Memorandum on the Establishment and Operation of the International Consumer Protection and Enforcement Network (ICPEN)

(formerly known as the International Marketing Supervision Network (IMSN))

1. This Memorandum was agreed to at a meeting held in London on 26-27 October 1992. A list of those organisations represented at that meeting is annexed (List London).

The Memorandum was amended at a meeting held in Montreux on 18-19 March 2002. A list of those organisations represented at that meeting is annexed (List Montreux). The Memorandum was amended at a meeting held in Port Douglas on 2-4 April 2003. A list of those organisations represented at that meeting is annexed (List Port Douglas).

The Memorandum was amended at a meeting held in Helsinki on 9-10 October 2003. A list of those organisations represented at that meeting is annexed (List Helsinki). At a meeting in Jeju on 26-28 March 2006 the Memorandum was amended and updated. A list of those organisations represented at that meeting is annexed (List Jeju). The amended Memorandum entered into

force at the end of the first meeting under the Polish Presidency held in Warsaw on 22-24 October 2006.

This Memorandum was amended in March 2016 concerning Article 14 about finances via a written procedure according to Article 19 of the Memorandum.

Introduction

2. At the "Supervision of Marketing" conference in Copenhagen in October 1991, it was agreed in principle that it would be desirable to establish an informal network of organisations from various countries in the consumer field involved primarily with the enforcement of fair trading practices. These would mainly be governmental organisations. The purpose was stated as being to find ways of co-operating on tackling consumer problems connected with cross-border transactions in both goods and services, and to help ensure exchanges of information among the participants for mutual benefit and understanding. These arrangements would be on an informal and voluntary basis, and rely on the high level of goodwill among those involved to make such a network effective. The Network would build on the many excellent contacts, which already existed among the organisations concerned.

3. At the meeting in London it was agreed to establish such a network. The Network will be called the International Marketing Supervision Network. To better reflect the work of the Network, the name of the Network was agreed to be changed at a meeting held in Sydney in September 2002. The name of the Network was amended to the International Consumer Protection and Enforcement Network (ICPEN). Its objectives and methods of operation are set out in this memorandum.

Objectives of the Network

4. The main common objective of the Network is to encourage practical action to prevent cross-border marketing malpractice. The Network should also encourage exchanges of information, which may provide more general knowledge of such practices and the way they are dealt with in the various countries. It is not intended to cover product safety or the prudential regulation of financial institutions. Nor will it normally be directly concerned with specific redress for individual consumers.

The long term goals of the Network are:

- (a) To generate and share information and intelligence on consumer protection issues;
- (b) To share best practices in legislative and enforcement approaches to consumer protection;
- (c) To take action to combat cross-border breaches of consumer protection laws;
- (d) To facilitate effective cross-border remedies;
- (e) To identify and promote measures for effective consumer protection enforcement; and
- (f) To promote and encourage wider participation and cooperation with other consumer protection enforcement organisations.
- 5. The Network will:
- (a) Establish and maintain an up-to-date of contacts from each participating organisation;
- (b) Maintain regular contact, in particular by means of at least one annual conference, and exchanges of views on matters of topical interest through bilateral and multilateral contacts of all kinds;
- (c) Mutually exchange information to enable participating organisations to build up a picture of each other's methods and legal and administrative arrangements; and
- (d) Co-operate at an operational level in preventing marketing malpractices as they arise. Cooperation will be on an informal basis. Participating organisations should endeavour to help each other, subject to national law and practice and availability of resources.

Participation in the Network

The Network comprises three types of participating organisations: Member organisations (Article 6), Partner organisations (Article 7) and Observer organisations (Article 8).

6. Member organisations

- (a) Principle: Membership will normally be reserved for one single national governmental organisation from each country that is involved with the promotion and enforcement of fair trading practices, though for certain countries other arrangements may be necessary. Exceptions are possible and are to be decided on a case by case basis. Only Member organisations have the right to take part in the decision-making.
- (b) Membership is foreseen for those organisations already participating in the Network at the Warsaw conference.
- (c) Membership is also given to other organisations that:
- 1. Have participated in compliance with Article 7 for a period of 2 or more years; and
- 2. Have met, for the preceding 12 months, the requirements to be considered active as outlined in paragraph (e).
- (d) Membership in the Network is given for as long as the concerned organization remains active in the work of ICPEN.
- (e) In order to be considered active, Member organisation- and those Partner Organisations seeking Membership should deliver an annual report (including figures of cross-border complaint handling) as requested by the Presidency, and for the preceding year meet at least three of the following requirements:
- 1. Participate in at least one of the Network's conferences under each Presidency;
- 2. Actively participate in the Network's Internet Sweep;
- 3. Actively participate in the Network's Fraud Prevention project;
- 4. Actively participate in another of the Network's projects;
- 5. Actively participate in the handling of cross-border complaints.
- (f) In the annual report Member organisations will describe the way they fulfilled their activity requirements in accordance with paragraph (e). The Presidency, the former President and the President-elect (collectively, the "Troika") will evaluate each Member organisation's annual report and determine whether the Member organisation has fulfilled its activity requirements. Member organisations notfulfilling the minimum activity requirements will be contacted. Any Member organisation not meeting the activity criteria in paragraph (e) for two years in a row will become a Partner and thereby lose the right to be involved in decision making.

(g) Member organisations that are no longer able to fulfil the obligations of full activity in the Network, as foreseen in paragraph (e), or prefer to participate rather on a limited basis in the activities of the Network can do so as a "partner organisation," as described under Article 7. If there is any disagreement regarding the decision about a Member organisation's activity level, the matter will be resolved by the Member organisations minus the Member organisation in question.

7. Partner organisations

- (a) Partnership will normally be reserved for one single national governmental organisation from each country that is involved with the promotion and enforcement of fair trading practices, though for certain countries other arrangements may be necessary. Exceptions are possible and are to be decided on a case by case basis.
- (b) Organisations will only be considered for Partnership status once they have been nominated by at least five Member organisations. If an ICPEN Member organisation is approached by an organisation seeking Partnership status, the Member organisation should inform the applicant of the procedure foreseen by this article and notify the Presidency.
- (c) The Presidency, if confronted with a proposition for Partnership as foreseen under paragraph (b), shall, after first contact with the applicant organisation, send the organisation a letter with the requirements for Partnership in the Network.
- (d) In order to meet the requirements for Partnership in the Network the applicant shall:
- 1. Be an organisation, which is occupied with the promotion and enforcement of fair trading practices;
- 2. Subscribe to the Network's principles of co-operation;
- 3. Present an overview of consumer protection in the country in which it is based, and describe its own enforcement powers and scope of activities;
- 4. Set out its reasons for applying for partnership, linking them to the long-term goals set out in Article 4; and
- 5. Agree to deliver an annual report (including figures of cross border complaint handling) as requested by the Presidency and agree to undertake annually at least one of the activity requirements in Article 6 (e), other than attending a Network conference.
- (e) If the organisation meets the requirements mentioned in paragraph (d), the Presidency will consult the Member organisations before inviting the organisation to participate in any activities or conferences of the Network.
- (f) Partners that are unable to fulfil the minimum obligations of partnership, as foreseen in Article 7(d)(5), for a one year period, or prefer not to participate will have their partnership status frozen. Any organisation wishing to recommence activity should notify the President, who will refer such an application to the Troika (Presidency, former

President and President elect) for consideration and a decision. If there is disagreement, the matter should be resolved by the Member organisations.

8. Observer organisations

Participation in the Network is also open, on an observer basis, to the OECD Secretariat, the EFTA Secretariat, the Commission of the European Union and other governmental international or public organisations involved in consumer protection enforcement, and shall be granted on a case by case basis.

Presidency

- 9. One of the Member organisations will be chosen to act as President of the Network. This position will rotate annually.
- 10. The responsibilities of the President organisation will be:
- (a) To host at least one conference for Member organisation-, Partner- and Observer organisations, at which Member organisations will review and plan the activities of the Network.
- (b) The President may choose to host and organise other events in conjunction with a conference such as Best Practices Training. The Presidency may at its discretion invite other governmental organisations occupied with the promotion and enforcement of fair trading practices that are not ICPEN Member organisation-, Partner-or Observer Organisations, the Presidency has the discretion to charge a fee from such a body (i.e. non ICPEN participation organisation) to cover any additional costs incurred;
- (c) To lead the Advisory Group (Article 12);
- (d) To maintain the list of Network contacts and circulate updated versions on a regular basis;
- (e) To act as a focal point for information regarding the operation of the Network itself;
- (f) To provide a central address, telephone and fax number to which all notifications regarding the list of Network contacts should be sent.
- 11. An organisation seeking candidacy for the President position must advise the incumbent President not less than one month prior to the meeting at which a decision on the Presidency will be made, i.e., one full twelve month period prior to the new President taking up the role. In the event that there are no candidates for the Presidency other arrangements will be made as appropriate.

The incumbent President must then notify the entire Network of the candidacy. Advance notice provides Member organisations with a sufficient period in which to discuss the candidates seeking to chair the Network.

In the event that there are no candidates for the Presidency other arrangements will be taken, as appropriate.

Advisory Group

- 12. The Advisory Group supports the Presidency. It is composed of:
- (a) The President;
- (b) The former President; and
- (c) The President-elect, appointed at each autumn conference, which will be the host for the following year's conference(s). The President-elect will serve for a year as Vice-President, during which time it should prepare for the conference and collaborate with the President and the former President in the operation of the Network.

As the Presidency deems necessary, the Advisory Group can be extended to include other Member organisations. In that case, the Presidency will seek candidates by consulting all the Member organisations in a transparent procedure, and will seek geographical representation and rotating participation of different Member organisations.

Working Languages

13. No particular languages will be formally designated. It is expected that meetings will normally be conducted in English and French, with simultaneous translation. The list of contacts may indicate individuals' particular language skills in order to facilitate effective communication.

Finance

- 14.1 All costs associated with hosting Network events, such as annual conferences and trainings, shall be borne by the event host country.
- 14.2 As outlined in Article 10(b), it is at the Presidency's discretion to charge a nominal fee for invited guests of the Presidency, and who are not Members, Partners or Observers, to attend Network events, such as annual conferences and trainings.
- 14.3 Other expenses to participate in Network events shall be borne by each participating organisation for its own nominated delegates. Participating organisations may seek financial assistance among themselves, and may agree to such assistance on a bilateral basis.
- 14.4 Member, Partner and Observer monetary contributions to the Network's operational finances are collected for the sole purpose of operating the Network's activities. Funds may be collected based on a project plan or a funding plan, which is sent to the Network , drawn up by the Member, Partner or Observer that bears the costs, on the advice of the

Advisory Group. Members and Observers declare themselves explicitly if they are able to contribute or not."

Operation of the Network

- 15. Member-, Partner- and Observer- organisations will use their best endeavours to ensure timely notification of changes to entries on the list of Network contacts.
- 16. Cooperation, bilateral and multilateral, will be for individual participating organisations to initiate among each other as and when required. It will not be a function of the President that such contact should be routed through her or him.
- 17. Where cases and issues arise for which responsibility does not lie with participating organisations, the latter will do their best to put correspondents into direct contact with other relevant bodies or organisations, perhaps at local level or in the private sector (especially in the case of a self-regulatory body), which can deal with the matter. However, the participating organisation will usually be the initial liaison point. The wide variety of communication, cooperation and exchange of information, which already takes place among different bodies in each country with an interest in consumer protection will naturally continue.
- 18. Decisions to be made by the Network are categorized as follows:
- (a) Decisions concerning changes to this memorandum, applications by new Partner-or Observer organisations, or public statements of the network regarding positions on particular issues shall be taken by consensus (unanimity) only.
- (b) For all other decisions in the network the Presidency will seek compromise through consensus. If consensus cannot be reached before the following network meeting, the proposal of the Presidency will be consider ed accepted without further debate at the outset of that meeting unless at least five Member organisations object before that time.
- 19. The written procedure
- (a) The written procedure is coordinated by the Presidency or another Member organisation designated by the Presidency.
- (b) The Presidency or its designee shall send the proposal to be decided on as well as all relevant documentation to all Member organisations at the same time.
- (c) Member organisations not replying within the required period are considered to be in agreement with the proposal.

ANNEX to the ICPEN Memorandum of Understanding

Motion agreed to at the Jeju ICPEN Conference – 26-28 March 2006) on procedures in order to improve upon on the decision-making process, streamline our meetings, and increase productivity (to be considered in connection with article 18 of the ICPEN Memorandum).

As an annex to the MoU, and in order to improve upon the decision-making process, streamline our meetings, and increase productivity, the Network also informally adopts the following practical steps:

(1) Advanced Discussion of Issues

Important issues should be briefed and discussed in advance of the meeting by the members (or a relevant group such as this one). This can be accomplished through written drafts and/or teleconferences. Members can reach a consensus in advance (through, for example, negative option) or a relevant group can circulate a proposal in advance to have an abbreviated

discussion during the meeting.

(2) Limited Discussion During Meetings

The President should set strict time limits for discussion of issues at meetings. Once that time limit has been reached the President should gauge if there is a consensus. If there is, the issue is decided. If there is not, the President stops the discussion and takes steps to continue the discussion elsewhere (see below). The meeting can then continue to tackle otherimportant issues in the agenda.

(3) Continued Discussion Outside of the Meeting

If members could not reach a consensus through pre-briefing, and during the time limit set in the agenda, the President should select a subgroup of members (for instance, those members in opposite sides of an argument) and task them to work out a compromise to be proposed to the membership at large (either later on at the meeting, or to be continued after the meeting).

(4) Inability to Reach a Consensus After All These Steps

If after pre-briefing, meeting discussion, side discussions, and subgroup proposal, the members still cannot reach a consensus, it would appear that the issue is important by definition. Otherwise, a consensus would have been reached already. If members cannot reach a consensus after all these steps, we

suggest that the issue should continue to be discussed between meetings until a consensus is attained. But we do not hope that this will occur very often.

LIST LONDON: ORGANISATIONS PRESENT AT THE CONFERENCE IN LONDON 1992

COUNTRY ORGANISATION

Australia } Trade Practices Commission

Federal Bureau of Consumer Affairs

Austria Federal Ministry for Health, Sports and Consumer

Protection

Belgium Economische Algemene Inspectie

Canada Department of Consumer and Corporate Affairs

Denmark The National Consumer Agency of Denmark

France Direction Générale de la Concurrence de la

Consommation et de la Répression des Fraudes

Finland Consumer Ombudsman

Bundesminister Für Wirtschaft

Holland Ministerie Van Economische Zaken Hungary Fogyasztóvédelmi Föfelügyelöség

Ireland Office of Consumer Affairs and Fair Trade

Japan } Consumers' Affairs Division

Economic Planning Agency

New Zealand Ministry of Consumer Affairs

Norway Consumer Ombudsman

Portugal Instituto Nacional de Defesa do Consumidor

Spain Instituto Nacional del Consumo

Sweden Consumer Ombudsman

Switzerland Bureau de la Consommation

United Kingdom } Office of Fair Trading

Department of Trade and Industry

United States of America Federal Trade Commission

Organisation for Economic Co-Operation and Development

Commission of the European Communities

LIST MONTREUX: ORGANISATIONS PRESENT AT THE CONFERENCE IN MONTREUX 2002

COUNTRY ORGANISATION

Australia } Australian Competition & Consumer Commission

Consumer Affairs Division, The Treasury

Austria Ministry of Justice, Directorate for Consumer

Protection

Belgium Federal Administration for Economic Inspections

Canada Industry Canada, Competition Bureau, Fair

Business Practices

Denmark The Danish Consumer Ombudsman

Estonia Consumer Protection Board

France Direction Générale de la Concurrence de la

Consommation et de la Répression des Fraudes

Finland The Finnish Consumer Ombudsman

Germany \ Verbraucherzentrale Bundesverband e. V.

Bundesministerium für Verbraucherschutz

Greece Ministry of Development

Hungary Fogyasztóvédelmi Föfelügyelöség

Ireland Office of the Director of Consumer Affairs

Italy Italian Competition Authority

Japan Fair Trade Commission

Cabinet Office

Korea Consumer Protection Board

Korea Fair Trade Commission

Latvia Consumer Rights Protection Centre

Luxembourg Ministère des Classes Moyennes

Mexico Procuraduría Federal del Consumidor

New Zealand Ministry of Consumer Affairs

Norway The Norwegian Consumer Ombudsman

Poland Office for Competition and Consumer Protection

Portugal Instituto Nacional de Defesa do Consumidor

Spain Instituto Nacional del Consumo

Sweden Swedish Consumer Agency

Switzerland State Secretariat for Economic Affairs (seco)

United Kingdom } Office of Fair Trading

Department of Trade and Industry

United States of America Federal Trade Commission

Organisation for Economic Co-Operation and Development

Commission of the European Communities

LIST OF IMSN PARTICIPANTS, REFERENCE DATE 19 MARCH 2002

COUNTRY ORGANISATION

Australia } Australian Competition & Consumer Commission

Consumer Affairs Division, The Treasury

Austria Ministry of Justice, Directorate for Consumer

Protection

Belgium Federal Administration for Economic Inspections

Canada Industry Canada, Competition Bureau, Fair

Business Practices

Czech Republic Ministerstvo Prumyslu a Obchodu Ceske Republiky

Denmark The Danish Consumer Ombudsman

Estonia Consumer Protection Board

France Direction Générale de la Concurrence de la

Consommation et de la Répression des Fraudes

Finland The Finnish Consumer Ombudsman

Germany } Verbraucherzentrale Bundesverband e. V.

Bundesministerium für Verbraucherschutz

Greece Ministry of Development

Hungary Fogyasztóvédelmi Föfelügyelöség

Ireland Office of the Director of Consumer Affairs

Italy Italian Competition Authority

Japan Fair Trade Commission

Cabinet Office

Korea Consumer Protection Board

Korea Fair Trade Commission

Latvia Consumer Rights Protection Centre

Luxembourg Ministère des Classes Moyennes

Malta Department of Consumer Affairs

Mexico Procuraduría Federal del Consumidor

Netherlands Ministry of Economic Affairs

New Zealand Ministry of Consumer Affairs

Norway The Norwegian Consumer Ombudsman

Poland Office for Competition and Consumer Protection

Portugal Instituto Nacional de Defesa do Consumidor

Slovac Republic Ministry of Economy of the Slovak

Republic

Spain Instituto Nacional del Consumo

Sweden Swedish Consumer Agency

Switzerland State Secretariat for Economic Affairs (seco)

United Kingdom \ Office of Fair Trading

Department of Trade and Industry

United States of America Federal Trade Commission

Organisation for Economic Co-Operation and Development

Commission of the European Communities

LIST PORT DOUGLAS: ORGANISATIONS PRESENT AT THE CONFERENCE IN PORT DOUGLAS 2003

COUNTRY ORGANISATION

Australia } Australian Competition & Consumer Commission

Consumer Affairs Division, The Treasury

Belgium Federal Public Service Economy

Canada Industry Canada, Competition Bureau, Fair

Business Practices

Finland The Finnish Consumer Ombudsman

Germany \ Verbraucherzentrale Bundesverband e. V.

Bundesministerium für Verbraucherschutz

Ireland Office of the Director of Consumer Affairs

Italy Italian Competition Authority

Japan } Ministry of Economy, Trade and Industry

Japan Fair Trade Commission

Korea Consumer Protection Board

Korea Fair Trade Commission

Latvia Consumer Rights Protection Centre

Mexico Procuraduría Federal del Consumidor

New Zealand Ministry of Consumer Affairs

New Zealand Commerce Commission

Norway The Norwegian Consumer Ombudsman

Sweden Swedish Consumer Agency

Switzerland State Secretariat for Economic Affairs (seco)

United Kingdom \ Office of Fair Trading

Department of Trade and Industry

United States of America Federal Trade Commission

Organisation for Economic Co-Operation and Development

LIST HELSINKI: ORGANISATIONS PRESENT AT THE MEETING IN HELSINKI OCTOBER 10, 2003

AUSTRALIA Australian Competition and Consumer Commission

Department of Treasury

AUSTRIA Federal Ministry of Social Security

BELGIUM FPS Economy, SMEs, Selfemployed & Energy

CANADA Competition Bureau

DENMARK Consumer Ombudsman

ESTONIA Consumer Protection Board

FINLAND Finnish Consumer Ombudsman

FRANCE DGCCRF

GREECE Ministry of Development

HUNGARY General Inspectorate for Consumer Protection

IRELAND Office of the Director of Consumer Affairs

ITALY Italian Competition Authority

JAPAN Quality-of-Life Policy Bureau, Cabinet Office

Fair Trade Commission of Japan

LATVIA Consumer Rights Protection Centre of Latvia

MEXICO The Office of the Federal Attorney General for Consumer

Protection

NETHERLANDS Ministry of Economic Affairs

NORWAY The Norwegian Consumer Ombudsman

POLAND Office for Competition and Consumer Protection

PORTUGAL Consumer Institute of Portugal

SOUTH KOREA Consumer Protection Board

Korea Fair Trade Commission

SPAIN Instituto Nacional del Consumo

SWEDEN Swedish Consumer Ombudsman

SWITZERLAND State Secretariat for Economic Affairs (seco)

UNITED KINGDOM Office of Fair Trading

Department of Trade and Industry

USA Federal Trade Commission

OECD

EUROPEAN COMMISSION

LIST JEJU:

ORGANISATIONS PRESENT AT THE CONFERENCE IN JEJU 2006

COUNTRY ORGANISATION

Member organisations:

Australia Australian Competition & Consumer Commission

Belgium DG Enforcement & Mediation, FPS Economy

Canada Industry Canada, Competition Bureau

Chile National Consumer Service (SERNAC)

Cyprus Ministry of Commerce, Industry and Tourism

Denmark Danish Consumer Ombudsman

Estonia Consumer Protection Board

Japan } Fair Trade Commission of Japan

National Consumer Affairs Center

Cabinet Office

Latvia Consumer Rights Protection Center

Lithuania National Consumer Rights Protection Board

Mexico Procuraduría Federal del Consumidor

(Profeco, Office of the Federal Attorney for

Consumer Protection)

Netherlands Netherlands Consumer Authority

New Zealand } Commerce Commission

Ministry of Consumer Affairs

Poland Office of Competition and Consumer Protection

Republic of Korea } Korea Consumer Protection Board

Korea Fair Trade Commission Ministry of Finance and Economy

Switzerland State Secretariat for Economic Affairs (seco)

United Kingdom } Office of Fair Trading

Department of Trade and Industry

United States of America Federal Trade Commission

Observer organisations:

Azerbaijan Department on Antimonopoly Policy, Ministry of

Economic Development

China State Administration for Industry and Commerce

(SAIC)

Organisation for Economic Co-Operation and Development

LIST OF ICPEN PARTICIPATING ORGANISATIONS (Article 6 (b)) ON 23-24 OCTOBER 2006 (WARSAW CONFERENCE)

Member organisations

COUNTRY ORGANISATION

Australia Australian Competition & Consumer Commission

Austria Federal Ministry of Social Security, Generations

and Consumer Protection

Azerbaijan* Department on Antimonopoly Policy, Ministry of

Economic Development

Belgium DG Enforcement & Mediation, FPS Economy,

SMEs, Self-employment and Energy

Canada Canadian Competition Bureau

Chile National Consumer Service (SERNAC)

China* State Administration for Industry and Commerce

(SAIC)

Cyprus Competition and Consumer Protection Service,

Ministry of Commerce, Industry and Tourism

Denmark Danish Consumer Ombudsman

Estonia Consumer Protection Board

Finland Finnish Consumer Agency and Ombudsman

France Direction Générale de la Concurrence, de la

Consommation et de la Répression des Fraudes

(DGCCRF)

Germany Federation of German Consumer Organisations

(VZBV)

Hungarian Competition Authority

Ireland Office of the Director of Consumer Affairs

Italy Italian Competition Authority

Japan Fair Trade Commission

National Consumer Affairs Center

Cabinet Office

Ministry of Economy, Trade and Industry

Latvia Consumer Rights Protection Centre

Lithuania National Consumer Rights Protection Board

Luxembourg Ministère des Classes Moyennes

Mexico Procuraduría Federal del Consumidor (PROFECO)

Netherlands Netherlands Consumer Authority

New Zealand Commerce Commission

Norway Norwegian Consumer Ombudsman

European Consumer Centre

Council of Consumer Ombudsman

Republic of Korea Korea Consumer Protection Board

Korea Fair Trade Commission

Spain European Consumer Centre

Sweden Swedish Consumer Agency and Ombudsman

Switzerland State Secretariat for Economic Affairs (SECO)

United Kingdom Office of Fair Trading

Department of Trade and Industry

United States of America Federal Trade Commission

Observer organisations

European Commission DG Sanco

^{*} Azerbaijan and China: membership status granted at the conference

OECD CCP Secretariat

Non-member organisations

Croatia Ministry of Economy, Labour and Entrepreneurship