides a cardholder with a cause of action against a card issuer in some circumstances where a given transaction has failed. For example, if the merchant with whom the transaction was made had gone bankrupt at the time of the cardholder's dispute, the cardholder may possibly receive a refund from the card issuer.

Similar legal regimes exist in the uniform credit provisions of the State and Territory Credit Acts. The linked credit provider or the connected lender liability considerations do not apply to a majority of the credit card transactions.

However, the consumer has a statutory right under Section 75A of the Trade Practices Act to return unsuitable goods to the merchant. When goods purchased by credit cards are returned, merchants always insist that the cardholder should accept a refund to their credit card.

Remedies under the Australian Trade Practices Act.

Both the Commission and State and Territory consumer affairs agencies can initiate criminal prosecutions under the various consumer protection statutes as contained in Part VI of the Trade Practices Act. However, not all breaches of such statutes are criminal.

Injunctions

Under the Trade Practices Act, injunctions can be obtained to restrain the contravention or attempted contravention of the Act. Injunctions can also be obtained under State and Territory consumer protection legislation.

Ancillary orders

The Trade Practices Act and the State consumer protection statutes enable a court, at the request of a consumer, the Commission, or State and Territory consumer affairs agencies, to grant a wide range of orders varying the contractual arrangement between a consumer and a merchant. Such orders may include the payment of damages, an order directing work to be done, or a refund of money or return of property.

Voluntary chargeback rights

Provision of chargebacks are set out in the merchant agreements and agreements between participating institutions in card payment networks.

The merchant agreement signed with the card issuers leaves the issuer discretion to accept or reject some transactions. Rejected transactions are normally charged back. Such a situation would arise if the sales transaction is not valid, if the cardholder disputes the transaction for whatever reason, or if the cardholder asserts a claim for set-off or a counterclaim. Moreover, the chargeback policies of participating institutions can affect the interpretation and operation of the chargeback provisions in these agreements.

In some instances, participating institutions may have some informal arrangements which facilitate and effectively provide a credit to cardholders in cases of disputed transactions without activating the chargeback processes. Informal arrangements could even cover situations in which chargeback agreements do not exist. This could mean that the card issuing institution would bear the loss as either part of its customer care policy or simply as a matter of building good business relations.

Another voluntary consumer redress process is the Australian Banking Ombudsman scheme, which began operation in 1990. It is fully funded by the banks which have agreed to be bound by the awards of the Ombudsman. The banks consent to pay up to Aus\$ 100 000 as compensation to any customer who incurred damages through bank error. In effect, consumers of bank services who have any dispute with their bank may seek resolution through the Ombudsman's office, particularly if that dispute falls within the latter's jurisdiction.

Moreover, banks have adopted voluntary codes of practice which have implications for chargebacks. These codes are the Electronic Funds Transfer (EFT) Code of Conduct and the linked Code of Banking Practice. Under these Codes, the cardholder is not responsible for any losses which result from any of the following reasons:

- i. fraudulent or negligent conduct of employees of the financial institution or of merchants who are linked to the EFT system;
- ii. transactions initiated by forged, faulty or expired cards;
- iii. transactions initiated by the misuse of the card or PIN before its receipt by the cardholder.

Concerning sub paragraph iii, card issuers are cautioned against direct mailing of activated cards. Mere delivery of the card to the cardholder's address is not accepted as proof of receipt of the card. In the event of dispute, the burden of proof of receipt of the card in issue lies with the issuer.

If the cardholder notifies the card issuer of theft of the card or that the PIN had been compromised in some way, the cardholder is absolved of any liability from further transaction on that particular card.

In situations where a transaction has occurred before the issuer receives the cardholder's notification, then the liability of the cardholder will be determined by whether the cardholder was negligent or contributed to the loss. If the cardholder was neither negligent nor contributory to the loss of the card, the cardholder's liability will not exceed Aus\$ 50. The cardholder is liable to pay either the account balance on the card or the actual loss at the time of notification, whichever is less than Aus\$ 50.

The Australian Banking Ombudsman is particularly concerned with situations where cardholders are requested to sign blank sales vouchers or rental contracts which provide cover for the future payment of a specific contract agreement. In a dispute situation, the cardholder has difficulty in presenting a case for chargebacks because the cardholder had consented to be liable for additional charges. Such charges may spread over a wide area including taxes, insurance, or refuelling charges. The international operating regulations of payment card companies like MasterCard and Visa permit such multiple sales vouchers, but do not provide any protection for the cardholder if the original contract is disputed.

Chargebacks in international transactions

Payment cards which can be used in both domestic and cross-border transactions in Australia may be subject to the chargeback process irrespective of where the transaction occurred, although the applicable law of contract would vary according to the nature and terms of the relevant contracts.

If an Australian-issued payment card is used in a cross-border transaction which comes into dispute, the cardholder may approach the card issuer, who would initiate an investigation through the merchant's acquirer. The cardholder would be credited with the disputed sum if the claim is valid.

3. Belgium

In national and international transactions, the holder of a card is able to obtain redress directly from the merchant or turn to the courts when the dispute cannot be resolved in cases of complaints about delay in delivery, poor quality, or damaged products. Belgian law does not take account of the principle of connected lender liability and therefore, the holder of the card can only obtain the redress linked to the product with the expressed authorisation of the merchant. Nevertheless, if the dispute between the cardholder and the merchant stems from invoicing errors or potentially fraudulent acts, the cardholder is able to obtain redress through the card issuer.

Belgium does not have at its disposal the legal provisions regulating reimbursement except in the case of the loss or theft of a card. Article 61 of the Consumer Credit Law (revised in July 1992) envisages that, in the case of the loss or theft of the card, and excluding fraud, the consumer assumes liability for the misuse of the card until the time of notification of the loss or theft is made to the issuer. The liability has been limited to 6,500 Belgian francs by royal decree. After notification of the loss or theft, the issuer assumes the whole risk.

In cases where the consumer is guilty of grave negligence at the time of the loss or theft of the card, the risk assumed by the consumer before notification is limited to a ceiling of 32,500 Belgian francs, or half the total of the credit if this is greater than 65,000 Belgian francs.

4. Canada

Chargeback policy in Canada

There are no legal regimes governing the provision of chargebacks in Canada. Chargeback practices are established by credit card companies like MasterCard and Visa, which provide extensive guidelines to card issuers. Such guidelines are standard for all banks or credit companies which are participating in the payment card scheme. Monthly meetings are held by card companies to ensure that chargeback practices are uniform throughout the industry. To complement this activity, the Canadian Bankers' Association has a committee on credit card operations in which every financial institution is represented.

There are two types of chargebacks in Canada. First, there are routine chargebacks, which could arise from a situation where a cardholder who is dissatisfied with a given transaction follows the merchant's return policy. Second, there are non-routine chargebacks for unauthorised transactions and disputes of bill processing errors with the merchant. All non-routine chargeback disputes are subject to investigation. The card issuer will inform the merchant through the merchant's acquirer of a chargeback claim if the credit is over a minimum amount. Such information is irrelevant to the cardholder's receipt or non-receipt of chargeback.

No specific policy exists to deal with merchants with high volume of chargebacks. Credit card companies do not penalise companies which process large numbers of routine chargebacks. However, the card issuers do screen their card acceptors in order to minimise risks of exposure to the claims from cardholder and merchant transactions.

Some examples of circumstances in which chargebacks may be provided are listed below. It is noteworthy that in all of the seven cases used as illustrations herein, the cardholder needs to have registered a complaint to the card issuer within 30 days of receiving the credit card statement and not less than 90 days after the original transaction date.

Case 1

Chargeback reason: Unauthorised transaction

Description:

- i. Cardholder had no contact with the merchant and therefore did not authorise the purchase.

or

- ii. Cardholder had dealings with the merchant, but did not authorise purchase via payment card. The card number may have been given as a reference number only.

Possible action: Cardholder, on receipt of the billing statement, may call the issuer's customer service centre immediately to dispute the transaction. The cardholder would need to state his or her name, card number, transaction amount and the name of the merchant as it appeared on the billing statement.

Possible results: The card issuer will initiate an investigation. If the card issuer determines the transaction to be unauthorised, it will request the cardholder to send a signed affidavit to support the claim. On receipt of the affidavit, the disputed value of the transaction may then be credited to the cardholder. If necessary, the cardholder's card can be withdrawn and replaced with a new card and PIN number.

Case 2

Chargeback reason: Processing error

Description:

- i. Cardholder authorised purchase on credit card, but wrong amounts appear on the statement.

or

- ii. Return/reversal processed as a purchase or purchase processed as a return/ reversal.

Possible action: The cardholder should contact the merchant, identify the problem and ask for a correction. The cardholder should also obtain a copy of the correcting voucher.

If the cardholder is not satisfied with the merchant's response, the cardholder may contact the card issuer. The cardholder would need to state his or her name, card number, the transaction value, the name of the merchant as it appeared on the statement and a copy of the sales draft as proof of the transaction.

Possible results: After an investigation by the card issuer, if the transaction is determined to be incorrect, the issuer will request the cardholder to send a copy of the transaction receipt. The difference may then be credited/debited to the cardholder.

Case 3

Chargeback reason: Goods or services charged to the card but not received

Description: Cardholder ordered goods or services and did not receive adequate value from the merchant within the defined period of time.

Possible action: The cardholder may contact the merchant directly to find out what has happened to the order. If the cardholder's good faith effort with the merchant fails to yield desired results, the cardholder may contact the card issuer.

Possible results: If the cardholder's claim is validated after an investigation, credit will be restored to the cardholder's account. In certain cases, cardholders who purchased services from travel merchants in Ontario, Quebec, or British Columbia which have gone bankrupt are referred to the appropriate provincial funds for possible refunds.

Case 4

Chargeback reason: Goods or services are charged to the card and received, but not as described

Description: Goods received do not fit description provided by merchant. They may be of inferior quality, defective, or an unacceptable substitute from the items described by the merchant.

Possible action: The cardholder may contact the merchant and make arrangements for the return of the goods and refund of the cost of the rejected goods. Subsequent to contact with merchant, the cardholder should return the goods if it is required by the merchant, and state in writing the desire for refund. The cardholder should retain proof that the goods were returned and be prepared to state how the goods did not conform to original specifications.

Possible results: First, it is essential that the cardholder be aware of the merchant's return policies. Second, if the good faith effort with the merchant fails, the cardholder may contact the card issuer. The issuer would refund the disputed amount only if the cardholder's claim had been validated by an investigation.

Case 5

Chargeback reason: Cancelled recurring transactions

Description: Cardholder continues to be billed for a recurring charge after cancellation notification has been given to the merchant or service provider (for example, subscription to publications or social clubs).

Possible action: First, the cardholder may be restricted by the terms of the contract between the cardholder and the merchant. Second, the cardholder must have given the merchant adequate notification of cancellation. Third, the cardholder may contact the merchant and find out why the billing is still recurring in the cardholder's periodic statement of account. If the merchant is unhelpful, the cardholder may contact the card issuer, explain the nature of the dispute, and provide proof of cancellation.

Possible results: After an investigation, if the cardholder is shown to have a genuine claim, the transaction amount may be credited to the cardholder's account.

Case 6

Chargeback reason: Duplicate billings for a single transaction

Description: The cardholder had been charged more than once for a single transaction.

Possible action: The cardholder must contact the card issuer's customer service centre immediately. The cardholder will need to state the card number, name of the cardholder, transaction amount and name of the merchant as it appeared on the statement.

Possible results: If the card issuer's investigation validates the cardholder's claim, the appropriate credit will be refunded.

Case 7

Chargeback reason: Credit voucher not processed

Description: Following a commercial transaction between the cardholder and the merchant, a credit voucher was issued by the merchant. However, the credit was not processed on current or previous statements.

Possible action: The cardholder should be aware that credit vouchers may take up to 45 days to appear on a statement. If 45 days had elapsed since the date of the credit voucher, the cardholder should contact the card issuer with a copy of the credit voucher. The cardholder should ensure that the credit transaction has not been processed on any previous statements.

Possible results: The card issuer will initiate an enquiry and refund the appropriate sum to the cardholder if the investigation proves the claim as valid.

5. Denmark

Domestic transactions

Cardholders in Denmark are protected by several laws, among which the Payment Cards Act and the Act on Credit Contracts are the most important.

The latter contains a principle of connected lender liability, which applies where a purchase has been financed by a credit given to a consumer on the basis of an agreement between the lender and a merchant. The consumer may make the same claims against the lender as against the merchant. First, however, the consumer must have made an unsuccessful complaint to the merchant.

The question as to what extent the principle of connected lender liability applies to credit cards is a matter of contention between the Consumer Ombudsman and the issuers of the major international credit cards, which will have to be clarified by a court decision. However, some card issuers in Denmark do assist their cardholders by mediation between the cardholder and the merchant in disputed transactions involving use of credit cards.

The Payment Cards Act limits the cardholder's liability when a card has been misused by a third party, and places the burden of proof with the cardholder if the cardholder disputes a transaction. The Act implies maximum liability for the cardholder of DKK 1,200 (appr. 165 ECU) if the secret PIN code has been used with the card. Apart from this, the law limits the cardholder's liability to DKK 8,000 (appr. 1,100 ECU) if the cardholder has acted in a "grossly irresponsible" manner, or if the cardholder has failed to report the loss of the card immediately.

Distance selling where transactions are carried out on the basis of the card number, which is not secret, causes special problems. Anyone who knows the card number is able to place fraudulent orders, and merchants are also able to charge the cardholder's accounts without sending the ordered merchandise. At present, the Consumer Ombudsman is negotiating general guidelines with the card issuers about the procedures which should be followed in connection with distance selling.

6. Finland

Finland's legal regimes include the Consumer Protection Act and the Guidelines on Television Shopping. The Consumer Protection Act recognises the "cancellation rights" of the credit cardholder regarding domestic transactions.

The Consumer Ombudsman has interpreted the principle of the consumer's right to withdraw from a transaction as extending to cross-border transactions, especially in relation to direct marketing. The Guidelines on Television Shopping appear to have been designed specifically to address recurrent problems which arise from distance selling and mail order marketing.

The Guidelines stipulate that commercial propositions should provide adequate information on the service being offered, the identity of the merchant, the price of goods, the conditions and time of delivery, clear instructions for placement of orders, and clear statements regarding the consumer's rights and time limitations for cancellation of orders. In the context of credit card transactions, the Guidelines further provide that cancellation periods allowed in mail order sales should be taken into account in the contracts between credit card companies, through the card issuers and merchants, so that products will not be charged to the consumer's account before the end of the cancellation period.

This provision is chargeback-related and could apply where a cardholder admits to having entered into a contractual commitment with a merchant. If the cardholder receives a product and finds it deficient or non-conforming to the merchant's description, the product can be returned within the cancellation period without the cardholder's account being debited. In this case, the credit card has only served as product value security to the merchant during the trial period.

If the cardholder disclaims a transaction or has no prior knowledge of the origination of a transaction for which the cardholder would be held liable, the principle of connected lender liability, as enshrined in the Finnish Consumer Protection Act (CPA:13) would apply. It holds that "where a consumer has the right to refrain from payment or to receive reimbursement, damages or other payment in money from the seller or the party performing the service on the basis of a breach of contract of the latter, this right shall apply also in respect to the creditor who has financed the purchase or service".

The Guidelines on TV Shopping drew from this provision by including chargeback-related provisions for domestic and cross-border transactions. However, the law restricts the issuer's liabilities to the voucher value paid by the cardholder.

7. France

The legal principle governing payments in France is "payment is irrevocable". In the chargeback regime this has translated into a situation where chargebacks are provided for billing errors and merchant errors, but they are not provided for product-related disputes. Thus, if a cardholder fails to receive a product or is dissatisfied with the product, the only recourse is to resolve the dispute with the merchant directly or in court.

8. Federal Republic of Germany

In the Federal Republic of Germany, there is no specific legal regime governing the conditions under which a cardholder may require that the card issuer returns value to the cardholder. In Germany, "chargeback" is a technical banking expression of the substantive legal question of what payment claims

the card issuer has against the cardholder. Under the relevant general legislation, risks related to the misuse of a card (theft, loss) are borne by the card issuer.

The general terms and conditions concerning the use of cards, however, stipulate that the cardholder bears the risk unless the issuer is notified of the theft or loss of card without delay, and that the cardholder is liable to a limited extent (approximately DM 100) for damages arising from the misuse of the card before the loss has been reported. This widely accepted rule in the general terms and conditions of card issuers is not regarded as improper in Germany.

Non-delivery of goods, delayed delivery or defective goods paid with a credit card do not entitle the cardholder to refuse to refund the respective sum to the card issuer. Although Section 9, paragraph 3 of the Consumer Credit Act provides in the case of credit-based transactions that the consumer may under certain conditions utilise rights relating to purchases to offset claims for payment by the lender, there is agreement that this does not basically apply to payments with credit cards. There is one exception: the cardholder may refuse to pay the respective amount to the card association where the card is issued by an association linked financially with the merchant in terms of capital, or within the framework of a corporate group, or acting for the merchant as a service company (customer credit cards).

In the Federal Republic of Germany, there is no difference in the treatment of domestic and cross-border payments by credit cards.

9. Hungary

There are no laws relating to chargebacks in Hungary. The market for credit cards is still in a developmental stage, and the use of card payment networks for settlement of transactions is not very widespread.

National card associations do exist. Banks and other financial institutions or credit organisations which apply for membership of any of the payment networks must first obtain the permission of the Hungarian National Bank (MNB). The MNB as a national financial regulatory institution does not exercise much influence over the operations of international payment card services.

The development and review of rules and regulations for the operations of national and international payment card associations, including networks systems monitoring and management, clearing and settlement of accounts, and transaction authorisation, is the responsibility of Giro Bankkartya Rt (Giro Bank Card Ltd.) The Giro Bank is owned and controlled by Hungarian banks, and provide services to domestic card issuers and cross-border acquirers.

Chargebacks in Hungary

Although the Giro Bank claimed that they comply with the rules of international card companies in relation to chargebacks, the Hungarian Consumer Protection Superintendence (HCPS) stated that transactions charged and settled by use of financial transaction cards cannot be cancelled. The HCPS explained that when an acquiring bank passes on the documents regarding a cardholder transaction to the card issuing bank, the charge must automatically be recorded against the cardholder's account. This is purely routine procedure. But what happens if a dispute arose, especially if the cardholder disclaims a transaction or the processing of certain aspects of such transactions?

Domestic transactions

Giro Bank found that the collective position of its members was one of non-participation in dispute resolution involving a cardholder and a merchant. This discovery contradicted its previous claim that its Hungarian banks abide by the operating rules and regulations of international payment card networks.

The prevailing situation in Hungary according to Giro Bank is that in the contractual "agreement between the card issuer and the cardholder they (the banks) regulated that the bank does not take part in the dispute aspect between the cardholder and the retailer". The cardholder is under obligation to seek redress for disputed goods or services directly with the merchant, and probably resort to court proceedings in cases where informal face-to-face dispute resolution seems difficult. This scenario depicts situations affecting cardholders and other parties to a particular card payment network interacting in a restricted domestic environment.

Cross-border transactions

In the case of cross-border transactions, uncertainty remains about the dispute resolution procedures between the card issuer and the Hungarian merchant's acquirer. The Giro Bank acknowledged the need to review its redress options relating to chargebacks for credit cardholders. Giro stated that it is currently working to develop its consumer protection policy on the card payment networks in Hungary.

10. Japan

The legal regime governing the use of credit cards in Japan is the Instalment Sales Act No. 159 of 1 July 1961 which was amended in 1984. In principle, the Instalment Sales Act Section 30-4 enables the cardholder in a consumer credit purchase to raise the same claims against the creditor other than the supplier, as against the supplier himself. Chargebacks are provided under card association rules. The card issuing members of Japanese card associations are mainly credit companies, not banks.

Domestic transactions

In domestic transactions in Japan, chargebacks can be provided in circumstances where cardholder disputes are related to billing errors or merchant errors relating to potential fraud, non-authorized transactions, counterfeit transactions, non-receipt of goods or services, or receipt of merchandise which is not as described in the offer of sale. In some situations, as in cases of defective merchandise, the credit cardholder would need to first of all negotiate and resolve the dispute directly with the merchant before chargebacks can be provided by the credit card issuer.

Cross-Border transactions

In Japan, international direct marketing is still in its developmental stage, and direct mail orders and home shopping are not widespread. Most Japanese buy on-sight after confirming the quality of the goods, especially when on trips abroad. This approach minimises or eliminates disputes over international transactions.

11. Korea

In Korea, the Instalment Sales Act of 1991 gives chargebacks a limited mention. This legislation enables a cardholder to forbid the card issuer to pay a merchant any outstanding instalment balance on a given transaction. This can apply if the agreement was concluded on the basis of payment by instalment and the value of the product in dispute exceeds W 200 000. The cardholder can then seek appropriate redress in terms of replacement or return of rejected goods, or refund for credit. Outside this legal framework, if a credit cardholder is dissatisfied with a product or service, the only redress option is for direct resolution of the dispute with the merchant.

Korean card associations comprise 31 banks, with credit card companies and six value-added networks. In domestic and cross-border transactions, card associations recognise chargebacks involving fraud and billing errors from either the merchant or the issuers' billing processors, but excludes product-related disputes like non-delivery, late delivery, mistake, or damaged goods.

The legal principle governing payment cards in Korea is that payment is irrevocable. While exceptions can be made at the discretion of the issuer, generally the cardholder is expected to resolve any product-related dispute directly with the merchant.

12. Mexico

Mexico has laws governing the operations of credit institutions, but none is chargeback-related. These include the General Laws on Titles and Credit Transactions, and Federal Consumer Protection Laws. Mexico also has rules and regulations binding all companies issuing and administering credit card accounts. But none of these legal regimes include the principle of connected lender liability. The card issuer will not get involved in product-related disputes, except for cardholder complaints of fraud, theft or loss of credit card.

Current Mexican legislation does not allow the consumer to suspend payment as a means of demanding attention to a claim about the quality of performance of goods or service purchased with a credit card. All such claims must be made directly to the supplier or manufacturer.

In Mexico, when a cardholder makes a purchase which requires payment by instalments, if the cardholder decides to cancel the transaction, the chargeback process involves only the cardholder and the merchant. Both supplier and consumer must reimburse each other for any benefits received.

13. Norway

Legislation on consumer credit purchases

The legal regime governing the use of credit cards in Norway is the Consumer Credit Act No 82 of 21 June 1985 which was amended on 1 January 1994 according to EEC Directive 87/102.

According to the Consumer Credit Act Section 8, the cardholder in a consumer credit purchase may raise the same claims against a creditor other than the supplier, as against the supplier himself. However, the cardholder must give notice to the supplier according to the Sale of Goods Act, as well as to the creditor within reasonable time. The liability of the creditor is limited to the amount received from the buyer in connection with the purchase.

The Consumer Credit Act applies to purchases of moveable goods on credit, credit account agreements, hiring of moveable goods and supply of consumer service on credit. The Act is mandatory in relation to consumer contracts.

The rule in Section 8 on connected lender liability applies to credit cards and to charge cards, provided that the time between use and settlement is not so short that the arrangement cannot be defined as providing credit. The Consumer Credit Act does not apply to pure debit cards.

Voluntary chargebacks

Beyond the scope of the Consumer Credit Act, there are no arrangements based on agreements in which the card issuer undertakes responsibility for actions against the supplier in case of breach of contract. On the contrary, a number of card issuers, whose activities fall under the Act, have declined to give specific reference to the lender liability issue following from Section 8 of the Act. Other card issuers limit the time between use and settlement to the effect that the element of credit becomes negligible, and consequently the Consumer Credit Act may not be applied as mentioned above.

Legislation on unfair standard contract terms

The Consumer Ombudsman has the power under Section 2(a) of the Control of Marketing and Contract Terms and Conditions Act No. 47 of 16 June 1972, to take action against unfair standard contract terms. The Ombudsman has conducted negotiations with all card issuers in Norway on a model for the contract between cardholder and issuer. The various organisations of card issuers have accepted the arrangements. The Ombudsman has required that the issuers of credit cards and charge cards include specific reference to the Consumer Credit Act in the contracts. The Ombudsman is at present conducting a study on how this requirement has been followed by the card issuers.

Chargebacks in particular situations

According to the requirements of the Consumer Ombudsman, a cardholder who disclaims a transaction where there is neither a request for signature nor a PIN code may request that the disputed amount is charged back to the account. The burden of proof then lies with the card issuer. This applies to all payment cards, including debit cards.

14. Poland

The consumer redress options in Poland are complex in nature because each Polish bank has its own internal rules and regulations which contractually bind the card issuer and the cardholder. There are no laws or accepted legal principles in the Polish legal system wherein the term "chargeback" is defined.

According to the Polish Anti-Monopoly Office, the scope of these varied internal regulations covers the circumstances and conditions in which authorisation "may or must" be given for chargeback processes. Such flexibility is a result of a legislative gap in consumer protection in Poland. The Polish Ministry of Finance had previously prepared draft legislation concerning payment by credit cards, but the provisions of the Act were not accepted.

Cross-border transactions

The Polish card issuing and acquiring banks adopt the operating principles of international card companies like MasterCard-EuroCard and Visa.

According to Kredyt Bank S.A., Polish cardholders have a right to withhold payment on international and domestic transactions where they are unable to reconcile item to account. In this situation they can request their bank to investigate or request or refund.

PolCard explained that the granting of chargebacks depends on the results of the investigation. If the claims are genuine, the credit cardholder's account is credited. But if the claims are "unjustified or fail to meet. . . chargeback procedure requirements", the cardholder is charged a fee which generally ranges between US\$ 20 - 40, depending on the bank. The cardholder could avoid this fee by first requesting to see a transaction confirmation slip, which enables the cardholder to ascertain the validity of the transaction.

15. Portugal

There is no chargeback-related legislation in Portugal. However, there are statutes like Order No. 360/73 of 23 May 1973, which laid down general rules governing the issuance of credit cards, and was subsequently amended by Order No. 401/77 of 4 July 1977 stipulating charges for late settlement of bills resulting from the use of credit cards. Order No. 1042/81 of 4 February 1981 reduced the debt settlement time from 30 to 20 days from the date of receipt. It would seem like the laws were drawn up to protect card payment networks from consumer abuse, and not the reverse.

16. Spain

Until 1988, when the European Commission issued a Recommendation, there was no legislation governing the payment card systems in Spain.

Thereafter, there has been credit finance and consumer-related legislation, namely (i) Article 10 of the General Act on Consumer and User Rights which contains clauses prohibiting the card issuers from including clauses that are contrary to good faith in their agreement with cardholder or other parties to the payment network; (ii) the Act on Credit Institution Discipline and Intervention, and Article 48.2 of the Act of 29 July 1988 which empowered the Ministry of Economy and the Treasury to regulate the activities of credit institutions; (iii) Point 7 of the Ministerial Order of 12 December 1989 which regulates credit institution interest rates, commissions, operating rules, client information and publicity; and (iv) the Bank of Spain Circular No. 8 of 7 September 1990 which expanded on the provisions of the Order of 12 September 1989 regarding bank contracts with clients.

Notwithstanding the above legislation, there is inadequate information regarding domestic and international redress options available to payment card holders in Spain.

17. Sweden

Chargebacks are not specifically addressed in Swedish laws, but consumer credit-related legislation does exist. The legal regime is the Consumer Credit Act. According to the National Swedish Board for Consumer Policies, the Consumer Credit Act incorporates the principle of the connected lender liability in the event of disputes which occur as a result of either domestic or cross-border transactions.

Domestic and cross-border transactions

The Swedish Consumer Ombudsman states that section 16 of the Consumer Credit Act protects the credit cardholder from abuse by other parties to a given transaction because in the event of dispute, "the cardholder has the equal redress rights against the creditor as to the merchant".

Therefore, there is a possibility that if a cardholder, for any number of reasons, disputes the validity of a transaction, the option exists for a one-to-one resolution, either face-to-face or by direct correspondence between the cardholder and the merchant, or the cardholder can request the card issuer to chargeback the value of the transaction to the merchant through the acquirer. The card issuer, in recognition of its equal liability in the credit transaction, or simply out of good business policy, will mediate with the merchant to resolve the cardholder's claim.

If the card issuer is unable to charge back the value of the disputed transaction and it also accepts liability over the matter in contest, the card issuer is not required by law to pay the credit cardholder any sum in excess of the value of the contested transaction as indicated on the payment voucher.

18. Switzerland

In Switzerland, each chargeback case is considered to have unique characteristics and is treated differently for resolution based on the strength of the cardholder's claim. That is irrespective of whether the dispute relates to products, billing or fraud. Therefore if a dispute arises between a merchant and a credit cardholder the chargeback principle may or may not be applied as a matter of privilege.

According to the Consumer Ombudsman, the Swiss banks claim to apply the same standards world-wide, but provided no case instances of conditions under which the banks would intervene on behalf of the cardholder. Card issuers took the view that the cardholder was responsible for noting the rights granted in the provisions of the contract with the merchant for the provision of goods or services.

The use of payment cards for the settlement of cross-border transactions is not widespread in Switzerland. According to the Bureau de la Consommation, the payments for distant purchases are generally not made on credit cards because the Swiss consumer would often prefer to pay for bills by postal order. International mail order companies prefer to avoid the problems of Swiss customs and excise duties by establishing local subsidiaries in Switzerland. This also minimises the chances of cross-border chargeback related disputes which could be associated with the use of credit payment cards.

19. Turkey

No national legislation exists governing the use of payment card systems in Turkey, but other related legislation and a mechanism referred to as the provisions of an "expert report" are relied upon in courts to adjudicate disputes arising from the use of credit cards. There are also no broad legal traditions to which banks or other financial institutions which issue international payment cards must abide, except the rules laid down by the Interbank Card Centre (BKM).

BKM was founded by a groups of Turkish Banks in 1990, and now provides services to 27 members. Its membership is restricted to banks formed in accordance to the Turkish Banking Act and which are members of one or more international payment card networks.

The rules and operating regulations of the BKM supersede rules formulated by the international card payment networks. The BKM provides support and services for MasterCard and Visa credit and debit cards, while performing similar functions for private label cards owned by Turkish banks. The BKM regulates the Turkish payment card market and designs redress options according to the domestic needs of its members.

An arbitration committee exists within the BKM to resolve disputes which cannot be resolved through the routine chargeback processes as provided to cover international or domestic transactions. These chargebacks could simply be the kind that arise between a merchant acquirer and an issuer rather than between a cardholder and a merchant, both of whom could have contested issues which are product-related.

Recent developments in Turkey suggest that legislation which could cover chargeback rights may be enacted in Turkey soon.

The Banking Association of Turkey and BKM members have submitted a draft legislation for review and ratification by Turkish legislature. According to the BKM, "the new draft legislation contains no provision conflicting with the current chargeback policies set forth by MasterCard and Visa".

20. United Kingdom

In the United Kingdom, payment card issuers are members of one or more of the international and domestic card companies. Such dual memberships, with often dual (home and abroad) rules and regulations relating to procedures and processes for chargebacks, may create a climate capable of intimidating the cardholder, especially in matters regarding disputes.

However, section 75 of the Consumer Credit Act of 1974 protects the credit cardholder. The law holds that where a credit cardholder had a transaction with a merchant relating to the provision of goods or services which were paid for by use of credit card, in the event that such a transaction is disputed by the cardholder because the merchant misrepresented or breached the contract, and if the disputed transaction exceeds £100 but is no more than £30,000, the cardholder can make similar claims against the card issuer as against the merchant.

The underlying principle of connected lender liability in Section 75 not only guarantees the cardholder in domestic and international transactions (whether in face-to-face or in direct marketing) but helps to facilitate the processes for chargebacks by spreading the burden of risks among the parties to the card payment network.

In domestic matters, there is complementary legislation which could help minimise the possibilities of product related disputes arising from transactions. The Sale and Supply of Goods Act, which became law on 4 January 1995, gives consumers greater opportunities to reject unsatisfactory goods. This means that goods displayed or offered for sale or supply must be of a particular guaranteed quality and would need to be delivered to the consumer in like manner whether in face-to-face transactions or in remote purchasing as in direct marketing.

In May 1995, the Office of Fair Trading (OFT) issued a second report which followed public consultations on Section 75 of the Consumer Credit Act 1974, which proposed that:

- i.* credit card issuers should remain jointly and severally liable with suppliers for breach of contract or misrepresentation by suppliers but that claims against issuers should be limited to the amount of credit involved in the transaction. Currently, the issuers' liability is unlimited;
- ii.* for the upper and lower limits for Section 75 to apply, it should be defined in terms of the amount of credit involved in the transaction rather than the cash price of the item; and
- iii.* the lower limit should remain at £100 and the upper limit should be the same as the upper monetary limit for regulated consumer credit agreements which is currently £15,000 but is proposed to increase to £25,000.

The proposal is expected to be implemented soon. Card issuers have agreed, with immediate effect, to meet claims relating to cross border transactions, on an ex-gratia basis. This voluntary agreement will run until 31 December 1996 unless the legislation is changed in the interim period.

21. United States

There are a number of State and Federal statutes relevant to the chargeback process in the United States. While these statutes may vary slightly, they place responsibilities on credit card companies regarding product failures which result from transactions between merchants and cardholders. Such liability cover three situations: non-delivery of goods, defective goods and goods not matching their catalogue description. However, the chargeback rights provided by the card associations often exceed these legal requirements.

On the Federal level, the Truth in Lending Act (TILA) requires credit card companies to investigate complaints about "billing errors" from a cardholder within 60 days from the date of the first billing statement. Billing errors are defined to include non-delivery of goods or services, goods or services which are not acceptable to the consumer, or goods or services which do not match the description of offer. Credit card companies are also required to acknowledge receipt of cardholder's written notice of dispute within 30 days or to resolve the dispute within two billing cycles or 90 days, whichever is less.

Disputes which relate to the quality of goods or services, or goods which are defective, are also governed by different sections of the TILA and its implementing regulation, Regulation Z. When a merchant fails to resolve a dispute satisfactorily, after a good faith effort by the cardholder, the cardholder may then assert claims and defences which arose out of the disputed transaction to the card issuer. If the dispute is resolved in favour of the cardholder, the card issuer must credit the cardholder with the value of the disputed amount without any surcharges.

The TILA also limits consumer liability to US\$ 50, or less if a lost or stolen card is reported before unauthorised charges are made, and allows credit card users to delay payment if they dispute billing errors by contesting them in writing within 60 days after receiving the bill.

Nonetheless, protection under the connected lender liability provisions of Regulation Z is significantly limited. First, the amount of the credit transaction in dispute must exceed US\$ 50. Second, connected lender liability does not apply to the extent that the cardholder has paid the disputed charge. Third, the transaction must be made within the cardholder's state or within 100 miles of a cardholder's mailing address. Where a transaction "occurs" for purposes of this geographic limitation depends on state law. Thus, a cross-border transaction conducted by telephone from a cardholder's residence may or may

not be covered, depending on whether state law deems the transaction to occur at the consumer's location or at the merchant's.

22. European Union

European Commission Recommendation No 87/598/EEC of 8 December 1987 focuses on the interoperability of cards between EU Member states, and contains a number of basic principles and objectives concerning language used in card contracts and data protection. It is primarily concerned with relations between card issuers and merchants, rather than on the relations cardholders may have with these parties. The Recommendation is a non-binding instrument, and EU Member states have taken few concrete measures to promote the Recommendation's objectives.

European Commission Recommendation No 88/590/EEC of 17 November 1988 concerning payment systems, particularly the relationship between cardholder and card issuer, is designed to establish minimal common standards governing the terms and conditions of these cards by issuers, other financial institutions, and merchants. The scope of this provision is wide and covers all payments by cards, as well as cash withdrawals and all associated operations involving any electronic device or electronic payment system. The Recommendation is a non-binding instrument, and only Denmark has adopted rules following this model.

Provisions dealing with redress include limiting cardholder liability except in cases of extreme negligence or fraud (Section 4.2), a requirement for card issuers to maintain sufficient records for errors to be traced and rectified (Section 6.1), placement of the burden of proof on issuers in cases of unauthorised electronic fund transfer (Section 6.2), and limitation of cardholder liability in cases of loss or theft (Sections 8.1 - 8.4).

Annex 2: THE EVOLUTION OF PAYMENT CARDS

Although cash remains the most popular means of settlement of transactions, the payment card industry presents an option which is often preferred for the benefits it affords to consumers. The United States was the first to enter the modern payment card industry when, in the 1920, its departmental stores introduced and issued *credit coins*.

Credit coins were a loyalty scheme which enabled loyal customers of a select chain of stores to purchase merchandise on credit from the appropriate stores. These coins were differentiated from other means of payment by impressions made on the coin to identify the issuing merchant's name and the coinholding customer's account number. This service helped to retain the merchant's loyal customers through the privilege of credit and the creation of a financial convenience for the customer. In turn, this financial arrangement increased the merchant's turnover by repeat purchases. Storecards are the natural descendant of these credit coins.

The success of the credit coin schemes encouraged the development of the credit market beyond retailers to international payment card companies. By 1950, Diners Club had launched its own credit plan and transformed the market by the introduction of plastic cards rather than coins. The plastic cards soon redefined the relationship between banks, merchants and consumers who used the payment scheme. The American Express Company joined the payment card market in 1958, with Carte Bancaire following in 1967. Visa International evolved from Bank Americard while its ancillary company, Nation Bank Americard Incorporated, became Visa USA. Greater competition was added to the payment card schemes market by the entry of Mastercard and the Japanese Credit Bureau. Various national card schemes were introduced; some of these have become assimilated to one or other of the major international brands, while others have remained independent. Continuous technological innovations and a widening market acceptance have resulted ever since.

Debit cards were introduced in the late 1970's to fill a niche in the consumer market left untouched by the credit card schemes. Debit cards primarily offer a cardholder the convenience of not being required to pay with cash, as well as providing a record of the transaction. Debit cards differ from credit cards in a number of ways. Debit card holders authorise the issuing card company to fully settle the outstanding balance at the end of the billing period by automatically drawing funds from the cardholder's bank account. Credit cards, in contrast, may be a source of unsecured consumer credit if they allow the cardholder to carry a revolving balance beyond the immediate billing period into succeeding periods.

The merchant at the point of sale, being unaware of the credit or debit mode of the card, except where the cards' brand name distinguishes them as such, is simply concerned that the transaction be within authorised limits and that the cardholder is properly identified with an authentic card. The legal implication of this distinction is that most national credit legislation protects the designated credit cardholder, and the debit cardholder is left to fend for himself.

For issuing companies, the legal difference between a credit and debit card are only the period payments and the security arrangements. But the financial incentives and risks differ radically between the two cards. For debit cards, issuers charge a fixed annual fee, and immediate settlement of outstanding balances reduces risk. Credit cards, however, are often issued without charge, and the interest charges on unpaid balances constitute a significant source of issuers' revenues.

A recent study, *Statistics On Payment Systems in The Group of Ten Countries* (1994) by the Bank For International Settlements, reveals that the market penetration of credit/debit cards per 1,000 inhabitants is highest in Japan with 1,769; Sweden 1,309 and the United Kingdom with 876. Figures for the United States were unavailable. In 1991 there were over 270 million Visa cards in circulation worldwide. These cards could be used in at least 9 million outlets in 187 countries with commercial transactions being possible in about 23 different currencies. The market has continued to grow since these statistics were compiled. In the United Kingdom for example, there were 84 million plastic cards in the wallets and pockets of consumers by 1993. These were used in about 1,450 million purchases within the United Kingdom alone. According to the *European Card Review* (1994), at the end of 1993 there were an estimated 162,199,000 debit cards (excluding domestic private label cards) in use in Europe. The domestic debit card schemes have 108,480,500 cards in issue. The top ten global card markets each have an annual average transaction value over US\$ 24.68 billion.

Annex 3: PREPAYMENT CARDS

1. Introduction

Prepayment cards, sometimes called "stored value cards" or "smart cards", are cards whose credit value is paid in advance by the cardholder. Common examples are telephone cards, laser printing cards, and other service cards which have low unit charges. Some of these prepayment cards have magnetic strips which are reloadable or rechargeable, while others are not capable of these functions and are therefore disposable after use. The monetary value of any prepayment card will diminish with every transaction made by the cardholder.

Further, not all prepayment cards are personalised to a cardholder. Except for the brand name of the card issuer, some prepayment cards do not bear the name of their owner, and the cardholder is not required to prove his identity before making payment for transactions. This is particularly true for cards issued by service providers like telephone or photocopying companies. Such companies and their cardholders are the only parties in the payment system. Also, the technological design of their payment arrangement allows for anonymity of transactions. If someone walks into a store and buys a telephone card worth £10 for cash, there may be no record of the transaction nor of the subsequent use of the card. In the event of dispute, the cardholder often accepts the loss because the transaction value is often too small to encourage litigation against the card issuer.

The issue of a transaction record could be a concern for consumers using prepayment cards to settle larger cross-border transactions, and cardholder anonymity may present unique challenges for discouraging fraud or card misuse, particularly in the case of electronic transactions. While issues relating to the regulation of prepayment cards is beyond the scope of this project, the OECD Committee on Consumer Policy hopes that the principles established by the payment card industry can be extended to prepayment cards, to ensure consumer confidence in appropriate redress mechanisms.

2. Types of prepayment card

There are many prepayment schemes either in general use by the public or still at the developmental stage. Versions of prepayment schemes include Cybercash in Austria, MisterCash in Belgium, Danmont in Denmark, Cartes Bancaires in France, PostCards in Switzerland, Mondex in the United Kingdom, and Digicash in the United States to mention but a few. These schemes adopt two distinct approaches in the creation and use of electronic cash.

Some prepayment systems have adopted smart card technology to hold and use electronic cash in transactions; this is the case with Mondex and PostCards. However, the creation and use of electronic money is not dependent on payment card technology. For example, Digicash and Cybercash are intended to be used for computer screen-based transactions. The computer network companies provide servers which co-ordinate the flow of information on merchants and the means of payment on, for example, the Internet.

Consumers who have a store of value with the electronic money issuing companies like Cybercash can draw on their personal accounts in payment for transactions carried over the computer network. On the other hand, traditional credit cards are still valid alternatives. Card numbers can be freely given over computer networks provided there are adequate encryption techniques to protect the security of

this information. Purchases from merchants are billed to the cardholder's account after decrypting the encrypted card numbers or PIN. However, software with strong cryptographic functions is still subject to United States export control, and there appears to be no generally accepted alternative for world-wide use.

Carte Bancaire, and Danmont are advanced generic credit cards which have integrated computer chips to process transactions. PostCards in Switzerland can serve dual functions, depending on the choice of either the cardholder or the issuer, and may be used either as a debit card or as a prepayment card. If used as a debit card, the cardholder requires a PIN. No PIN would be required for its prepayment function. Mondex can only be used as an electronic cash card and is more "cash-like" than most other prepayment schemes. It therefore raises some issues in a particularly sharp form, and for this reason it is discussed more fully below.

3. Electronic cash

Mondex does not lend itself to classification as a debit, credit, or charge card. Transactions with it do not need to pass through a bank, which therefore need have no more record of them than of a purchase made with traditional cash. The issuers of Mondex cards therefore argue that they cannot be held liable for failures in transactions involving the use of their cards. An analogy can be drawn between a commercial bank which issues cash on behalf of the state bank and an issuer who issues an equivalent amount of electronic cash which is limited to the value of a customer's account at any point in time. Both issuers of electronic cash and fiscal cash perform a similar function. Therefore promoters of electronic cash cards make claims to *carrier protection*; they argue that they simply provide consumers with a safer means of carrying cash and, consequently, they are not liable if the card becomes unreadable (due to tampering), or for the fraudulent use, or loss of such cards. However, the transfer of funds is a potential source of dispute. Suppose, for example, that a cardholder claims that the money he withdrew from his account by use of telephone or ATM was not retained in the card. Or that the amount requested for transfer from one terminal to another or a transfer from one card to another was neither partially nor fully credited to the receptor. Who will be liable?

A Mondex *electronic purse* is capable of holding five different currencies at any one time. A cardholder can check his cash position against a balance reader to determine the card's store of value at any point. Mondex enables cardholders to process transactions in any of the five different currencies and is currently conducting trials in Swindon, United Kingdom, where the card can be used by consumers to purchase a wide range of goods and services.

Moreover, a Mondex card's store of value can be transferred from one card to another without the supervision, authorisation or knowledge of the card issuer. The transaction is roughly equivalent to handing over a bank note. This feature permits a one-to-one card value transfer precluding the issuer from liability in the event of transaction failures, because the transfers are authorised by the cardholder, not the issuer. However, Mondex offers the cardholder an access control system through the electronic purse lock which prevents fraudulent use of the card in the event of loss or theft.

A Mondex card stores only monetary value and other information which is essential to the operation of the payment system. Since its use does not require authorisation or authentication, it will not generate information which would identify the payer, the payee, the amount, the physical place or the time in which a given transaction occurred. (Cards and merchant terminals have limited transaction memories, but these are likely to have been overwritten by the time a dispute arises.) It grants the cardholder anonymity. This means dispute resolution may be largely dependent on "good faith" collection.

However, with the use of a Mondex device the cardholder may be able to identify the last ten transactions made on his or her card. This memory capability may be expandable as technology develops.

4. Conclusion

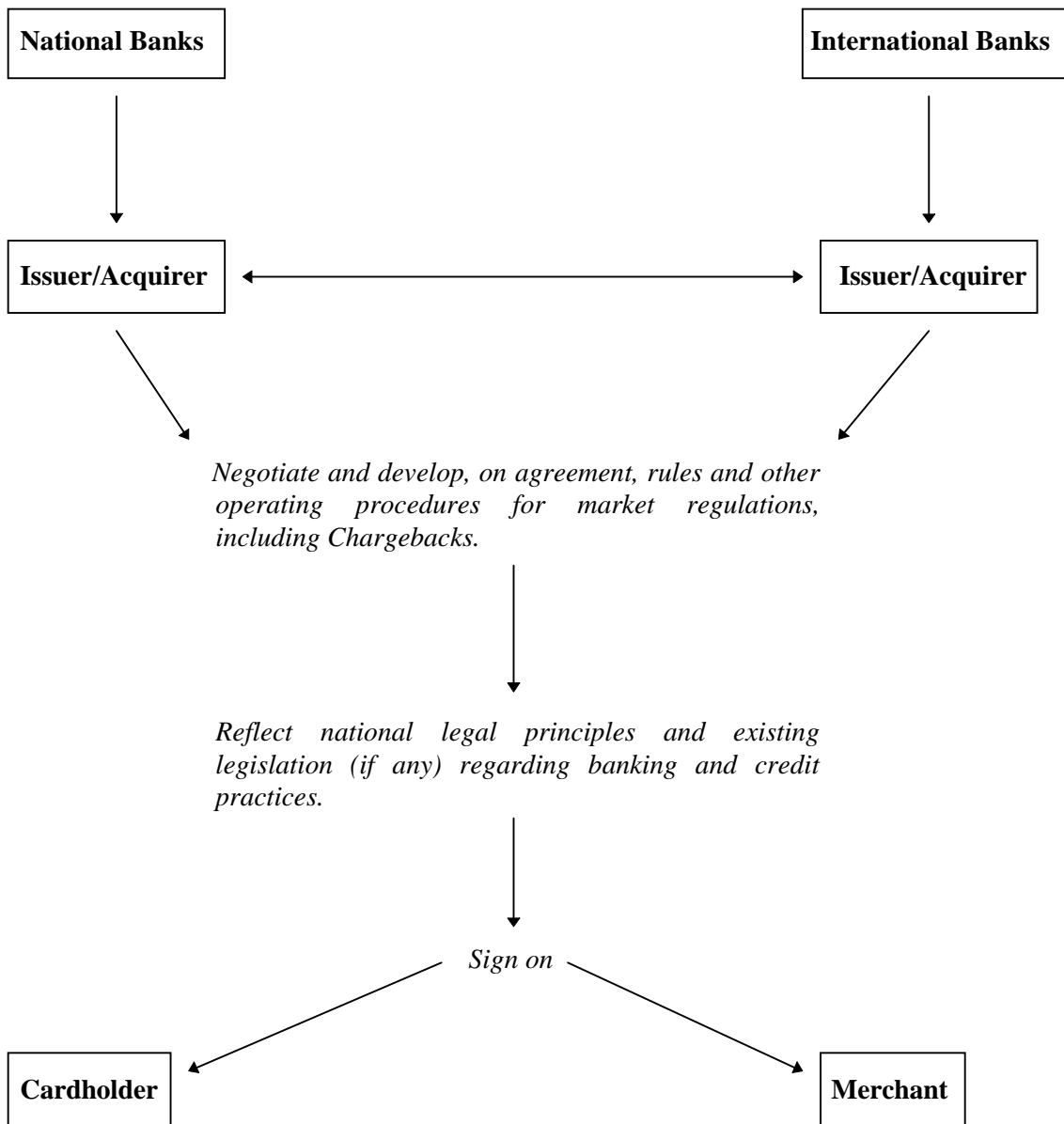
The benefits, or claimed benefits, of prepayment cards vary from system to system and from country to country. For instance in Norway prepaid cards have an off-line processing capability which makes them a cost-effective means of payment. They are being encouraged in France as a substitute for cheques and as a fraud control device. Fraud remains a threat to the payment card industry because it encourages an increase in interchange costs and reduces the opportunity for issuers to make good returns on their investments. Prepayment cards also offer some other value-added innovations such as greater flexibility, convenience and the promise of other multiple functions to allow free and unaccounted exchange of value in transactions. As already noted, one big difference between prepayment cards is whether transactions can take place without the knowledge of a bank or other card issuer.

The impact of prepayment cards will depend on the advantages they offer to all the parties involved, including issuers and processors. The technology of prepayment cards could greatly reduce the cost of processing transactions as was the case with cheques and credit vouchers. To the issuers, it lowers the processing rates of transactions which, with a credit card, can involve providing approximately 150 clearances per second during peak holiday shopping seasons. Two basic reasons account for the low costs: First, prepayment cards eliminate the need for on-line referral to a central data base to verify creditworthiness or the genuineness of the card. Secondly, prepayment cards can afford the merchant immediate access to electronic cash, thus saving cash handling costs and pilferage. The cardholder enjoys the corresponding benefits of anonymity, convenience and ease of use.

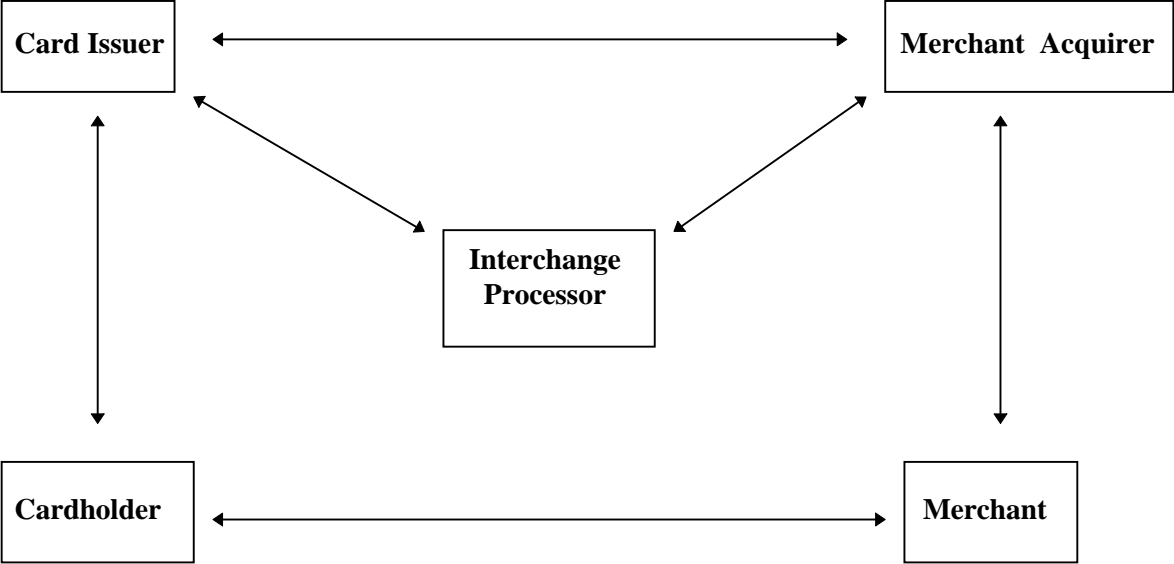
To financial regulators, prepayment cards could pose a greater challenge of monitoring and control. How would forgery be detected in an electronic cash payment system? Who would be liable for technical malfunctions or if an electronic prepayment card failed to hold or transfer value from the cardholder to a merchant or banker and vice versa. How adequately are the interests of the cardholder/consumer protected in the new payment systems which are being introduced? To what extent can consumer redress be facilitated through prepayment card systems? How can redress models already in place in traditional credit and debit card systems be transposed to prepayment cards? This is of particular concern because in a world of global electronic payment systems, already vulnerable consumers may become still more vulnerable.

Annex 4: DIAGRAMS AND DEFINITION OF BASIC TERMS AND CONCEPTS

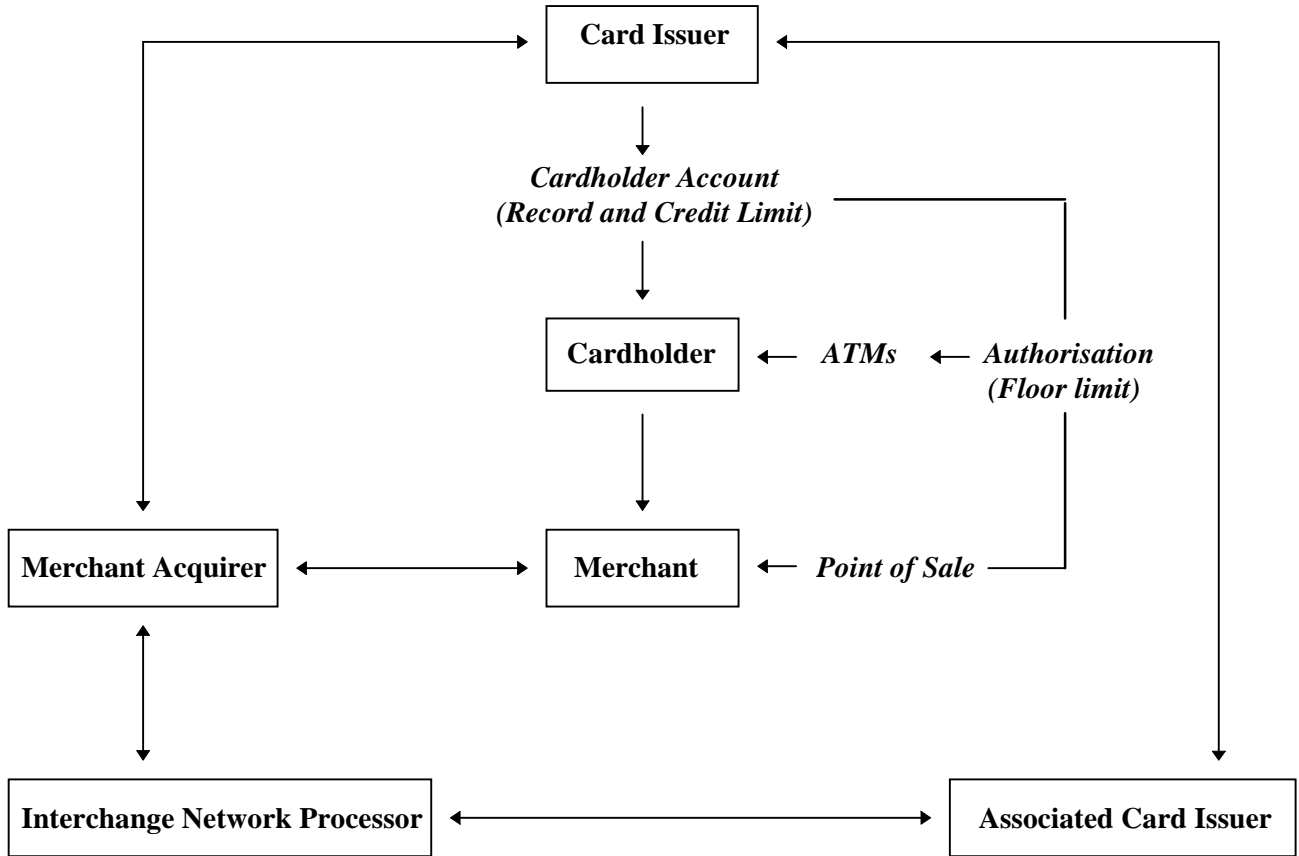
1. The Domestic Card Association Formation Process



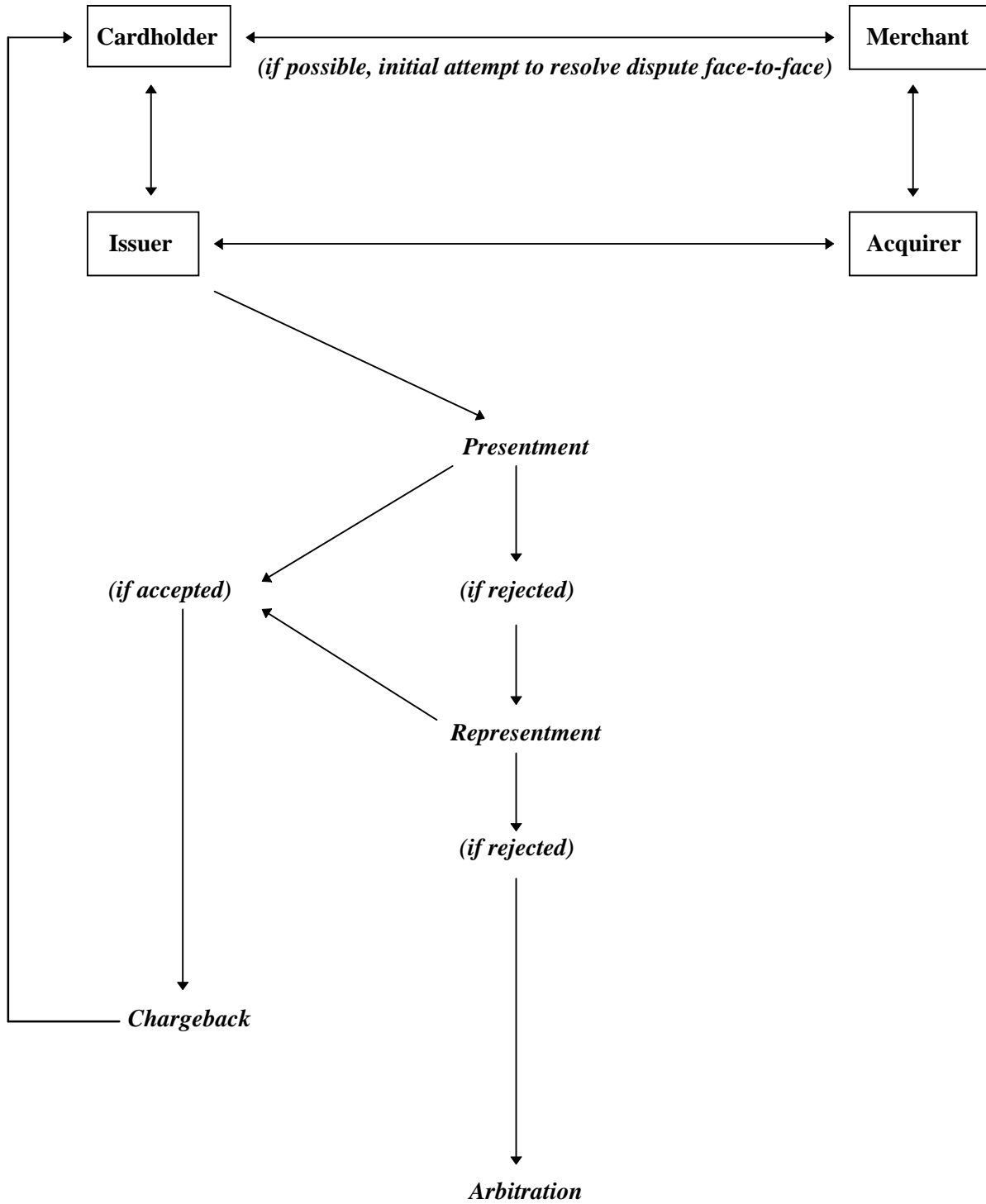
2. Card Payment Structure (Domestic and International)



3. Payment Authorisation Flow (Domestic and International)



4. The Structure of Redress Processes



5. Definitions of Basic Terms and Concepts

For the purposes of this study the following meanings shall apply:

Acquirer A business or financial institution, either different from or the same as the issuer, with whom the merchant has an agreement to acquire for value a sales coupon/draft/slip/voucher or some other form of receipted agreement relating to a transaction between a cardholder and the merchant of goods and services, and who also enters records of such transactions into the issuer's payment systems.

Cardholder Any person to whom a payment card is issued by a financial guarantor to pay the value of any transaction made upon presentation of the card, or any person named on the face of the payment card on agreement with the card issuer who agrees to pay for obligations arising from the use of that card by the cardholder or by another authorised person, for example the spouse or a relative of the cardholder.

Chargeback A banking facility which enables a cardholder who paid for goods or services to dispute aspects of the transaction through the card issuer and be credited for some or all of the amount of the disputed transaction; it may also be defined as "a transaction that an issuer returns to the acquirer."

Credit limit The restricted maximum financial debt guarantee which an issuer allows on each card issued to a cardholder; any credit in excess of such limit will require the issuer's authorisation to enable any transaction above the maximum debit amount. Each credit limit is normally determined by the projected or real income of a cardholder over a defined period of time.

Floor limit The restricted maximum financial debit guarantee which a card issuer allows each merchant on each transaction with a cardholder; any value in excess of the floor limit requires the authorisation of the card issuer.

Issuer Any business or financial institution, including but not exclusive to merchants, national and private banks, credit organisations, or any other legal persons, trusts, building societies, organisations, or duly authorised agent who issues a payment card for the benefit of the cardholder.

Merchant Any person, business or other organisation authorised by an issuer to advance money, goods, services or anything else of value upon presentation of a financial transaction card by the cardholder.

Payment Cards Any banking, cheque-guarantee, credit, debit, prepayment or store card issued by an issuer for the benefit of a cardholder in obtaining money, goods, services or anything else of value in certifying to a third-party the availability of funds on deposit or guaranteed, that are equal to or greater than the value of the transaction. The individual cards have the following characteristics:

Bank cards Are used by the cardholder for transactions such as depositing or withdrawing funds with the issuing bank or affiliated institutions. Such cards may combine the functions of debit and credit cards as authorised by the issuer.

Cheque-guarantee cards Are issued by any financial institution to guarantee payment by cheque for cardholder's domestic and international transactions, for example Eurocheques.

Credit cards Any card issued by an issuer for the benefit of a cardholder in obtaining money, goods, services or anything else of value in certifying to a third-party the availability of funds on deposit or guaranteed, that are equal to or greater than the value of the transaction. Cardholders

may carry the credit balance beyond the immediate billing period into succeeding periods. Credit cards are discussed in detail in Annex 2.

Debit cards Similar to credit cards, except that debit cards authorise the issuer to fully settle the outstanding balance at the end of the billing period by automatically drawing funds from the cardholder's bank account. Debit cards are discussed in detail in Annex 2.

Prepayment cards Also known as **Stored Value Cards** or **Smart Cards** are cards whose credit value is paid in advance by the cardholder and store on the card, either on a magnetic strip or a microchip. Prepayment cards are discussed in detail in Annex 3.

Store Cards, also known as **Loyalty Cards**, are issued by a specific organisation or merchant for the benefit of cardholders in transactions with its stores or affiliated organisations, for example petrol or grocery chain cards.

Presentation Any action taken by a cardholder or any person authorised by the cardholder or any other person authorised by a cardholder to introduce a payment card into an automated banking device, which requires the disclosure of a personal identification code or number over a telephone line or computer network, or merely showing the payment card to the issuer, organisation, or merchant for the purpose of settling transactions involving the provision of money, goods, services, or anything else of value.

Sales voucher/slip/draft/coupon A paper form of evidence attesting the authorisation of a cash advance, the purchase of goods or service or cash withdrawal from an electronic device through the use of a financial payment card by the cardholder.