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INDUSTRY SELF-REGULATION: ROLE AND USE IN SUPPORTING CONSUMER INTERESTS

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FOREWORD

This report, which was prepared by the Committee on Consumer Policy (CCP), examines the role that industry self-regulation (ISR) can play in addressing consumer problems. It assesses the conditions and situations where there are likely to be benefits, and the steps that need to be taken to help ensure that such initiatives succeed. The report draws on 23 case studies of industry self-regulation agreements which are based on materials provided by governments, businesses, civil society and other experts.

This report builds on the CCP's *Consumer Policy Toolkit* which provides a framework for enhancing policy making to address consumer problems. It shows how ISR can be used to complement other actions taken by governments to address such problems.

The report was approved and declassified by the CCP in February 2015. It is published under the responsibility of the Secretary-General of the OECD.

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OVERVIEW AND KEY POINTS

Overview

In 2010, the OECD's Committee on Consumer Policy published a *Consumer Policy Toolkit*, which provides a framework for developing and implementing effective consumer policies (OECD, 2010). The report notes that industry self-regulation (ISR) can play an important role in addressing consumer issues, particularly when business codes of conduct and standards are involved.¹ This report examines the roles that ISR can play in these and other areas more closely, examining conditions and situations where there are likely to be benefits, and the steps that need to be taken to help ensure that such initiatives succeed.

The report draws on 23 case studies where consumer issues are addressed. The case studies are based on material provided by governments, businesses, civil society and other experts; for the most part the case studies have not been independently evaluated. They cover a range of sectors and activities, including advertising, financial services, telecommunications, video games and software applications (apps), toys, and direct selling. The case studies are illustrative of the ways that ISR has been used to address consumer issues; they do not cover areas where ISR has not been effective.

Key points

Industry self-regulation can be an advantageous complement to government policies, but it also poses a number of challenges. At the same time, ISR can potentially provide important benefits to both industry and consumers; their success in doing so depends on a number of factors, including: *i*) the strength of the commitments made by participants; *ii*) the industry coverage of the ISR; *iii*) the extent to which participants adhere to the commitments; and *iv*) the consequences of not adhering to the commitments.

Advantages of ISR

Governments, businesses and consumers can all benefit from ISR. Governments may be interested when ISR covers issues where they have limited authority, which can be the case when advertising issues are concerned; ISR could also be more cost-effective for governments, to the extent that enforcement and monitoring burdens are lightened and/or shifted to business. The case studies identify a series of potential benefits for consumers and business.

Consumers can potentially benefit from:

- *Improved information.* Advertising codes can reduce the risk that consumers encounter misleading and fraudulent advertisements. Trustmarks can help consumers identify products that

¹ For the purposes of the report, industry self-regulation (ISR) concerns groups of firms in a particular industry, entire industry sectors or professional groups that agree to act in prescribed ways, according to a set of rules or principles decided by themselves. The groups can be wholly responsible for developing the self-regulatory instruments, monitoring compliance and ensuring enforcement, or they can work with government entities and other stakeholders in these areas, in a co-regulatory capacity.

meet certain standards, or companies that have subscribed to important commercial principles. Rating schemes can help consumers identify products that meet desired criteria.

- *More effective dispute resolution.* ISR that provides specialised, independent, low-cost dispute resolution mechanisms can facilitate problem-solving and increase consumer confidence.
- *Combatting unfair or abusive practices.* ISR can provide mechanisms through which businesses can tackle specific problems. This was done successfully in the case of spam. As ISR dealing with telemarketing and charges telecommunications indicates, its effectiveness depends on subscription by a sufficient number of firms, and their commitment to the prescribed actions.
- *Enhanced consumer rights.* Some ISR agreements contain provisions which provide consumers with stronger protection and rights. In addition to improved dispute handling (described above), this could include additional product guarantees and more favourable return policies.

Potential benefits of ISR to industry include:

- *Enhancing consumer confidence/improving the image of businesses.* Most of the ISR agreements reviewed indicate the value that the instruments have played in building consumer confidence by helping to ensure product quality and good commercial practices. The value of trustmarks in improving the image of ISR members was noted in this regard.
- *Disciplining businesses that fail to meet commitments.* Many of the ISR agreements mention the importance of the instruments in helping to maintain a level playing field. Provisions that impose a cost on those businesses that do not adhere to the ISR can play an important role in discouraging violations.
- *Improving complaint handling.* Participants in ISR agreements have noted the efficiency and effectiveness of external dispute resolution mechanisms in addressing complaints, and the positive responses from consumers using low-cost, independent authorities for addressing issues.
- *Pre-empting formal government regulation.* In a number of instances, ISR agreements were developed with a view toward avoiding more direct intervention by government. The ISR was viewed as a more flexible instrument that could be adapted more easily to deal with changing conditions.
- *Providing instructional resources.* Well established ISR agreements can provide centralised services for members, providing, for example, opportunities for training and information sharing.

Challenges of ISR

At the same time, ISR poses challenges which include:

- *Strength of instruments.* Instruments might have to be watered down to achieve industry support and therefore might not be sufficiently strong.
- *Compliance and oversight.* In the absence of effective enforcement and monitoring, participants might have little incentive to adhere fully to the scheme.
- *Risk of regulatory capture.* This could occur when a self-regulatory body is overly “close” to the businesses that it oversees.

- *Free-riders.* Businesses that do not participate in an ISR are not bound by its provisions and avoid the cost of compliance; they may benefit significantly from the avoidance of formal government regulation that might otherwise apply.
- *Market coverage.* Low participation rates by businesses in an ISR could render it ineffective.
- *Favouritism.* If a small number of actors dominate the governance of a scheme, it might result in the scheme favouring those actors.
- *Distortions in competition.* Self-regulation can create barriers to entry or otherwise distort competition through, for example, licensing or accreditation bodies that discriminate against certain businesses.
- *Accountability.* Some self-regulatory schemes might lack mechanisms for review and evaluation, and resources may not be available if the schemes do not fulfil their objectives.
- *Costs.* The cost of establishing and operating an ISR might be high and could be passed on to consumers.

Enhancing the effectiveness of ISR agreements

The effectiveness and impact of ISR agreements depend on a series of factors. How well the provisions are implemented and enforced is critical, as is the level of industry participation. The factors include those that relate to specific market and industry circumstances (i.e. environmental factors) and the features, or provisions, of the ISR (Box 1).

Box 1. Factors contributing to the success of industry self-regulation in the consumer area

Environmental factors

- *Industry self-interest.* Businesses are more likely to support ISR agreements where there are clear benefits.
- *Alignment of industry, government and consumer interests.* Shared goals can boost “buy-in”.
- *Number of market players.* A relatively small number of players can facilitate management of ISR agreements.
- *Market coverage.* The higher the level of participation in an ISR, the greater the likely impact.
- *Homogeneity of products.* Product similarity can simplify ISR application.
- *Nature and magnitude of consumer detriment.* The more serious the potential detriment, the more critical the need for high industry coverage and compliance.
- *Competition.* ISR agreements should not result in barriers to entry or facilitate market-distorting collusion.

Features or provisions of the self-regulation

- *Clarity and strength of objectives.* This can encourage industry participation, and facilitate impact assessments.
- *Conformity of schemes with government policies.* Conformity can strengthen and reinforce support from government regulatory authorities.
- *Legal basis.* ISR agreements that aim at implementing laws and policies are likely to win broad support.
- *Leadership.* Strong, independent ISR management can boost credibility and effectiveness.
- *Leveraging industry knowledge in rule setting.* Exploiting industry expertise can improve outcomes and enhance industry support.
- *Monitoring, transparency and public accountability.* This is a key to building trust and credibility in ISR agreements.
- *Enforcement and sanctions.* These disciplines are needed to encourage compliance and build impose costs for those businesses which do not adhere to the ISR agreements.
- *Dispute resolution and redress (DRR).* Providing consumers with DRR mechanisms can build consumer trust, while providing a means for support monitoring.
- *Stakeholder participation.* This can improve the quality of ISR agreements, helping to ensure that key issues are identified and adequately addressed.
- *Public awareness.* This can enhance consumer use of ISR agreements and build public pressure for adherence.

As noted, the participation of stakeholders can play an important role in enhancing the effectiveness of self-regulation. Governments, consumer organisations and other stakeholders can participate and contribute to the design, implementation, monitoring and enforcement of the schemes. Their actual involvement, has however, been relatively limited in the case studies reviewed. Governments played a formal role in developing ISR agreements in less than half of the cases; they played a far smaller role in authorising and enforcing the ISR agreements and a formal role in evaluating the instruments in slightly less than half the cases. Consumer organisations and other civil society actors played a minor role in

providing formal advice in ISR development, and in authorising, enforcing, monitoring and evaluating the schemes.

In some instances, however, government plays a powerful role in designing, authorising, enforcing and monitoring ISR agreements. This is particularly the case with respect to ISR agreements dealing with financial services, which can require businesses to join schemes as condition for being granted an operating license, and can support enforcement actions taken under the agreement through, for example, revocation of an operating license.

In contrast, in a number of instances, while there is no formal involvement, government nevertheless plays an important behind-the-scenes role in providing informal advice and monitoring ISR agreements. This seems particularly true for those ISR agreements dealing with advertising, and dealing with specific problems (such as spam and telemarketing issues).

Transnational ISR agreements

Self-regulation can be useful at the transnational level, as a means to address issues that cannot or may be more difficult to tackle through inter-government co-operation. It can help ensure that consumers are provided with a measure of protection in cross-border transactions. Many initiatives have been pursued in the standards area through the International Organization for Standardization, and ISR agreements have also been developed outside the ISO, in the areas of advertising, toys and food safety. In addition to standards, codes of conduct have been developed at the ISO and the OECD, through their *Guidance on Social Responsibility* and *Guidelines for Multinational Enterprises*, respectively. Moreover, an ISR involving the protection of consumer data flows has been adopted in the APEC forum.

Next steps

The use of ISR to help address consumer issues needs to be considered systematically when policy makers and enforcement authorities are developing options for taking action. As discussed in the *Consumer Policy Toolkit*, ISR could be part of a multi-faceted response to a problem, supporting other measures that governments might take. With respect to the development, monitoring and evaluation of such mechanisms, it appears that stakeholder involvement has been limited, and that it may be beneficial to explore whether there are ways that involvement could be strengthened, in ways that would benefit all stakeholders. There may also be scope for expanding the use of transnational ISR agreements, particularly in light of the growing number of transactions that consumers are engaging in, via e-commerce. Moreover, ISR agreements may acquire greater importance in emerging areas, such as e-commerce, where industry may be better positioned to react rapidly to technological changes that raise consumer issues, and to the development of new products or services that may not be adequately covered by governmental regulations. In this context, the greater flexibility of ISR agreements and the expertise that industry participants could have in addressing new areas could be beneficial.

INDUSTRY SELF-REGULATION: ROLE AND USE IN SUPPORTING CONSUMER INTERESTS

I. Overview

In 2010, the OECD completed work on a *Consumer Policy Toolkit*, which provides a framework for improving the development and implementation of policy measures to address consumer problems (OECD, 2010a). It presents a six step process for addressing problems and describes the twelve principal policy instruments that should be considered in developing responses (Box 2). The report notes the important role that non-governmental stakeholders can play in developing and applying the instruments, either acting on their own or in co-operation with government regulators and other stakeholders.

Box 2. Consumer policy instruments

1. *Consumer education and awareness*: Measures aimed at developing critical consumer skills and alerting consumers to specific problem areas.
2. *Information provision and other disclosure measures*: Measures aimed at ensuring that consumers are provided with information which is accurate and which can contribute to their making well-informed decisions.
3. *Contract terms regulation*: Measures aimed at ensuring that contract terms are fair and reasonable.
4. *Cooling-off periods*: Measures aimed at providing consumers with the ability to cancel a contract within a specified period.
5. *Moral suasion*: Measures aimed at persuading businesses to address a problem on their own, without formal government intervention.
6. *Codes of conduct and trustmarks*: Measures aimed at influencing business behaviour (codes of conduct) or recognising adherence to established principles or standards (trustmarks).
7. *Standards*: Measures aimed at establishing criteria to ensure that products, services and systems are safe, reliable and that they consistently perform in the way they were intended to.
8. *Licensing and accreditation of firms or providers*: Measures aimed at ensuring that businesses have the competence to produce or provide acceptable goods and services.
9. *Financial instruments*: Financial measures aimed at penalising firms for certain conduct or damage, or encouraging consumers or businesses to behave in a certain manner (e.g. through taxes or subsidies).
10. *Prohibitions*: Measures aimed at banning undesirable products or practices.
11. *Dispute resolution and redress mechanisms*: Measures aimed at providing consumers with effective ways to resolve disputes and, when appropriated, obtain compensation.
12. *Enforcement strategies*: Decisions concerning the types of enforcement actions that can be used in specific instances to achieve desired outcomes.

Source : OECD, 2010

The Committee on Consumer Policy, which developed the *Toolkit*, decided that it would be beneficial to examine more closely the potential role that industry could play in addressing problems, through measures which are self-regulatory in nature. It prepared this report, which explores the terms and conditions under which industry measures that correspond to the twelve policy instrument areas could be effective in achieving positive outcomes. It also addresses the limitations of self-regulatory actions, providing examples when such actions fell short of expectations.

The report builds, *inter alia*, on earlier OECD work on alternatives to traditional regulation (OECD 2006). It benefits from case studies that were provided by OECD members, business and consumer groups.

What is industry self-regulation?

For the purposes of this report, industry self-regulation concerns groups of firms in a particular industry or entire industry sectors that agree to act in prescribed ways, according to a set of rules or principles. Participation by firms in the groups is often voluntary, but could also be legally required.

The groups can be wholly responsible for developing the self-regulatory instruments, monitoring compliance and ensuring enforcement, or they can work with government entities and other stakeholders in these areas, in a co-regulatory capacity. Co-regulation can be seen as being part of the continuum between self-regulation and government regulation. Self-regulatory schemes entailing some degree of government involvement are common; the level of involvement, however, can vary significantly among schemes. As described later, government can play a variety of roles in encouraging and interacting with self-regulatory schemes even outside of a co-regulatory model.

How and why is self-regulation used in the field of consumer policy?

A review of the case studies provided in support of this analysis, together with related research, indicates that self-regulation has been used to support consumer policy and has been pursued principally through the development of codes and standards. The measures reviewed, however, all have a multi-dimensional character. The British Code of Advertising, Sales Promotion and Direct Marketing, for example, has links to 8 of the 12 policy instruments presented earlier. The multi-dimensional character of the measures is due in part to the overlap and complementarities in some instruments; codes of conduct, for example, could cover a variety of issues, including education and awareness, information disclosure and dispute resolution.

Why self-regulation is pursued can be linked to a number of factors. Governments may be interested in encouraging such regulation when they may, because of legal constraints, be limited in their ability to address certain issues. This is sometimes the case with respect to issues related to information disclosure, where, in some cases, governments may not be able to regulate the way businesses advertise due to rights of free expression. Moreover, governments may find it more cost-effective to pursue ISR options.

Businesses can also have interests in self-regulation:

- *Reputation.* Self-regulatory efforts can help those businesses involved to be seen in a more favourable light by consumers and/or governments. Participants may see benefits in collectively promoting their trading standards to differentiate themselves from others in the industry, or to improve or enhance confidence in the industry as a whole. Consumers who are aware of a self-regulatory scheme and understand the benefits it may provide to them may be willing to change their purchasing behaviour in favour of participation in the scheme.
- *Competition.* Self-regulatory arrangements can be used to develop and maintain common standards, providing level playing fields that facilitate the entry of newcomers and promote competition. On the other hand, those arrangements which favour incumbents, while beneficial to those concerned, can act to limit competition.
- *Regulation.* Self-regulatory schemes have frequently been initiated in response to the threat of government regulation, which can be more costly and less flexible than ISR schemes. In this regard, self-regulation gives firms greater scope to influence the standards set and a bigger

influence on how they are monitored and enforced, which can be beneficial. This, in turn, may allow industry participants to accumulate practical experience in designing and complying with new standards over time.

- *Other.* ISR agreements can also provide benefits to industry, to the extent that they include training and other resources that would prove useful in implementing an ISR.

What roles can and do government and stakeholders play in such schemes?

The scope for the involvement of government and stakeholders, including civil society (such as consumer groups) and independent experts, in industry self-regulation in the consumer area varies. Their participation ranges from early involvement in the development of schemes, to monitoring their effectiveness, to enforcement and dispute resolution and dispute and redress.

Role of government

Governments can *i)* encourage self-regulatory action, by urging or mandating businesses to develop self-regulatory schemes to address consumer issues, *ii)* provide advice, by contributing to the development of guidance on how certain issues may best be addressed, *iii)* support compliance, by encouraging or requiring adherence to ISR, *iv)* authorise the schemes, to ensure their suitability and/or compliance with laws and regulations, *v)* monitor the effectiveness and impact of schemes, *vi)* support enforcement of the schemes by third parties or through governmental enforcement activities, *vii)* promote multi-stakeholder dialogue, by involving civil society and other interested parties to take part in the development and/or monitoring of schemes and *viii)* publicly endorse successful self-regulatory efforts

As indicated above, the role that they can play varies. Bartle and Vass (2005) have suggested the following taxonomy:

- *Co-operative*, where the regulator and regulated co-operate on the operation of statutory regulation.
- *Delegated*, where the implementation of statutory duties by a public authority is delegated to self-regulatory bodies.
- *Devolved*, where powers are legally ascribed to self-regulatory bodies.
- *Facilitated*, where self-regulation is explicitly supported by the state in some way, but where the scheme itself is not backed by statute.
- *Tacit*, where there is little explicit state support, but the implicit role can be influential.

Encouraging self-regulatory action

Once consumer issues have been identified by stakeholders and it has been determined that an action needs to be taken, governments can consult with industry and other stakeholders to determine what policy options would be the most effective, and the role that self-regulation could play (OECD, 2010). For example, in April 2006, the US Federal Trade Commission (FTC) urged the US food and beverage industry and the Council of Better Business Bureaus to determine whether the then-existing self-regulation system for advertising targeting children could do more to address concerns about child-directed food and beverage advertising in light of rising childhood obesity. The FTC's call built on related recommendations from the Institute of Medicine, a non-profit organisation that works outside of government to provide

unbiased and authoritative advice to decision makers and the public on health matters (FTC and Department of Health and Human Services, 2006).² In response, in 2006, the industry developed a Children's Food and Beverage Advertising Initiative (CFBAI) under the auspices of the Council of Better Business Bureaus that applies to certain types of food and beverage marketing. In a detailed analysis, the FTC has commended the CFBAI for making "major strides" in improving self-regulation while continuing to encourage the food and beverage industry to make additional improvements to the CFBAI program (FTC, 2012*b*).

In addition to the United States, government has engaged with industry to develop self-regulation to restrict food marketing to children in Denmark, Latvia and Spain (World Cancer Research Fund International, 2014*a*). Norway restricts all broadcast advertising to children through legislation but has a voluntary initiative, agreed in 2013, which calls upon industry to follow standards that are largely set by government on a further range of communication channels. In the European Union and Thailand, governments have stated that they support the implementation of pledges made by food companies to restrict advertising of foods to children through specific communication channels.

In addition to marketing, voluntary agreements, often developed with government, have been reached to promote healthy food by, for example, reducing salt use in specific products (World Cancer Research Fund International, 2014*b*).

Providing advice

Governments can provide advice to industry on ways to design self-regulatory schemes, helping to ensure that issues are adequately covered and that proposed measures will be effective in addressing issues. This was done, for example, by the Danish Ministry of Science, Technology and Innovation, which worked closely with industry to develop the Danish Spam Control Code. In Finland, the Consumer Ombudsman worked with the industry in 2010 to develop a checklist of essential points that should be considered by consumers before entering any mobile subscription arrangement; it was designed to serve as a prototype that would be adapted by operators to meet their specific needs (OECD, 2013).

Promoting multi-stakeholder dialogue

Governments can serve as a catalyst for involving stakeholders in ISR, including civil society groups such as consumer organisations. They can, for example, take actions to include them in reviewing and validating schemes and to solicit their views in reviewing the effectiveness of ISR agreements.

In Australia, for example, the Telecommunications Act 1997 requires that consultations with industry, the public, consumer representatives, the Australian Competition and Consumer Commission, the Telecommunications Industry Ombudsman and, in some cases, the Information Commissioner, be carried out when codes are being developed; such consultations are required for the code to be registered with the Australian Communications and Media Authority (ACMA). The Communications Alliance (CA), which is the main industry association, takes the lead role in drafting and reviewing industry codes and other industry initiatives. Its membership currently comprises about 54 providers, including many of the larger providers. Consumer representative organisations participated alongside industry representatives in the drafting of the Telecommunications Consumer Protections Code 2012, a code which significantly improved protections in the areas of advertising, point of sale information, billing, spend management tools, financial hardship and complaints handling for telecommunications consumers.

Authorising schemes

² See: www.bbb.org/us/storage/0/Shared%20Documents/CFBAI%20Report.pdf.

Governments can examine ISR schemes to determine their suitability for addressing concerns. In the United Kingdom, for example, the Office of Fair Trading (OFT) operated a Consumer Codes Approval Scheme (CCAS) for many years, which was designed to identify industry codes that would be effective in protecting and promoting consumer interests (UK OFT, 2008). In April 2013, OFT transferred the CCAS programme to the Consumer Codes Approval Board operated by the Trading Standards Institute (TSI), which is an association of trading standards professionals in the UK and overseas - in local authorities, the business and consumer sectors and in central government.³ In February 2013, the TSI, following public consultation, issued guidance on the core criteria for the modified CCAS programme. Significantly, under the modified CCAS, the code scheme was strengthened to ensure that approved codes actively reduce consumer detriment (TSI, 2013).

Supporting compliance

Governments can take actions to encourage or require adherence to ISR. In the United States, with a view towards addressing bill shock issues in contract for telecommunication services, the Federal Communication Commission (FCC) issued a notice of proposed rulemaking in 2010, promoting the industry group CTIA-The Wireless Association, to revise the CTIA Consumer Code for Wireless Service to address issues. In light of this, the FCC put its bill shock rulemaking proceeding on hold, reserving the right to take action, should non-compliance occur (OECD, 2013).⁴ Compliance is also supported through an FCC website that tracks wireless companies compliance and progress.⁵ In the United Kingdom, the Office of Communication (Ofcom) provided the telecom industry with guidance in the area of contract terms to enhance compliance with existing regulation, which proved very effective (OECD, 2013).

Enforcing rules

When schemes' structure and existing regulation allow, governments can contribute to enforcing ISR schemes. For instance, both the US National Advertising Division (NAD) and the Electronic Retailing Self-Regulatory Program, self-regulatory programmes concerned with advertising, can and do make referrals to the Federal Trade Commission, when advertisers fail to follow their recommendations. Such referrals lead to review by the agency and may lead to informal or formal actions.

Monitoring and evaluating schemes

Governments can play an important role in monitoring and assessing the effectiveness of self-regulatory schemes. In the United States, for example, the FTC has been conducting regular reviews of the effectiveness of the rating system established by the motion picture, recording and electronic gaming industries; the ratings are assigned to entertainment products such as movies, music, video games and "apps" to indicate their suitability for different age groups. These reviews can influence and enhance improvements of the self-regulatory programs. For example, as a result of an FTC assessment, the industry-based Entertainment Software Rating Board (ESRB) improved and expanded its self-regulatory program (FTC, 2013).

In Canada, although banks were required to adhere to an external complaints handling body, there previously were no regulatory standards for such bodies and no monitoring by the government, which resulted in uncertainty for consumers. This changed in April 2013, however, following an evaluation of the

³ See www.tradingstandards.gov.uk/extra/ourorganisation.cfm?frmAlias=/ourorganisation/.

⁴ In October 2011, the code was updated to provide consumers with free notifications for voice, data and messaging usage, and international roaming (CTIA, 2011).

⁵ See www.fcc.gov/bill-shock-alerts.

schemes; as a result, banks are required to be members of an approved external complaints body (Department of Finance, 2013). In the United Kingdom, the Department for Business, Innovation and Skills (BIS) conducted a consumer survey on payday loans between May and June 2013 to monitor to what extent payday loan lenders complied with industry standards that were adopted in 2012. The survey reveals that payday lenders did not fully abide by the standards and that the industry has failed to self-regulate effectively (BIS, 2013).

Role of stakeholders

Civil society, independent experts and other stakeholders can play roles similar to those of government in the areas mentioned above. They can, for example, *i*) provide input into schemes' design, through consultations with industry and government, *ii*) participate in schemes' management, through participation in independent bodies, *iii*) contribute to monitoring the effectiveness of self-regulatory efforts and *iv*) contribute to consumer awareness, through information, education and awareness initiatives. Establishing a transparent, multi-stakeholder process for developing self-regulatory schemes could help enhance their objectivity, transparency and consumer trust in them (Ramirez, 2012).

The involvement of these stakeholders can be informal or well established. The Cosmetic Ingredient Review (CIR), for example, was established in 1976 by the industry trade association (now called the Personal Care Products Council), with the support of the US Food and Drug Administration and the Consumer Federation of America; its main role is to review and assess the safety of ingredients in cosmetics.⁶ Although funded by the Council, CIR and the review process are independent from the Council and the cosmetics industry. General policy and direction are given by a 7-member Steering Committee chaired by the President and CEO of the Council, with a dermatologist representing the American Academy of Dermatology, a toxicologist representing the Society of Toxicology, a consumer representative representing the Consumer Federation of America, an industry scientist (the current chair of the Councils CIR Committee), Chair of the CIR Expert Panel and the Council's Executive Vice President for Science (Cosmetic Ingredient Review, undated).

How can self-regulation be used at the transnational level in the consumer area?

Self-regulation can be useful at the transnational level, as a means to address issues that cannot be tackled, or may be more difficult to tackle, through inter-government co-operation, legal actions, or other means. It can help ensure that consumers are provided with a measure of protection in cross-border transactions, Guidelines, standards, trustmarks and codes of conduct are being used in this context.

Business organisations have developed transnational self-regulatory instruments in a number of areas. In the field of advertising, for example, the International Chamber of Commerce (ICC) developed a *Consolidated ICC Code of Advertising and Marketing Communication Practice* that is designed, on the business side, to provide ethical guidelines that create a level playing field and minimise the need for legislative or regulatory restrictions, while, on the consumer side, building trust with consumers by assuring them of advertising that is honest, legal, decent and truthful and quick with easy redress when transgressions occur.⁷ Related work has been developed in a number of other areas including on behavioural advertising, food and beverage marketing, environmental marketing and direct selling practices.

⁶ See www.cir-safety.org/about.

⁷ See www.iccwbo.org/Data/Policies/2011/ICC-Consolidated-Code-of-Advertising-and-Marketing-2011-English/.

At the European level, an example of self-regulation is provided by the *Charter of the European Advertising Standard Alliance (EASA)*. EASA is a co-ordination point for bodies with the responsibility to apply codes of standards and practice established by self-regulatory organisations in response to consumer protection issues highlighted by the creation of the European Common Market. Other cases in point are the *Responsible Commercial Communications Guidelines for the Brewing Industry of the Brewers of Europe (CMBC)* and the *Guidelines on the Lifespan of Products of the European Cosmetic and Perfumery Association (COLIPA)*.

In the area of product safety, the Toy Industry Association developed the world's first toy safety standard, in 1976. The standard was transformed into a formal global industry standard (ASTM F963) that was endorsed by the US Congress and transformed into a mandatory rule by the United States Consumer Product Safety Commission (CPSC), in 2012. The standard is a living document that is regularly revised by the Standards Committee of ASTM International. The committee operates by consensus and includes representatives of industry, consumer organisations, medical experts and child development experts, as well as representatives from the US CPSC and Health Canada (Kaufman, A, 2012).

In the area of food safety, a Global Food Safety Initiative (GFSI), a business-driven initiative established in 2000 to promote the continuous improvement of food safety management systems worldwide, provides a platform for co-operation between some of the world's leading food safety experts. These include retailer, manufacturer and food service companies, service providers associated with the food supply chain, as well as international organisations, academia and government. One of its key goals is building confidence in third-party certification (Scimeca, 2012).

International organisations, both governmental and non-governmental, have also supported industry self-regulation. Self-regulation has been widely used, for example, in the development of standards, led by the work carried out at the International Organisation for Standardization (ISO). For business, such standards have appeal, to the extent that they provide strategic tools that can reduce costs by minimising waste and errors, and increasing productivity.⁸ They are also beneficial to the extent that they help companies to access new markets, level the playing field for developing countries and facilitate free and fair global trade. The ISO is an independent, non-governmental organisation made up of members from national standards bodies which represent their country's standardisation interests in the ISO System. Its members can be part of the government structure of their countries, but they also include private sector organisations set up by national partnerships of industry associations.⁹ The instruments developed by the ISO, it should be noted, are voluntary in nature.

The ISO also has a Committee on Consumer Policy (COPOLCO) which:

- Studies means of helping consumers to benefit from standardisation, and means of improving consumer participation in national and international standardisation.
- Provides a forum for the exchange of information on the experience of consumer participation in the development and implementation of standards in the consumer field, and on other questions of interest to consumers in national and international standardisation.
- Advises the ISO Council as to the consolidated viewpoints of consumers on matters relevant to ISO's current and potential standardisation and conformity assessment work.
- Advises the ISO Council on the need for new or revised policies or actions within ISO as they relate to consumer needs.

⁸ See www.iso.org/iso/home/standards.htm.

⁹ See www.iso.org/iso/iso_membership_manual_2013.pdf.

To date, COPOLCO has overseen the development of standards in six main areas:¹⁰

- Purchase information on goods and services intended for consumers (ISO/IEC Guide 14:2003).
- Instructions for use of products by consumers (ISO/IEC Guide 37:2012).
- Packaging -- Recommendations for addressing consumer needs (ISO/IEC Guide 41:2003).
- Comparative testing of consumer products and related services -- General principles (ISO/IEC Guide 46:1985).
- Graphical symbols -- Technical guidelines for the consideration of consumers' needs (ISO/IEC Guide 74:2004)
- Development of service standards -- Recommendations for addressing consumer issues (ISO/IEC Guide 76:2008)

The ISO published guidelines for B2C e-commerce in 2013. The organisation is currently developing standards on mobile banking/payments and on services to energy users.

In addition to these standards, related instruments to protect consumer health and safety have been developed, and there is an important section in the ISO *Guidance on Social Responsibility* (ISO 26000) pertaining to consumer issues.

Such standards can support consumer interests in a number of ways (Henry, 2012). They can, for example, establish an internationally recognised and accepted blueprint for new companies which are in the early stages of developing their policies and procedures. For established firms, they can be used as a checklist to review company policies and procedures and identify areas where changes might be required to improve their approach to consumer issues. This can be critical in the case of emerging areas, such as e-commerce, where companies may not be sufficiently aware of the types of measures that need to be taken to ensure that consumers are treated fairly and are properly informed when purchasing items online. In such cases, adhering to the standards could help in a pre-emptive way to diminish the scope and magnitude of potential problems.

A similar role can be played by codes of conduct, such as the *OECD Guidelines for Multinational Enterprises* (MNE guidelines) (OECD, 2011). Governments, in consultation with stakeholders, negotiated the guidelines, which establish a set of principles to encourage and enhance socially responsible behaviour by multinational enterprises, in ways that would go significantly beyond simple adherence to national laws and regulations. The guidelines, combined with the complementary guidance contained in the ISO 26000, provide an important benchmark for evaluating the performance of businesses. The MNE guidelines, while voluntary in nature, present an additional feature: stakeholders can make inquiries or raise concerns with a National Contact Point (NPC). The NCPs are government-supported that essentially act as intermediaries when problems arise, seeking to find ways to resolve problems (Yu, 2012).¹¹ Their role can go further, however, providing recommendations, when appropriate, related to the implementation of the guidelines. In some countries the role of NCPs is, however, stronger, as they take a very active role in resolving issues (Kaufman, J, 2012). The MNE guidelines are endorsed by 46 countries: 34 OECD Members and 12 non-Members.

¹⁰ See www.iso.org/iso/iso_technical_committee.html?commid=55000.

¹¹ See www.accountabilitycounsel.org/wp-content/uploads/2012/02/1.25.13-brochure.pdf.

In the area of privacy, the Asia-Pacific Economic Co-operation Forum (APEC) developed a Cross-Border Privacy Rules System (CBPRS), which is a self-regulatory initiative aimed at enhancing the protection of consumer data that moves between APEC members through a voluntary but enforceable code of conduct implemented by participating businesses (FTC, 2012a). Interested businesses are certified once they have demonstrated compliance with the system. The commitments that they make in subscribing to the system must be legally enforceable in the APEC countries concerned.

Advantages and challenges of self-regulation

Advantages

Industry self-regulation can help to prevent harm to consumers and the environment and to foster improved market functioning in a number of ways. It can, for example, provide support for businesses in overseeing the implementation of existing legal requirements. It can also go beyond legal requirements to address areas where market failures exist and no regulatory actions have been taken. The lack of a government response in these latter instances could reflect limited resources or legal restraints (Engle, 2012). This can be particularly important in jurisdictions, where legal frameworks and infrastructures may still be insufficient to provide consumers with a minimum level of protection. ISR can also be important in a cross-border context, given the global nature of many firms' activities (OCA, 1998 and Zaring, 2012).

Advantages include:

- *Going beyond legal requirements.* Self-regulation can go beyond what is legally required, thereby contributing to improved consumer outcomes. For example, it has been used in a number of instances to establish quality standards that go beyond legal requirements. The UK's CCAS, for example, states that its self-regulation programme "goes above and beyond consumer law obligations and sets a higher standard, showing consumers clearly - through the right to display the TSI Approved Code logo - that code members can be trusted" (TSI, undated).
- *More flexibility.* Oftentimes industry response to new issues through self-regulatory schemes can be adjusted more swiftly and easily than government regulations, which can be a time consuming, cumbersome process and may entail significant procedural hurdles (Engle, 2009). In this respect, self-regulation seems to play a particularly important role at the cross-border level, where reaching co-ordinated regulatory solutions could prove especially challenging (Van der Zeijden and Van der Horst (2008)).
- *Filling regulatory gaps quickly.* The rapid change that businesses and consumers encounter in markets may require existing regulations to be changed or updated frequently (OECD, 2006). However, as mentioned above, the process for governments changing regulations may be a lengthy one. Processes overseen by industry may be more responsive and quicker. The self-regulatory process may also help establish new government regulations in the future, if it turned out that government regulations would be effective for consumer protection. Moreover, from the business perspective, having a self-regulation scheme may enhance the opportunity to shape any forthcoming legislation (William, 2004).
- *Higher technical expertise.* The higher technical expertise of industries can make them better positioned to tailor rules and guidance to their specific situations.
- *Lower costs.* Studies on self-regulation indicate that it can often be less costly and less burdensome for businesses than comparable government regulation, regardless of the level of government involvement (Bartle and Vass, 2005 and Ministry of Consumer Affairs, 2005).

- *Stronger values and ethics.* Although it can be argued that self-regulation is unlikely to be successful in the absence of a well rooted culture of business ethics, self-regulatory initiatives tend to nurture stronger business values and ethics (Priest, 1998).
- *Higher compliance levels.* Regulations which are imposed by governments might not command the full support of affected businesses, which can translate into weak compliance. Compliance with self-regulatory mechanisms, on the other hand, can, in some cases, be stronger due to the benefits of buy-in by industry members who may have helped design them and who may thus have a vested interest in their success (Priest, 1998). The degree of commitment engendered by industry control may also be beneficial for consumers, as it may in some cases encourage business to “raise the bar” and reach higher standards (OFT, 2009).
- *Enhanced competition.* Self-regulation can help to enhance competition, to the extent, for example, that it establishes norms that create more level playing fields and, by encouraging responsible business behaviour, provide added incentives for consumers to purchase from businesses which participate in the schemes (Priest, 1998). Smaller businesses can benefit from participation, to the extent that their reputations are enhanced. This is true at both the national and international levels.
- *Conserving government resources and costs.* From the government perspective, industry self-regulation is more cost effective since most of the regulatory costs would be borne by businesses rather than by the government; enforcement and inspection costs could thereby be saved (Bartle and Vass, 2005).

Challenges

The success of ISR agreements depends critically on the strength of their provisions, and the extent to which businesses adhere to the schemes. As events in the financial sector demonstrated in 2007-2008, ISR agreements are not always successful. The crisis indicated that self-regulation and initiatives which rely entirely on a voluntary approach to improve business behaviour have limitations (OECD, 2010*b*). In the consumer area, efforts to curtail deceptive billing practices and unwanted telemarketing calls in the United States through ISR agreements did not succeed, which resulted in the government having to intervene directly to address problems (Box 3 and Box 4).

Box 3. Pay-per-call (United States)

During the early 1990s, many types of entertainment and information services were provided by telephone, using a pay-per-call model. When first introduced, the interactive audio-text technology used for pay-per-call services had the potential to expand the market for information services dramatically. Unfortunately, while the technology was convenient for consumers, it also became easy to abuse. Tens of thousands of consumers wound up with charges on their telephone bills for services they thought were free. Others were billed for expensive calls made by their children without their knowledge or consent.

At the time, there were a few several self-regulatory efforts to deal with these concerns. These included initiatives by the pay-per-call service providers, the long distance telecommunications carriers (which provided voice transmission and billing services for the pay-per-call services) and some local phone companies. Several long distance telecommunications carriers, for example, instituted policies that required an introductory message which provided rate information for certain types of calls. In addition, some local phone companies blocked user access to pay-per-call exchange numbers upon request.

The two then-existing industry associations, which opposed government regulation, developed a self-regulatory plan that would have required that all charges be disclosed, prohibited false or misleading advertising, outlawed programming that was obscene or promoted illegal or violent activities, and mandated additional disclosure and content requirements for services aimed at children. The Children's Advertising Review Unit, the children's arm of the advertising industry's self-regulation program, also instituted self-regulatory guidelines directed at children's audio-text programming.

These efforts, however, did too little to halt the widespread deception. In 1992, Congress enacted the Telephone Disclosure and Dispute Resolution Act, which required the FTC to initiate a rulemaking proceeding to prevent abuses in the industry.

Source : Federal Trade Commission (United States) (2009), Unpublished information provided to the OECD secretariat.

Box 4. Telephone preference service (United States)

Starting in 1985, the Direct Marketing Association (DMA) administered a program called the Telephone Preference Service (TPS), which gave consumers the opportunity to put their name on a list, free of charge, to avoid receiving telemarketing calls from DMA members. The system was voluntary and, to the extent that sanctions existed for non-compliance, DMA could only apply those sanctions against its members.

The government found the scheme to have been ineffective and proceeded with the development of a binding regulation, which subjected violators to civil penalties.

Source : Federal Trade Commission (United States) (2009), Unpublished information provided to the OECD secretariat.

As the above examples indicate, there are a number of challenges for industry self-regulation that might lead the scheme to be ineffective. These include:

- *Strength of instruments.* Businesses participating in the development of self-regulatory mechanisms may not share the same interests and, as a result, may have different views on the scope and substance of such mechanisms. Achieving consensus in such situations could result in compromises that favour provisions that are less far-reaching (Which?, 2009).
- *Compliance and oversight.* In the absence of effective enforcement and monitoring, parties to a scheme would have an incentive to adhere only to the extent that they deem it in their interest to do so (Williams, 2004). If the consequences and related costs for non-compliance were low,

businesses might be tempted not to adhere. Moreover self-regulatory organisations may not be in a good position to monitor which businesses are subscribing to a scheme, and, more importantly, the extent to which they are complying (Williams, 2004). These types of problems are commonly referred to as principal-agent problems. Such problems include the ability that some bad actors might have to join a scheme without the knowledge of the “principal,” thereby undermining the effectiveness and credibility of the scheme

- *Risk of regulatory capture.* This could occur when a self-regulatory body is overly “close” to the businesses that it is supposed to regulate/monitor/sanction and thus fails to exercise its functions effectively (Ogus and Carbonara, 2009).
- *Free-riders.* Businesses which do not participate in an ISR are not bound by its provisions and avoid the cost of compliance; they may benefit significantly from the avoidance of formal government regulation that might otherwise apply. They may also benefit from them, to the extent that consumers are not aware of their non-participation and base their decisions on the assumption that they are (Williams, 2004).
- *Market coverage.* Schemes may not achieve sufficient market coverage, and thus be ineffective. This could be due, for instance, to free-riding behaviour, but also to the fact that some businesses may not be aware of the existence of such schemes (OECD, 2013).
- *Favouritism.* The structure governing a self-regulatory scheme may be dominated by a small number of actors that have the influence and/or resources to organise and run it; this could, for example, favour the interests of larger or long-established firms. In addition, the benefits of flexibility and of swift responses to rapidly evolving environments may be lost in such situations, if dominant firms pursue their vested interest in preserving the *status quo* (Priest, 1998).
- *Distortions in competition.* As with all forms of regulation, self-regulation can create barriers to entry or otherwise distort competition through licensing or accreditation bodies that unfairly discriminate against certain businesses, or standards that unfairly discriminate against firms with new products or processes (see Which?, 2009 and Kovacic, 2012). This can be true both at the national and the transnational level.
- *Accountability.* Unlike government regulation, which may be subject to formal review and legal action if not administered properly, the effectiveness and operation of some self-regulatory mechanisms may be subject to limited, or no, evaluation, and recourse may not be available if the schemes do not fulfil their objectives (OECD, 2006 and Bartle and Vass, 2004).
- *Costs.* Establishing and operating self-regulatory schemes may impose higher direct costs on business, which might then be passed on to consumers (Priest, 1998 and ACMA, 2011). Government regulation would have a lower direct impact, to the extent that those costs were not directly recoverable from affected businesses and consumers.

Operating parameters/variables

Factors favouring success

The potential success, or failure, of self-regulatory mechanisms can be assessed by examining a number of key factors, a list of which is provided in Box 3. The list draws on related work carried out by several consumer agencies (see OFT, 2009, ACMA, 2011, Ministry of Consumer Affairs, 2005 and OCA, 1998).

Box 5. Factors contributing to the success of industry self-regulation in the consumer area

Environmental factors

- *Industry self-interest.* Businesses are more likely to support ISR agreements where there are clear benefits.
- *Alignment of industry, government and consumer interests.* Shared goals can boost “buy-in”.
- *Number of market players.* A relatively small number of players can facilitate management of ISR agreements.
- *Market coverage.* The higher the level of participation in an ISR, the greater the likely impact.
- *Homogeneity of products.* Product similarity can simplify ISR application.
- *Nature and magnitude of consumer detriment.* The more serious the potential detriment, the more critical the need for high industry coverage and compliance.
- *Competition.* ISR agreements should not result in barriers to entry or facilitate market-distorting collusion.

Features or provisions of the self-regulation

- *Clarity and strength of objectives.* This can encourage industry participation, and facilitate impact assessments.
- *Conformity of schemes with government policies.* Conformity can strengthen and reinforce support from government regulatory authorities.
- *Legal basis.* ISR agreements that aim at implementing laws and policies are likely to win broad support.
- *Leadership.* Strong, independent ISR management can boost credibility and effectiveness.
- *Leveraging industry knowledge in rule setting.* Exploiting industry expertise can improve outcomes and enhance industry support.
- *Monitoring, transparency and public accountability.* This is a key to building trust and credibility in ISR agreements.
- *Enforcement and sanctions.* These disciplines are needed to encourage compliance and impose costs for those businesses which do not adhere to the ISR agreements.
- *Dispute resolution and redress (DRR).* Providing consumers with DRR mechanisms can build consumer trust, while providing a means for support monitoring.
- *Stakeholder participation.* This can improve the quality of ISR agreements, helping to ensure that key issues are identified and adequately addressed.
- *Public awareness.* This can enhance consumer use of ISR agreements and build public pressure for adherence.

The factors can be grouped into those which are environmental in nature (i.e. pertaining to market and industry circumstances) and those others which pertain to the features or provisions of a self-regulatory mechanism.

Environmental factors

Factors related to market and industry circumstances include:

- *Self-interest.* As indicated earlier, the positive effects that adherence to a self-regulatory scheme can have on firms' reputation can be important. Reducing the risk of potentially more onerous and costly formal government regulation is also a consideration (Monaco, 2012), as could be the commercial or competitive advantages achieved through, for example, certification or recognition for meeting high standards (Williams, 2004). On the other hand, a lack of serious interest by businesses can be an important impediment for the development of effective self-regulatory solutions (Van der Zeijden and Van der Horst, 2008).
- *Alignment of industry, government and consumer interests.* Coincidence of private and public interests can be important for self-regulatory schemes to be effective. Win-win situations that take business self-interest as a starting point in developing schemes could further contribute to fostering stakeholder co-operation as well as to designing solutions intended to simultaneously advance both industry and consumer interests. (Williams 2004).
- *Number of market players.* A small number of players with wide industry coverage can facilitate the operation of self-regulatory arrangements; it may, for example, facilitate achieving consensus on common solutions and compliance with common rules (ACMA, 2011) and it may also facilitate enforcement. Moreover, it may make it easier to identify cheating actors, so as to prevent free-riding and principal-agent problems. On the other hand, it has been noted that a small number of players may raise the risk of anticompetitive behaviour, thereby undermining an ISR (Which, 2009).
- *Market coverage.* The aggregate share of the market covered by participants in a self-regulatory scheme can be important for achieving goals. This can be particularly important in circumstances where problems relate to widespread and serious detriment across a market (OFT, 2009).
- *Homogeneity of products:* Self-regulatory initiatives seem to be more effective where the products concerned are essentially alike and firms are competing primarily on customer service (Ministry of Consumer Affairs, 2005). They seem to prove less effective when the products concerned are complex and difficult to compare, and especially so if they are credence or experience goods. (OFT, 2009). Lack of homogeneity may also make it difficult for industry to detect whether some players have engaged in wrongful activities (OFT, 2009).
- *Nature and magnitude of consumer detriment.* The nature and magnitude of any consumer detriment that a self-regulatory instrument aims at addressing can affect how successful it could be. In cases where the health and safety of consumers are at serious risk, for example, industry compliance may need to be very high for it to be deemed successful. In other instances, the criteria for success may be less demanding (ACMA, 2011).
- *Competition.* Self-regulatory initiatives are more likely to be successful where market structure and other sectoral characteristics are such that schemes do not create unnecessary barriers to competition (Faire, Ogus and Philipsen, 2009).

Features

Features of regulatory schemes that would influence the degree to which they may succeed include:

- *Clarity and strength of objectives.* Clarity in the goals of a self-regulatory scheme would help to enhance their acceptability to potential participants, and, in longer term, would help to facilitate assessments of their impact (OECD, 2010). Their impact would further depend on the extent to which the goals go beyond supporting the *status quo*.

- *Conformity of schemes with government policies.* Conformity can strengthen and reinforce support from government regulatory authorities. Schemes need to be examined to ensure that they do not contain provisions which may be inconsistent with government policies (OECD, 2006). Sometimes, for example, provisions may unintentionally violate competition policies or principles. The point may be particularly important in the case of transnational instruments as a scheme may be acceptable in some, but not all, jurisdictions.
- *Legal basis.* Self-regulation that is designed to implement laws can provide a strong basis for attracting membership and can contribute to broad stakeholder support. In this respect, self-regulation can provide assistance for businesses to comply with existing laws. Conveying that the intent is to facilitate implementation of legal obligations should therefore be made clear to businesses.
- *Leadership.* The ability and willingness of an industry to organise itself collectively is important for building industry capacity to ensure the success of the scheme (Ministry of Consumer Affairs, 2005). In this respect, the existence of a sufficiently independent and reputable self-regulatory organisation endowed with appropriate resources and monitoring and enforcement powers can be important.
- *Leveraging industry knowledge in rule setting.* Active involvement of businesses in rule setting can foster a greater sense of ownership as compared to government imposed legislation. It can thus increase acceptance of and compliance with the rules concerned. This can be particularly important in markets with complex products and in dynamic markets undergoing technological advances (OFT, 2009).
- *Monitoring, transparency and public accountability.* Regular monitoring of the operation and effectiveness of schemes can help to demonstrate whether objectives are being achieved and members of the scheme are complying. Such monitoring would also need to capture instances of non-compliance to help build credibility, and should evaluate the effects on consumers. Transparency and public accountability can significantly help build trust and confidence in self-regulatory schemes, helping to enhance its value to all participants and possibly encouraging new firms to join (Rossoglou, 2012).
- *Enforcement and sanctions.* Well-established, transparent enforcement mechanisms are key to establishing the credibility of self-regulatory mechanisms, as are sanctions which are substantial enough to discourage non-adherence. Such sanctions could be multifaceted, ranging, for example, from mild reprimands to expulsion (Faure, Ogus and Philipsen, 2009). Additionally, some industry self-regulation schemes might contain provisions for referral of violation to other enforcers, including government agencies, or provisions for government to serve as an enforcement backstop for self-regulatory schemes.
- *Dispute resolution and redress.* Self-regulatory instruments which concern consumers would benefit from provisions enabling consumers to complain when problems are detected. Effective complaint handling procedures would help build consumer trust in the self-regulatory scheme, while providing information on emerging problems and/or non-compliance (Rossoglou, 2012). Where appropriate, the provisions for complaints handling could be layered; if consumers do not obtain satisfaction at the firm level, an effective self-regulatory scheme could provide them with an avenue for appeal to other approved bodies. Where appropriate, self-regulatory schemes could also benefit from the inclusion of provisions for obtaining redress when detriment occurred. Provisions for addressing cross-border problems would also be beneficial.
- *Stakeholder participation.* Stakeholder participation in the development and/or maintenance and/or enforcement of schemes can have many advantages. The expertise and views that

stakeholders provide can, moreover, help to ensure that issues have been discussed adequately and that consideration has been given to different options. Such stakeholders could include government regulators and policy makers, consumer groups, experts and independent bodies. Existence of an institutional framework for regular dialogue between those stakeholders could be helpful in this regard.

- *Public awareness.* Consumer awareness of schemes can be important for building support. This could occur e.g. through consumer-focused provision of information and publicity. It can help consumers make more informed choices, drive reputational benefits for business, increase trust in the market and reduce the scope for free-riding behaviour (Ministry of Consumer Affairs, 2005). This could be particularly important in markets for credence goods or services, or for products which consumers purchase infrequently (OFT, 2009). The media can also play an important role in this context, not only in enhancing visibility, but in detecting problems that might arise.

II. Experience in using industry self- regulation in consumer areas: Case studies

This part of the report provides information on ISR agreements where consumer issues have been addressed. The case studies are based on materials provided by governments, businesses, civil society and other experts; for the most part they have not been independently evaluated. They cover a range of sectors and activities, including advertising, financial services, telecommunications, video games and software applications (apps), toys, and direct selling. The case studies are illustrative of the ways that ISR has been used to address consumer issues; they do not cover cases where ISR agreements have been largely unsuccessful. Examples of the latter are provided earlier in the report (see Box 3 and Box 4).

Annex I presents summaries of 23 case studies provided by governments and stakeholders for this assessment. The largest number of these case studies concerned dispute resolution and redress mechanisms and guidelines for advertising. Most of the case studies were prepared in 2006-7; some have been updated to reflect developments since their initial preparation.

This section of the report provides an overview of the case studies, focusing on the:

- Goals that were being pursued when the ISR was developed.
- Roles of governments and consumers in the development, operation and oversight of the ISR agreements.
- Key features of the ISR agreements.
- Potential benefits of the ISR agreements to consumers and industry.

Goals of self-regulation

The aims of the ISR agreements reviewed mostly concerned *i)* improving industry practices and increasing consumer trust, *ii)* providing consumers with better information and *iii)* providing more efficient dispute resolution mechanisms (Table 1).

With respect to improving industry practice, the Consumer Codes Approval Scheme (CCAS) in the United Kingdom, which is now operated by TSI, requires the codes to clearly exceed legal requirements in order to gain approval. As stated earlier, TSI approved codes go above and beyond consumer law obligations and set a higher standard; the codes are approved if it is clear that they can reduce consumer detriments. This was a change from a previous scheme, where codes were approved as long as they met specified criteria.

Enhancing consumer confidence was also an underlying theme in many of the codes, including those concerned with direct selling practices and automobile repair. In other instances, ISR agreements were developed to target specific problems, such as controlling spam and addressing abuses in telemarketing and phone charges that undermined consumer confidence in new types of media.

Providing consumers with better information through improved disclosures was also a common goal in the ISR agreements reviewed. Much was done to ensure the accuracy of advertising in this regard. In the case of the code on software ratings, the improved disclosures also required companies to provide consumers with information that would enable them to better protect their children from ill-suited content.

In the area of dispute resolution, a number of codes were adopted in complex markets where consumers were experiencing difficulties in resolving problems, including the telecommunications and financial services areas. These usually established mechanisms where decisions would be made by independent authorities.

Table 1. Goals of industry self-regulation measures

Self-regulatory measure	Jurisdiction	Goal(s) of measure
Government approval schemes		
Fair Competition Codes	JPN	Government sets criteria for schemes; goal is to reduce deceptive and misleading advertising, and unjustifiable premiums.
Consumer Codes Approval Scheme:	GBR	Government sets criteria for schemes; goal is to bolster consumer protection and improve customer service standards.
Direct Selling Association Consumer Code	GBR	Improve industry practice; increase consumer trust.
Vehicle Builders and Repairers Association Code	GBR	Improve industry practice; increase consumer trust.
Advertising		
National Advertising Division	USA	Promote truthfulness in advertising.
Advertising Standards Authority Advertising Codes of Practice	NZL	Provide a fair, effective, efficient codes and complaints system for consumers.
British Code of Advertising, Sales Promotion and Direct Marketing	GBR	Ensure that advertisements are legal, decent, honest and truthful.
Electronic Retailing Self-Regulation Programme	USA	Help ensure that advertising by electronic retailers is truthful and properly substantiated.
Children's Food and Beverage Advertising Initiative	USA	Shift the mix of foods advertised to children under 12 to encourage healthier dietary choices and healthy lifestyles.
Code of Marketing of Food and Non-alcoholic Beverages to Children	MEX	Help fight against childhood obesity.
Consolidated ICC Code of Advertising and Marketing Communication Practice	Multi	Provide an aspirational code that complements existing frameworks of national and international law.
E-commerce		
Confianza Online	ESP	Increase consumer's confidence in e-commerce and interactive advertising.
Online Interest-Based Advertising Accountability Program	USA	Apply consumer-friendly standards to online behavioural advertising.
Financial services		
Financial Ombudsman Service	AUS	Provide a free, efficient and fair consumer dispute resolution service with expertise in the financial industry.
Credit Ombudsman Service Ltd	AUS	Provide consumers and financial services providers with an alternative to legal proceedings for resolving financial services disputes.
Telecommunications services		
Telecommunications Industry Ombudsman	AUS	Respond to government mandate for an external dispute resolution body to address complaints.
Framework Agreement for Mobile Content and Payment Services	DNK	Regulate mobile content and payment services.
Spam Control Code	DNK	Minimize the amount of spam received by consumers to their private e-mail addresses.
Other		
Entertainment Software Rating Board	USA	Assign ratings for video games and apps so parents can make their own purchasing decisions regarding the appropriateness of the content of these products for their children.
Safety Toy mark	JPN	Set the toys safety (ST) standards and approve the use of the ST mark for the toys accepted in the ST standards conformity test.
Electricity and Gas Complaints Commission	NZL	Provides a free and independent complaint handling service for electricity and gas complaints.
Direct Selling Association Code of Practice	NZL	Establish guidelines for industry practice.
Collision Repair Industry Code of Practice	NZL	Promote good practice and to ensure a good relationship with the public.

Role of governments and consumer groups

The role of public authorities, consumer groups and other civil society actors in the development, maintenance and enforcement of ISR agreements varies considerably (Table 2). In the ISR agreements reviewed, governments played a formal role in developing ISR agreements in less than half of the cases; they played a far less role in authorising and enforcing the ISR agreements and a formal role in evaluating the instruments in slightly less than half the cases. Consumer organisations and other civil society actors played a minor role in the four areas.

In some instances, government plays a powerful role in designing, authorising, enforcing and monitoring ISR agreements. This is particularly the case with respect to ISR agreements dealing with financial services, which can require businesses to join schemes as a condition for being granted an operating license, and can support enforcement actions taken under the agreement through, for example, revocation of an operating license.

In contrast, in a number of instances, while there is no formal involvement, government nevertheless plays an important behind-the-scenes role in providing informal advice and monitoring ISR agreements. This seems particularly true for those ISR agreements dealing with advertising, and dealing with specific problems (such as spam and telemarketing issues).

Table 2. Role of governments and consumer groups in ISR schemes

Self-regulatory measure	Role of governments or public authorities (G) and consumer groups (C) in:			
	Providing formal advice in developing ISR	Authorising ISR	Enforcing ISR	Formally monitoring and/or evaluating ISR
Government approval schemes				
Fair Competition Codes:	G, C	G	-	G
Consumer Codes Approval Scheme:				
Direct Selling Association Consumer Code	-	G	-	G
Vehicle Builders and Repairers Association Code	-	G	-	G
Advertising				
National Advertising Division	G	-	G	-
Advertising Standards Authority Advertising Codes of Practice	G,C	-	-	-
British Code of Advertising, Sales Promotion and Direct Marketing	na ¹	na ¹	G, C	G,C
Electronic Retailing Self-Regulation Programme	G	-	-	-
Children's Food and Beverage Advertising Initiative	-	-	-	-
Code of Marketing of Food and Non-alcoholic Beverages to Children	G	-	-	G
Consolidated ICC Code of Advertising and Marketing Communication Practice	-	-	-	-
E-commerce				
Confianza Online	-	G	-	-
Online Interest-Based Advertising Accountability Program	-	-	-	-
Financial services				
Financial Ombudsman Service	G (sets criteria)	G	G, C	G, C
Credit Ombudsman Service Ltd	G (sets criteria)	G	G, C	G
Telecommunications services				
Telecommunications Industry Ombudsman	G, C	G	G, C	G, C
Framework Agreement for Mobile Content and Payment Services	-	-	-	G
Spam Control Code	-	-	-	na ¹
Other				
Entertainment Software Rating Board	-	-	-	G
Safety Toy mark	G	-	-	-
Electricity and Gas Complaints Commission	G (sets criteria)	G	G	-
Direct Selling Association Code of Practice	G	-	-	-
Collision Repair Industry Code of Practice	-	-	-	-

1 Not available.

Features of ISR

Most of the ISR agreements reviewed have *i*) enforcement provisions, *ii*) sanctions for non-compliance, *iii*) monitoring provisions and *iv*) dispute resolution provisions (Table 3). They thus have the basic elements in place that are conducive to success.

Enforcement

Many of the ISR agreements are governed or operated by an independent board, council or appointed administrator. In addition to representatives from the industry, government officials and consumer representatives often participate.¹² In one ISR that it is operated by the industry, supervision is carried out by an ombudsman, which is an independent public authority.¹³ In another case, a non-profit organisation is responsible for administration.¹⁴ The operating bodies generally have the power to investigate members' compliance; some publish annual reports that review enforcement activities.¹⁵

Sanctions

The sanctions contained in ISR agreements include *i*) notification to the public of non-compliance;¹⁶ *ii*) withdrawal of permission to use logos or trustmarks;¹⁷ *iii*) fines;¹⁸ *iv*) suspension or termination of the membership;¹⁹ and *v*) referral to regulatory authorities which might result in an administrative action being taken.²⁰ Before actually adopting sanctions, the ISR organisations may compel corrective actions or issue warning letters to non-complying members.²¹ Many of the ISR agreements have a range of sanctions which would be imposed, thereby providing operating bodies with the possibility to adopt sanctions accordingly to the seriousness of the breach.

Sanctions could play an important role in ensuring the effectiveness of an ISR. The potential loss of an operating license mentioned above, for example, provides a strong incentive to adhere to an ISR, as would the risk of incurring a large monetary fine. Expulsion from an ISR, on the other hand, may be of lesser consequence, depending on the visibility and significance of the ISR.

¹² See, for example, the case studies on Financial Ombudsman Service and Telecommunications Industry Ombudsman.

¹³ See, for example, the case study on Framework Agreement for Mobile Content and Payment Services.

¹⁴ See, for example, the case study on Electronic Retailing Self-Regulation Programme

¹⁵ See, for example, the case studies on Telecommunications Industry Ombudsman and Children's Food and Beverage Advertising Initiative.

¹⁶ See, for example, the case studies on Safety Toy Mark and Electronic Retailing Self-Regulation Programme.

¹⁷ See, for example, the case studies on Fair Competition Codes and Confianza Online.

¹⁸ See, for example, the case study on Framework Agreement for Mobile Content and Payment Services.

¹⁹ See, for example, the case study on Vehicle Builders and Repairers Association Code and Direct Selling Association Code of Practice.

²⁰ See, for example, the case studies on Children's Food and Beverage Advertising Initiative and National Advertising Division.

²¹ See, for example, the Direct Selling Association Code of Practice.

Monitoring and evaluation

Monitoring and evaluation of ISR agreements is generally carried out for the ISR agreements reviewed in this report, by ISR administrators, teams or councils in charge of compliance within ISR schemes. Governments or non-profit organisations may take part in the monitoring and evaluation process, especially when the codes are required to be approved by those parties; annual reports which include assessments of the operation of ISR agreements are sometimes prepared.²²

Various approaches have been used to monitor the ISR agreements reviewed in this report. Under one, consumer complaints are tracked based on the complaints from consumers, businesses could be asked to take corrective actions.²³ In some cases, the operating organisations may directly investigate the market; this could be done by, for instance, sporadic mystery shopping, weekly spot-checks (in the case of an advertising ISR), or surveys on particular sectors.²⁴ ISR may also require businesses to submit periodic reports on their compliance.²⁵ In the case of the CCAS, the TSI requires ISR operating bodies to develop measures of effectiveness, to facilitate monitoring²⁶. It requires that the measures demonstrate how the code is contributing to a reduction in consumer detriment and, where possible, to apply statistically valid methods. In this instance, the monitoring results need to be made publicly available, on the Internet. Reviews of the ISR scheme itself could be prompted by the results of the monitoring.

A number of the ISR agreements reviewed contain provisions for formal evaluations and reviews. Most of them require ISR operating bodies to regularly evaluate and review schemes. In some cases, such evaluation and review must be done in consultation with groups other than the operating body including the members, consumer groups or other independent bodies.²⁷ In one ISR, the operating body conducts customer satisfaction surveys quarterly from complainants and publishes annual statements describing their performance against key performance indicators.²⁸ In another scheme, the ISR requires the operating body to regularly review and update the provisions to ensure that the ISR is keeping pace with rapidly changing market conditions.²⁹

Dispute resolution and redress

Many ISR agreements include dispute resolution schemes which enable consumers to file complaints and ask for resolution directly with the operating organisations of the ISR (i.e., when it has not been possible for the consumer and the business concerned to resolve a dispute directly).³⁰ In most of the cases

²² See, for example, the case studies on Fair Competition Codes and Children's Food and Beverage Advertising Initiative.

²³ See, for example, the case studies on Entertainment Software Rating Board and Advertising Standards Authority Advertising Codes of Practice

²⁴ See, for example, the case studies on Confianza Online and British Code of Advertising, Sales Promotion and Direct Marketing.

²⁵ See, for example, the case study on Safety Toy Mark.

²⁶ See case study on the Consumer Codes Approval Scheme.

²⁷ See, for example, case studies on Financial Ombudsman Service and Telecommunications Industry Ombudsman.

²⁸ See case study on British Code of Advertising, Sales Promotion and Direct Marketing.

²⁹ See case study on Consumer Codes Approval Scheme.

³⁰ See, for example, the case studies on Direct Selling Association Code of Practice and Collision Repair Industry Code of Practice.

with dispute resolution provisions, decisions made by the organisations are binding for the member businesses, but not for consumers; therefore, consumers still retain their rights to bring their case to the court or to use other alternative remedies if they are not satisfied with the results.³¹ Usually, dispute resolution services are provided to consumers for free.³² In one instance involving product safety standards, consumers are entitled to receive redress from the standards organisation when an accident happens with a product carrying their logo,³³

³¹ See, for example, the case studies on Financial Ombudsman Service and Telecommunications Industry Ombudsman.

³² See, for example, the case studies on Credit Ombudsman Service Ltd. and Direct Selling Association Code of Practice.

³³ See, for example, the case study on Safety Toy Mark.

Table 3. Key features of ISR

Self-regulatory measure	Enforcement provisions	Sanctions for non-compliance	Monitoring and evaluation provisions	Dispute resolution provisions
Government approval scheme				
Fair Competition Codes	√	√	√	
Consumer Codes Approval Scheme:				
Direct Selling Association Consumer Code	√	√	√	√
Vehicle Builders and Repairers Association Code	√	√	√	√
Advertising				
National Advertising Division	√	√	√	√
Advertising Standards Authority Advertising Codes of Practice	√	-	√	-
British Code of Advertising, Sales Promotion and Direct Marketing	√	√	√	√
Electronic Retailing Self-Regulation Programme	√	√	√	-
Children's Food and Beverage Advertising Initiative	√	√	√	-
Code of Marketing of Food and Non-alcoholic Beverages to Children	√	-	√	-
Consolidated ICC Code of Advertising and Marketing Communication Practice	-	-	-	-
E-commerce				
Confianza Online	√	√	√	√
Online Interest-Based Advertising Accountability Program	√	√	√	√
Financial services				
Financial Ombudsman Service	√	√	√	√
Credit Ombudsman Service Ltd	√	√	√	√
Telecommunications services				
Telecommunications Industry Ombudsman	√	-	√	√
Framework Agreement for Mobile Content and Payment Services	√	√	√	√
Spam Control Code	√	-	√	-
Other				
Entertainment Software Rating Board	√	√	√	√
Safety Toy mark	√	√	√	√
Electricity and Gas Complaints Commission	√	√	√	√
Direct Selling Association Code of Practice	√	√	√	√
Collision Repair Industry Code of Practice	√	√	-	√

Potential benefits to industry and consumers

Part I of the report examines the potential benefits of ISR to governments, business and consumers, noting that there are also possible downsides which could have negative effects on them. Two examples were provided in which the ISR agreements failed to meet objectives.

The case studies provide further evidence of the potential benefits, from the perspective of the case study authors. Following is a summary of what they reported.

- *Better informed.*³⁴ Advertising codes can reduce risk that consumers encounter misleading and fraudulent advertisements. Trustmarks can help consumers identify products that meet certain standards, or companies that have subscribed to important commercial principles. Rating schemes can help consumers identify products that meet desired criteria.
- *More effective dispute resolution.*³⁵ ISR agreements that provide specialised, independent, low-cost dispute resolution mechanisms can facilitate problem-solving and increase consumer confidence.
- *Combatting unfair or abusive practices.*³⁶ ISR agreements can provide mechanisms through which businesses can tackle specific problems. This was done successfully in the case of spam. As ISR agreements on telemarketing and pay-per-call indicate, their effectiveness depends on subscription by a sufficient number of firms, and their commitment to the prescribed actions.
- *Enhanced consumer rights.*³⁷ Some ISR agreements contain provisions which provide consumers with stronger protection and rights. In addition to improved dispute handling (described above), this could include additional product guarantees and more favourable return policies.

They can be beneficial to businesses as well:

- *Enhancing consumer confidence/improving the image of businesses.*³⁸ Most of the ISR agreements reviewed indicate the value that the instruments have played in building consumer confidence by helping to ensure product quality and good commercial practices. The value of trustmarks in improving the image of ISR members was noted in this regard.
- *Disciplining businesses that fail to meet commitments.*³⁹ Many of the ISR agreements mention the importance of the instruments in helping to maintain a level playing field. Provisions that impose a cost on those businesses that do not adhere to the ISR can play an important role in discouraging violations.
- *Improving complaint handling.*⁴⁰ Participants in ISR agreements have noted the efficiency and effectiveness of external dispute resolution mechanisms in addressing complaints, and the positive responses from consumers using low-cost, independent authorities for addressing issues.

³⁴ See, for example, case studies on Safety Toy mark and Entertainment Software Rating Board.

³⁵ See, for example, case studies on Financial Ombudsman Service and Electricity and Gas Complaints Commission.

³⁶ See, for example, case study on Spam Control Code.

³⁷ See, for example, case study on Direct Selling Association Consumer Code.

³⁸ See, for example, case studies on Confianza Online and Safety Toy mark.

³⁹ See, for example, case study on Vehicle Builders and Repairers Association Code.

⁴⁰ See, for example, case studies on Credit Ombudsman Service and Electricity and Gas Complaints Commission.

- *Pre-empting formal government regulation.*⁴¹ In a number of instances, ISR agreements were developed with a view toward avoiding more direct intervention by government. The ISR was viewed as a more flexible instrument that could be adapted more easily to deal with changing conditions.
- *Providing instructional resources.*⁴² Well established ISR agreements can provide centralised services for members, providing, for example, opportunities for training and information sharing.

⁴¹ See, for example, case study on Framework Agreement for Mobile Content and Payment Services.

⁴² See, for example, case study on Entertainment Software Rating Board.

REFERENCES

- Australian Communication and Media Authority (ACMA) (2011), *Optimal Conditions for Effective Self- and Co-regulatory Arrangements –Occasional Paper*, www.acma.gov.au/webwr/_assets/main/lib310665/optimal_conditions_for_self_and_co-regulation.pdf, accessed in February 2013.
- Bartle I. and Vass P, (2005), *Self-regulation and the Regulatory State, Research Report 17*, Center for the Study of Regulated Industries, www.bath.ac.uk/management/crri/pubpdf/Research_Reports/17_Bartle_Vass.pdf, accessed in January 2013.
- Bartle I. and Vass P, (2007), *Self-regulation within the Regulatory State, Towards a New Regulatory Paradigm?*, in *Public Administration*, Vol. 85, No. 4, 2007 (885-905), <http://onlinelibrary.wiley.com/doi/10.1111/j.1467-9299.2007.00684.x/full>, accessed in January 2013.
- Cho, S.J. (2012), presentation at the FTC Enforceable Codes of Conduct – Protecting Consumers across Borders Forum, www.ftc.gov/bcp/workshops/codesofconduct/Final%20Transcript.pdf, accessed in April 2013.
- Cosmetic Ingredient Review (undated), About the Cosmetic Ingredient Review, www.cir-safety.org/about, accessed in September 2013.
- Credit Ombudsman Service Ltd (2004), *Annual Report 2004*, [www.cosl.com.au/cosl/assets/File/Annual%20Report%202003-2004\(1\).pdf](http://www.cosl.com.au/cosl/assets/File/Annual%20Report%202003-2004(1).pdf), accessed in March 2014.
- Credit Ombudsman Service Ltd (undated a), *About Us*, www.cosl.com.au/about/, accessed in March 2014.
- Credit Ombudsman Service Ltd (undated b), *Complaints FAQs*, www.cosl.com.au/complaint-resolution/complaints-faqs/?startRow=1&nextNID=C7A46B39-8F59-413F-AE4878C377186DD6, accessed in March 2014.
- Credit Ombudsman Service Ltd (undated c), *Credit Ombudsman Service Member*, www.cosl.com.au/cosl/assets/File/Member-Brochure.pdf, accessed in March 2014.
- Department for Business, Innovation and Skills (BIS) (the United Kingdom) (2013), *Payday Industry not Meeting Voluntary Codes*, 3 October 2013, www.gov.uk/government/news/payday-industry-not-meeting-voluntary-codes .
- Department of Finance (Canada) (2013), *Harper Government Introduces Tough New Pro-Consumer Oversight of Banking Complaints*, 10 April 2013, www.fin.gc.ca/n13/13-054-eng.asp .
- Direct Selling Association (undated), *About the DSA*, <http://dsa.org.uk/about>, accessed in March 2014.

- Electricity and Gas Complaints Commission (2010), *2010 Annual Report*, www.egcomplaints.co.nz/media/21914/egcc_ar_2010.pdf, accessed in March 2014.
- Electricity and Gas Complaints Commission (2013), *Annual Report 12-13*, www.egcomplaints.co.nz/media/51450/2013-EGCC-Annual-Report.pdf, accessed in March 2014.
- Electricity and Gas Complaints Commission (undated), *The Complaints Scheme*, www.egcomplaints.co.nz/about-us/the-complaints-scheme.aspx, accessed in March 2014.
- Engle, M. K. (2009), *Business Leadership in Consumer Protection - An OFT Conference on Self Regulation and Industry led Compliance: An International Perspective*, www.of.gov.uk/shared_of/consultations/speech.pdf, accessed in January 2013.
- Engle, M. K. (2012), presentation at the FTC Enforceable Codes of Conduct: Protecting Consumers across Borders Forum: www.ftc.gov/bcp/workshops/codesofconduct/Final%20Transcript.pdf, accessed in April 2013.
- Entertainment Software Rating Board (2013), *ESRB Survey: Parental Awareness, Use & Satisfaction*, www.esrb.org/about/awareness.jsp, accessed in March 2014.
- Federal Trade Commission (FTC) (United States) (2002), *Marketing Violent Entertainment to Children: A twenty-one month follow-up review of industry practices in the motion picture, music recording & electronic game industries: A report to the congress*, www.ftc.gov/reports/marketing-violent-entertainment-children, accessed in July 2014.
- FTC (2012a), *FTC Becomes First Enforcement Authority in APEC Cross-Border Privacy Rules System*, 26 July 2012, www.ftc.gov/news-events/press-releases/2012/07/ftc-becomes-first-enforcement-authority-apec-cross-border-privacy.
- FTC (2012b), *A Review of Food Marketing to Children and Adolescents*, December 2012, www.ftc.gov/sites/default/files/documents/reports/review-food-marketing-children-and-adolescents-follow-report/121221foodmarketingreport.pdf.
- FTC (2013), *FTC Undercover Shopper Survey on Entertainment Ratings Enforcement Finds Compliance Highest among Video Game Sellers and Movie Theatres*, 25 March 2013, www.ftc.gov/opa/2013/03/mysteryshop.shtm.
- Faire, M., Ogus, A., Philipsen, N. (2009), *Curbing Consumer Financial Losses: The Economics of Regulatory Enforcement*, in *Law and Policy*, <http://onlinelibrary.wiley.com/doi/10.1111/j.1467-9930.2009.00299.x/pdf>, accessed in February 2013.
- FTC and Department of Health and Human Services (2006), *Perspective on Marketing, Self-Regulation and Child Obesity*, www.ftc.gov/os/2006/05/PerspectivesOnMarketingSelf-Regulation&ChildhoodObesityFTCandHHSReportonJointWorkshop.pdf, accessed in September 2013.
- Kaufman, A. (2012), Presentation at the FTC Enforceable Codes of Conduct: Protecting Consumers across Borders Forum, www.ftc.gov/bcp/workshops/codesofconduct/index.shtml, accessed in September 2013.

- Kaufman, J. (2012), Presentation at the FTC Enforceable Codes of Conduct: Protecting Consumers across Borders Forum, www.ftc.gov/bcp/workshops/codesofconduct/index.shtml, accessed in September 2013.
- Kovacic, W. E. (2012), Presentation held at the FTC Enforceable Codes of Conduct: Protecting Consumers across Borders Forum, www.ftc.gov/bcp/workshops/codesofconduct/Final%20Transcript.pdf, accessed in April 2013.
- Ministry of Consumer Affairs (New Zealand) (2005), *Industry-Led Regulation - Discussion Paper*, www.consumeraffairs.govt.nz/legislation-policy/policy-reports-and-papers/discussion-papers/review-of-industry-led-regulation-discussion-paper, accessed in March 2013.
- OECD (2006), *Alternatives to Traditional Regulation*, www.oecd.org/gov/regulatory-policy/42245468.pdf, accessed in March 2013.
- OECD (2010a), *Consumer Policy Toolkit*, OECD Publishing, <http://dx.doi.org/10.1787/9789264079663-en>, accessed in March 2013.
- OECD (2010b), *Annual Report on the OECD Guidelines for Multinational Enterprises 2010: Corporate responsibility: Reinforcing a unique instrument*, OECD Publishing, <http://dx.doi.org/10.1787/mne-2010-en>, accessed in December 2014.
- OECD (2011), *OECD Guidelines for Multinational Enterprises*, OECD Publishing, <http://dx.doi.org/10.1787/9789264115415-en>, accessed in February 2013.
- OECD (2013), *OECD Consumer Policy Toolkit Workshop on Communication Services*, 15 March 2013, www.oecdilibrary.org/docserver/download/5k480t1g546j.pdf?expires=1379431182&id=id&accname=guest&checksum=B2478C51C81C05B4AE4D87CD33057A5B.
- Office of Consumer Affairs (OCA) (Canada) (1998), *Voluntary Codes – A Guide for Their Development and Use*, [www.ic.gc.ca/eic/site/oca-bc.nsf/vwapj/volcodes.pdf/\\$FILE/volcodes.pdf](http://www.ic.gc.ca/eic/site/oca-bc.nsf/vwapj/volcodes.pdf/$FILE/volcodes.pdf), accessed in February 2013.
- Office of Fair Trading (OFT) (United Kingdom) (2006), *Review of Impact on Business of the Consumer Codes Approval Scheme*, October 2006, www.oft.gov.uk/shared_of/Approvedcodesofpractice/oft870.pdf.
- OFT (2008), *Consumer Codes Approval Scheme*, March 2008, www.oft.gov.uk/shared_of/Approvedcodesofpractice/oft390.pdf, accessed in February 2013.
- OFT (2009), *Policy Statement – The Role of Self-regulation in the OFT's Consumer Protection Work*, http://oft.gov.uk/shared_of/reports/consumer-policy/oft1115.pdf, accessed in January 2013.
- Ogus, A. and Carbonara, E., Self-Regulation (2011), chapter 3, in *Production of Legal Rules*, ed. Parisi, F., Edward Elgar Publishing, www.ceur.it/system/files/carbonara1.pdf, accessed in January 2013.
- Ogus, A. (1999), Self-Regulation, Chapter IX, *Production of Legal Rules*, in *Encyclopedia of Law and Economics*, <http://encyclo.findlaw.com/9400book.pdf>, accessed in January 2013.
- Priest, M. (1998), *The Privatisation of Regulation: 5 Models of Regulation*, in *Ottawa Law Review/Revue de droit d'Ottawa*, www.investorvoice.ca/Research/MargotPriest_5models.txt, accessed in January 2013.

- Rossoglou, K. (2012), *Powerful Consumers and Responsible Entrepreneurs*, presentation the Consumer Environment Conference: Powerful Consumers and Responsible Entrepreneurs, November 2012, <http://ec.europa.eu/eesti/pdf/2012-11-konstantinos-rossoglou-the-european-consumer-organisation.pdf>, accessed in February 2013.
- Scimeca, J. (2012), Presentation at the FTC Enforceable Codes of Conduct: Protecting Consumers across Borders Forum, November 2012, www.ftc.gov/bcp/workshops/codesofconduct/Final%20Transcript.pdf, accessed in April 2013.
- Telecommunication Industry Ombudsman (2014), *Constitution of Telecommunications Industry Ombudsman Limited*, www.tio.com.au/__data/assets/pdf_file/0006/151845/TIO-Company-Constitution-2014.pdf, accessed in March 2014.
- Trading Standards Institute (TSI) (2013), *Trading Standards Institute: Consumer Codes Approval Scheme: Core criteria and guidance*, www.tradingstandards.gov.uk/templates/asset-relay.cfm?frmAssetFileID=28141, accessed in July 2014.
- TSI (undated), *Current Code Sponsors*, www.tradingstandards.gov.uk/advice/Currentcodesponsors.cfm, accessed in July 2014
- Van der Zeijden, P. and Van der Horst, R. (2008), *Self-Regulation Practices in SANCO Policy Areas, Final Report*, <http://eim.panteia.nl/nl/Expertise/Marktwerking/~media/1%20EIM/Files/self-reg-sanco.ashx> , accessed in January 2013.
- Which? (2009), *Consultation Response re: Business Leadership in Consumer Protection*, www.which.co.uk/documents/pdf/business-leadership-in-consumer-protection-which-response-222981.pdf, accessed in February 2013.
- Williams, A. (2004), *An Economic Theory of Self-Regulation*, http://anthonydwilliams.com/wp-content/uploads/2006/08/An_Economic_Theory_of_Self-Regulation.pdf , accessed in February 2013.
- World Cancer Research Fund International (2014a), *Restrict food marketing: Restrict food advertising and other forms of commercial promotion*, www.wcrf.org/int/policy/nourishing-framework/restrict-food-marketing, accessed in December 2014.
- World Cancer Research Fund International (2014b), *Improve food supply: Improve nutritional quality of the whole food supply*, www.wcrf.org/int/policy/nourishing-framework/improve-food-supply, accessed in December 2014.
- Yu, A. (2012), *Presentation at the FTC Enforceable Codes of Conduct: Protecting Consumers across Borders Forum*, www.ftc.gov/bcp/workshops/codesofconduct/Final%20Transcript.pdf , accessed in April 2013.
- Zaring, D. (2012), *Presentation held at the FTC Enforceable Codes of Conduct: Protecting Consumers across Borders Forum*, www.ftc.gov/bcp/workshops/codesofconduct/Final%20Transcript.pdf, accessed in April 2013.

ANNEX I: SUMMARY OF CASE STUDIES

I. Government approval schemes

*Fair Competition Codes (Japan)*⁴³

Overview

In the 1960s, there was a proliferation of deceptive and misleading advertising. It was decided that an industry-led scheme would be sufficient to address the problem, provided it did not result in anti-competitive behaviour. Provisions were made for the establishment of Fair Competition Codes.

Companies within a particular industry initiate the process for establishing such codes, with the Consumer Affairs Agency (CAA) and the Japan Fair Trade Commission (JFTC) providing legal advice. The industry then develops a draft text and establishes a preparatory committee which solicits views from consumer groups and academic experts. The company applies to the CAA and the JFTC for approval, and the CAA and the JFTC then publish the draft and seek comments from the public. The CAA and the JFTC authorize the code and make it public through the Official Journal. To gain such authorisation, the code must meet certain criteria that are provided in the country's Act against Unjustifiable Premiums and Misleading Representations (PRA). Member companies then establish a code-enforcing organisation and set procedures and detailed regulations for implementing the code. While not required, some enforcing organisations handle consumer complaints on a voluntary basis.

Operation and enforcement

The CAA and the JFTC monitor the activity of enforcing organisations through the annual reports prepared by the organisations. They can revoke authorisation of a code if the criteria set in the PRA are no longer met.

Each Fair Competition Code enforcing organisation has the power to investigate members' compliance. If a member is not complying, the organization may impose fines or disallow the use of the code logo.

Potential benefits to industry and consumers

As the CAA and the JFTC approval processes include consultation by both industry and consumer sides, the confidence of consumers in the industry should be enhanced. If member companies adhere to the code they can carry out their business without fear of breaching the PRA, and they are exempt from the operation of certain provisions of the Anti-Monopoly Act. If the standards in the codes become industry practice, companies which are not members of a code will often be held up to the same standards as members. If they do not do so, the CAA may deem the representations which do not meet the criteria specified in the code to be in violation of the PRA.

⁴³

See www.caa.go.jp/en/index.html and www.jftc.go.jp/en/index.html.

*Consumer Codes Approval Scheme (United Kingdom)*⁴⁴

Overview

The Consumer Codes Approval Scheme (CCAS) was originally launched in 2001, by the Office of Fair Trading (OFT). OFT had for many years been charged with encouraging trade and professional associations to prepare and disseminate codes of practice for guidance in safeguarding and promoting the interests of consumers. Over time it became apparent that the codes of practice supported by the OFT were not delivering the benefits envisaged. It needed a scheme where only strong codes that gave real benefits to consumers were given OFT approval; this led to the launch of CCAS. From April 2013, the management of CCAS transferred to a new Consumer Codes Approval Board operated by the Trading Standards Institute (TSI). The CCAS aims to promote consumer interests by setting out the principles of effective customer service and protection.

In order to submit a code for approval, the industry has to have a “code sponsor”. The TSI’s definition is “the organisation, firm or entity that administers and promotes a voluntary code of practice (as opposed to statutory codes) and can influence and raise standards within that sector.” In addition, code sponsors must be a distinct entity from their members.

The approval process consists of two stages:

- *Stage one.* The code sponsor has to present a code of practice which meets all of the relevant core criteria. The codes need to go above and beyond the normal consumer law rights.
- *Stage two.* In order to achieve approval, the code sponsor needs to demonstrate that the code of practice would work well in practice.

Once the TSI is satisfied that a code was working, approval will be granted. Code sponsors and their members are then able to display the TSI approved code logo on their marketing and promotional literature.

The codes will only be approved if they can clearly present that they are contributing to reduce consumer detriment, which is one of the changes made when TSI started to manage CCAS. The CCAS requires code members to have in place a low-cost, speedy, responsive, accessible and user-friendly alternative dispute resolution to deal with consumer complaints. The redress scheme had to bind the code members to the decision.

Operation and enforcement

The code sponsor’s role includes administration and monitoring functions. Code sponsors are required to adequately consult with consumer organisations, enforcement bodies and advisory services concerning the operation and monitoring of the code. They are also required to publish an annual report on the operation of the code, including information on the number and types of complaints, results from monitoring and consumer satisfaction feedback, and information on the sanctions imposed. The code sponsors are required to regularly review the code and update its provisions to ensure that it reflects the changing market and industry practices and expectations

The code sponsors are required to develop measures (where possible, by using statistically valid methods) of the effectiveness of the code which can be used to evaluate cover: *i*) compliance with the code;

⁴⁴ See www.tradingstandards.gov.uk/advice/ConsumerCodes.cfm.

ii) complaint trends; and *iii)* customer satisfaction levels. The assessment which is subsequently made is expected to show how the code is contributing to a reduction in consumer detriment.

The code sponsor was also required to set out a range of sanctions for non-compliance. TSI could also choose to terminate the right to use the logo or to withdraw approval of a code where there have been serious breaches to the terms of the standard copyright licence, or failure by the code sponsor to disseminate and effectively monitor the operation of the code.

Potential benefits to industry and consumers

Since its launch by OFT, the approved codes have been seen as helping address sector problems, while resulting in higher standards of customer service across industry sectors. Effective redress for consumer complaints has been seen as increasing consumer confidence and reducing the need for expensive and/or time consuming court procedures to resolve disputes. TSI provides an online portal to assist consumers in identifying approved code members, by entering business type and location/postcode.

In 2006, the OFT issued a report on the impact of the CCAS on business. The report showed that *i)* code sponsors were positive that the code improves customer services and enhances the operating conditions for businesses; *ii)* consumers could expect high satisfaction from members of an OFT approved code; *iii)* the costs to members of implementing and maintaining an approved code did not appear to be substantial; and *iv)* code sponsors benefitted by enhanced reputation and increased demand for membership (OFT, 2006).

Direct Selling Association Consumer Code (United Kingdom)⁴⁵

Overview

The Direct Selling Association (DSA) was formed in 1965 with the aim of improving public understanding and appreciation of direct selling through the voluntary adoption of a consumer code. The DSA defines direct selling as “the sale of consumer goods and services, in a face to face manner, away from business premises, normally in the homes of consumers, by predominantly independent direct sellers.” DSA members supply a wide range of goods and services which share the common sales channel of direct selling (most commonly by taking face-to-face orders following the delivery of a catalogue).

The code contains dispute resolution provisions. Decisions reached by the code administrator in a dispute are binding on the DSA member but not the complainant. The administrator can apply a range of sanctions, including compensation.

Operation and enforcement

The Council of the association appoints an independent, legally qualified code administrator. The administrator must be satisfied that the members are complying with the code, report failures to rectify breaches and publish an annual report.

Potential benefits to industry and consumers

The DSA code clarifies key problem areas in the industry concerning cooling off periods, pre-payments and guarantees. Consumers benefit from superior cancellation rights and access to an independent redress mechanism.

⁴⁵ See www.dsa.org.uk.

Vehicle Builders and Repairers Association Code (United Kingdom)⁴⁶*Overview*

The Vehicle Builders and Repairers Association Ltd (VBRA) was established in 1914 as a representative and educational body for vehicle body builders. The VBRA still has a bodybuilding section, but now also includes around 30% of the repairs industry. The VBRA's mission statement is to "advance professionalism and excellence through representation, education and members services". The Association represents around 500 businesses. Membership to the VBRA is open to applicants who meet criteria on health and safety, competence and ethics. The standards in the criteria are set by the national repairers' council and the VBRA secretariat.

The code contains a dispute resolution provision. If a dispute cannot be settled with the member, the consumer may take their complaint to a Conciliation Service. If conciliation fails, the complaint may go to arbitration with the consent of both parties (through the National Conciliation Service).

Operation and enforcement

The code establishes a procedure for non-compliance, including independent disciplinary procedures, reasonable timescales for action and sanctions. In the event of member non-compliance, the penalties that may be imposed include a reprimand and/or fine, or termination of VBRA membership. The Constitution provides that any penalty imposed and the reasons for the penalty shall be published in the VBRA's journal "Body".

Potential benefits to industry and consumers

The code is designed to provide consumers with clear information to the consumer with respect to *i)* the work being undertaken *ii)* cost estimates and quotations, *iii)* invoicing, *iv)* methods and terms of payment, *v)* warranties and *vi)* the terms and conditions which apply to the work being carried out.

II. Advertising***National Advertising Division (United States)***⁴⁷*Overview*

Established in 1971, the National Advertising Division (NAD) is an investigative unit of the US advertising industry's system of self-regulation. It is charged with promoting truth and accuracy in all national advertising made through any type of media. NAD opens cases where the truth or accuracy of advertising claims is challenged by a competing advertiser or by a consumer, a trade association, or a local Better Business Bureau. NAD also monitors national advertising in all media and opens cases based on the results of its monitoring activities. Challenges represent the majority of NAD cases. Cases that arise from monitoring activities focus on emerging issues, industries where challenge cases are rare, strong product claims concerning health and safety, and on claims targeting vulnerable audiences. The scheme was initially developed in response to concerns expressed by the government and consumer advocates about the truthfulness and accuracy of national advertising in the United States.

⁴⁶ See www.vbra.co.uk.

⁴⁷ See www.asrcreviews.org.

Operation and enforcement

The self-regulatory system is administered by the Council of Better Business Bureaus (CBBB), an independent business organisation which also operates a US-wide system for reporting consumer complaints. The CBBB receives more than one million consumer complaints each year. Policies and procedures for advertising industry self-regulation are established by the 11-member Board of Directors of the Advertising Self-Regulatory Council (ASRC). ASRC Board members are drawn from the leadership of the CBBB and six key US advertising trade associations: the American Association of Advertising Agencies (the 4A's); American Advertising Association (AAF), Association of National Advertisers (ANA), Direct Marketing Association (DMA), Electronic Retailing Association (ERA) and Interactive Advertising Bureaus (IAB). The broad board membership is designed to help ensure comprehensive support for advertising self-regulation in the U.S.

The decision-making process at NAD is independent of the CBBB and the ASRC Board of Directors. At the close of each case, NAD prepares a decision, summarises its findings in press releases and makes its determinations available to the public. All press releases are available on the ASRC website. All NAD decisions are posted to an Online Archive, a database available by subscription, and included in the NAD/CARU Case Reports, which is published 10 times per year. Subscriptions to the Online Archive are available free of charge for not-for-profit entities, consumer groups and educational institutions. The decisions made by NAD provide detailed guidance for US advertisers on claims interpretation, and support. The NAD's rules are subject to review and revision at meetings of the ASRC Board.

Participation in the NAD process is voluntary. Noncompliance with NAD recommendations results in a publicly reported referral to the Federal Trade Commission (FTC), or other government agency, for enforcement action. NAD publishes the non-compliance and/or refusals to participate in the monthly NAD/CARU Case Reports and makes the information available on the NAD website. Self-regulation receives broad support from advertisers in the United States. Although a voluntary process, NAD has a 95%-plus record of compliance with its decisions.

The programme is structured so that any interested stakeholder, including consumers, can complain to the NAD about national advertising that may be deceptive or misleading. The NAD will then ask the advertiser to substantiate the veracity of its claims, and issue a decision based on the evidence received. The NAD publishes all of its decisions. If an advertiser refuses to participate in the review process or to comply with a decision, which it can appeal, the NAD will report the advertiser to the media and refer the matter to the authorities. The NAD acts as an independent complaint resolution body. Appeals from the NAD's decisions are reviewed by the National Advertising Review Board, also an independent body, composed of members of the public and the advertising industry.

Potential benefits to industry and consumers

The NAD process provides benefits to the advertising industry, to consumers and to the government. Participation in the NAD programme enhances public credibility and fosters trust in individual participant companies as well as advertising in general. Additionally, the programme provides an efficient and cost-effective means for advertisers to resolve certain disputes. Consumers benefit from the knowledge that participating advertisers are engaged in an effective self-policing programme, which ultimately can enhance their confidence in the information on which their decisions will be based. The government benefits because by reducing the resources that would otherwise be needed to address technical national advertising issues.

Advertising Standards Authority Advertising Codes of Practice (New Zealand)⁴⁸*Overview*

The Advertising Standards Authority (ASA) is a self-regulatory funded by the advertising and media industries. Its goals are:

- To seek to maintain at all times and in all media a proper and generally acceptable standard of advertising and to ensure that advertising is not misleading or deceptive, either by statement or by implication.
- To establish and promote an effective system of voluntary self-regulation in respect to advertising standards.
- To establish and fund an Advertising Standards Complaints Board.

To these ends the ASA introduces and amends codes of practice. These have been developed for specific categories of advertising where they are considered necessary. Where appropriate the codes have been developed in consultation with industry, consumer groups and government departments

The scheme covers all forms of advertising including direct marketing. There is an overarching advertising Code of Ethics, in addition to 14 specific codes including one on advertising to children, environmental claims and financial advertising.

Operation and enforcement

The code is enforced by the Advertising Standards Complaints Board, which includes public representation (including the chair). The Board makes decisions in response to consumer complaints. Anyone can file a complaint and the process is free. A single complaint is enough to trigger a decision by the Board. Once a complaint is received, a copy of the complaint is sent to the relevant advertiser, agency or media for comment. The chairman of the Board can declare a matter "settled" if the advertiser acknowledges an error has been made and the advertisement is withdrawn before the matter is referred to the Board. Complaints to the Board may result in a request to withdraw the advertising copy.

Potential benefits to industry and consumers

The code provides a mechanism for consumers to file complaints, at no cost. For industry, self-regulatory measures allow the industry to provide a positive, customer focused approach to addressing problems. Industry can also benefit from the advice provided by the pre-vetting and on copy-advice procedures.

British Code of Advertising, Sales Promotion and Direct Marketing: United Kingdom⁴⁹*Overview*

The aim of the British Code of Advertising, Sales Promotion and Direct Marketing (CAP) is to ensure that advertisements are legal, decent, honest and truthful. While the UK's Office of Communication (Ofcom) is the regulatory body for advertising in the broadcast media (TV and radio), it has contracted out

⁴⁸ See www.asa.co.nz.

⁴⁹ See www.asa.org.uk.

the responsibility of enforcing the broadcast advertising codes to the Advertising Standard's Authority (ASA), which is the UK's independent regulator of advertising across all media.

Broadcasters are obliged by the condition of their Ofcom licence to enforce ASA rulings. If broadcasters persistently run advertisements that break the broadcasting codes, they risk being referred by the ASA to Ofcom, which can impose fines and/or withdraw their licence to broadcast.

Operation and enforcement

The ASA Council oversees the operation of the code. The Council consists of 13 members plus the chairman. Eight of the Council are independent members (of both government and the marketing industry) appointed by the chairman following public advertisement and an interviewing process involving outside assessors. The remaining minority of the Council are industry members, chosen by the Chairman for their experience of the advertising business, either as advertisers, in an agency, or in non-broadcast or broadcast media. The Council takes decisions on whether or not advertisements breach the CAP and related codes.

A CAP Compliance team regularly monitors advertisements in the national and regional press, consumer magazines, posters, direct mailings and Internet advertisements. Where it finds a breach of the non-broadcast CAP Code, the team contacts the business responsible and asks for an assurance that the marketing communications will be changed. As well as carrying out weekly spot-checks of press advertisements to monitor compliance, the CAP Compliance team also surveys particular media or industry sectors to check the compliance rate and identify any potential problems. If any advertisements are found that break the CAP code, CAP contacts the advertisers and the media, asking them to ensure that breaches are removed from ads.

A CAP Copy Advice team provides a pre-publication advice service for the advertising industry to avoid problems with advertisements in other media; the Broadcast Advertising Clearance Centre pre-checks ads on behalf of TV broadcasters before they go on air, eliminating almost all problems before transmission, and the Radio Advertising Clearance Centre pre-checks national radio ads and ads for specific categories before they are aired.

The ASA also investigates complaints from the public and industry about advertisements that appear to breach advertising codes. Complaints are investigated free of charge. The ASA accepts complaints by telephone, email, via their website and in writing. The results of the ASA's formal investigations are published weekly on the ASA website.

If a formal investigation is needed the ASA Council will rule on the matter. The Council will decide whether the codes have been broken and will publish their adjudication on its website. There is also an independent review procedure in place. In instances where a substantial flaw of process or adjudication is apparent, or where additional relevant evidence becomes available, the independent reviewer of ASA adjudications can ask the Council to reconsider its original decision.

Once the Council has made a decision, the advertisers must make sure that the ruling has been followed, whether that means changing an advertisement or withdrawing it. The CAP/BCAP Compliance teams will ensure that Council's rulings are acted on.

The ASA has a range of sanctions that it can apply and the statutory backstop was referral to the Office of Fair Trading (OFT). The ASA publishes performance statistics on a quarterly basis on its website showing the number of complaints received and resolved, and the average time taken to deal with different classes of complaints.

The ASA conducts quarterly customer satisfaction surveys from complainants about non-broadcasting and broadcasting advertisements. Annual statements are published detailing ASA's performance against key performance indicators. The CAP is also proactive in issuing "ad alerts" to let the industry know about a problem advertiser (or a change to the CAP code).

The Advertising Standards Board of Finance and the Broadcast Advertising Standards Board of Finance review the financial viability of self-regulation on an annual basis and the ASA publishes a report annually; it includes a review by the Chairman of CAP and BCAP,⁵⁰ one by the independent reviewer of ASA adjudications and one by the Chairman of BCAP's Advertising Advisory Committee. The ASA and BCAP Executive report quarterly to Ofcom. There are no formal review periods between code reviews but there is a best-practice onus on each party to review their codes from time to time, to ensure they are relevant. The current edition of the CAP Code was launched in 2010. The Code review process will involve extensive consultation with the industry, consumer groups and possibly other stakeholders.

Although the ASA cannot fine businesses that breach its CAP code, or bring legal action against bad advertisers, it does have a number of other sanctions.

The ASA's adjudications are published weekly on the ASA's website which generates a high volume of adverse publicity, thus encouraging compliance with the codes. Should the business persist in breaking the non-broadcast CAP code, CAP can issue ad alerts to its members, including the media, advising them to withhold services such as access to advertising space. Media owners will invoke their standard terms and conditions of business and refuse further advertising space. Advertisers and their agencies may also jeopardise their membership of trade organisations, as well as the financial incentives attached, if they persistently break the advertising codes. Advertisers whose posters breach the non-broadcast Code's rules on taste and decency or social responsibility may also be required to pre-vet all poster advertising through CAP Copy Advice for up to two years.

CAP (Non-broadcast) members can revoke, withdraw or temporarily withhold recognition and trading privileges. For example, Royal Mail can withdraw its bulk mailing discounts.

In the most severe cases, the ASA Director General can refer problem advertisers to the OFT to consider taking more formal enforcement action.

As for the disciplinary procedures that could be imposed by the CAP member association on their membership, CAP member organisations have the options of withdrawing trading privileges, suspensions or expulsion should their members not meet their membership obligations.

Potential benefits to industry and consumers

The activities of the ASA in enforcing the code can increase consumer confidence in advertising, which would be beneficial to the consumers. A system that boosts consumers' trust in marketing is also good for business. The rules benefit business by maintaining a level playing field for marketers and ensuring that marketing communications as a whole are not brought into disrepute. The CAP Code is actively publicised to raise awareness, as are the ASA findings which can act as a deterrent to others. The Code Copy Advice team provides a pre-publication advice service for the advertising industry to avoid problems with advertisements in other media.

The code provides benefits above the law in a number of areas, providing rules addressing issues concerning taste, decency and social responsibility, which are areas not generally addressed in legislation.

⁵⁰ Television and radio advertising codes.

Electronic Retailing Self-Regulation Programme (United States)⁵¹

Overview

The Electronic Retailing Self-Regulation Programme (ESRP) was developed to help ensure that advertising by electronic retailers is truthful and properly substantiated. The programme applies to any electronic direct response advertising in any national electronic media (TV, radio, print, and Internet). The ESRP provides a comprehensive overview of national direct response advertising through industry referrals and an internal monitoring mechanism.

The objectives of the programme are to:

- Improve consumer confidence in direct response advertising.
- Provide a quick and efficient mechanism for reviewing high profile advertising campaigns.
- Effectuate the modification and/or discontinuance of direct response advertising and other marketing materials that contain egregious unsupported efficacy, health and safety claims.
- Demonstrate the strong commitment of the industry to meaningful self-regulation.

The ESRP scheme was developed by the Electronic Retailing Association (ERA), the BBB, and the Advertising Self-Regulatory Conference (“ASRC”), with encouragement from the Federal Trade Commission. ERA consulted on the programme with the regulatory agencies such as the Federal Trade Commission, self-regulatory organisations such as the BBB, and law firms.

Operation and enforcement

To ensure the independence of the self-regulatory system, the BBB administers the ESRP programme and the ASEC Board of Directors provides policy oversight. The ERA is the primary financial supporter of the ESRP, but does not get involved in the substantive or administrative elements of the programme. Monitoring is conducted both by subscription to a commercial advertising monitoring service and by ESRP staff.

The ESRP is subject to ongoing reviews by the ASRC and ERA. The ESRP encourages consumers, advocacy groups, and regulatory agencies to comment on the functioning of the programme. The programme has reached its 10th anniversary and completed 350 cases with a 92% participation rate.

The programme has a procedure in place for ongoing compliance with an ESRP recommendation. The ESRP discusses compliance issues with participants and provides an opportunity to bring conduct into compliance. Non-compliance is publicly reported. Substantial non-compliance may be referred to regulatory authorities.

In addition to mailing complaints directly to ESRP, consumer complaints are also accepted through an independent website (<http://savvyshopper.org>).

The ESRP has recently completed a pilot programme to expand the programme scope to telemarketing calls

⁵¹ See www.retailing.org/advocacy/self-regulation <http://www.retailing.org/>.

Potential benefits to industry and consumers

The ERSP provides increased consumer confidence with respect to the accuracy of core claims that are disseminated in electronic direct response advertising which ultimately results in better and more informed purchasing decisions. Consumers benefit directly from prompt voluntary discontinuance of potentially misleading claims, often far more quickly than would result from government action.

For industry, the ERSP helps create a level playing field for direct-to-consumer commerce industry professionals. It also increases industry credibility.

Children's Food and Beverage Advertising Initiative (United States)⁵²*Overview*

The Children's Food and Beverage Advertising Initiative (CFBAI) is a voluntary self-regulation programme that involves 18 of the United States largest food and beverage companies (as of September 2013), covering approximately 80% of the child-directed food advertising market. The CFBAI is designed to influence the advertising of foods targeting children under 12, to encourage healthier dietary choices and healthy lifestyles.

The CFBAI provides for company-specific nutrition standards governing what foods participants advertise to children. On 31 December 2013, new CFBAI-developed uniform nutrition criteria went into effect and became the new foundation for child-directed food advertising.

Operation and enforcement

The CFBAI is entirely funded by participants and overseen by the Better Business Bureau (BBB), which is a non-profit organisation supported by business to foster honest and responsive relationships between businesses and consumers. The initiative is not subject to government approval.

The initiative's core principles are written in a programme document. Each company submits a written pledge proposing its nutrition standards and advertising plans for review and approval. The BBB monitors compliance with the initiative's core principles and company-approved pledges. A participant's substantial failure to meet its obligations under its BBB-approved pledge could be referred by the BBB to the Federal Trade Commission for action.

The BBB and participants hold monthly teleconferences to discuss developments and emerging issues. These calls and other individual conferences ensure the participants know and understand the rules.

The CFBAI publishes an annual report regarding participants' compliance with their commitments. The Core Principles document for the initiative expressly state that the programme would be comprehensively reviewed after it had been in operation for three years. This review was carried out by the BBB and most of the members in 2009, resulting in a number of enhancements to the commitments. The BBB and participants have scope for conducting such reviews as circumstances warrant.

⁵² See www.bbb.org/council/the-national-partner-program/national-advertising-review-services/childrens-food-and-beverage-advertising-initiative/.

Potential benefits to industry and consumers

Participation in the initiative provides greater public credibility to companies' efforts; the involvement of the BBB is helpful in this regard. Additionally, being part of a coalition provides greater impact to individual efforts.

For consumers, the code goes beyond existing legal requirements, addressing a key consumer concern in a proactive manner.

Code of Marketing of Food and Non-alcoholic Beverages to Children (Mexico)

Overview

The Code of Marketing of Food and Non-alcoholic Beverages to Children (PABI) is designed to help fight against childhood obesity. The Council of Advertising Self-Regulation and Ethics (CONAR), which is an industry initiative which establishes self-regulatory rules for advertising in Mexico, drafted the PABI, with input from government agencies. The review of the operation of the code also allows for recommendations from government agencies.

Operation and enforcement

CONAR is responsible for monitoring compliance with the code. The activities carried out by CONAR for this purpose consist of the following:

- Copy advice.
- Monitoring of Internet advertising, print media, radio, outdoor and television.
- Training to advertisers, in order to educate them on the content of the code and how to comply with its provisions.

CONAR receives and handles complaints about advertising from consumers, as well as companies. If CONAR finds that an advertisement is non-compliant, it can order the withdrawal of advertising. If an advertiser disregards CONAR's order, membership to CONAR will be withdrawn and the advertiser may face expulsion from the council.

When the code is reviewed, government agencies are encouraged to provide comments and recommendations.

Potential benefits to industry and consumers

CONAR provides benefits to the advertising industry through the provision of copy advice and training. Consumers benefit from the social impact of more responsible advertising, in particular the impact on childhood obesity.

Consolidated International Chamber of Commerce Code of Advertising and Marketing Communication Practice (Global)⁵³

Overview

The Consolidated International Chamber of Commerce (ICC) Code of Advertising and Marketing Communication Practice is an aspirational code that aims at complementing existing frameworks of national and international law, and to serve as an example for national, sectoral and corporate codes around the world. Goals include:

- To demonstrate responsibility and good practice in advertising and marketing communication across the world.
- To enhance overall public confidence in marketing communication.
- To respect privacy and consumer preferences.
- To ensure social responsibility as regards marketing communication and children/young people.
- To safeguard the freedom of expression of those engaged in marketing communication.
- To provide practical and flexible solutions.
- To minimise the need for detailed governmental and/or inter-governmental legislation or regulations.

Operation and enforcement

The ICC Task Force on Code Revision is an international group of marketing and public affairs executives from more than forty countries, whose responsibilities include the regular review of the code's provisions in order to ensure that they continue to reflect the latest developments in technology, marketing practice, and social concerns.

The code establishes an Interpretation Panel whose function is to clarify the meaning of ICC Marketing Codes and Guidelines. The Interpretation Panel consists of three Standing Members (one of them as Panel Chair). Up to three additional Specialist Members may be added on an *ad hoc* basis.

The Interpretation Panel may be called on as and when the need arises. Any firm, company, business, association, court of law, public authority, self-regulatory body, or private individual, as well as ICC national committees, may file a request for interpretation. The request must be in writing and must specify the type of clarification sought.

In response to a request for interpretation, the Interpretation Panel must set a timetable and notify the applicant when the opinion can be expected. The primary objective of the Panel is to produce high quality opinions; the Panel should not take a position on an individual case. Any opinions regarding clarification should be published in full text, in the absence of compelling reasons against publication. The services of the ICC Code Interpretation Panel are free of charge. If expert advice is needed, however, the Panel Chair may decide that the applicant should cover the costs.

The ICC Code is global and participation is voluntary. Although there is no international private regulatory enforcement authority, the ICC code may be enforced at the national level through private enforcement bodies called Self-Regulatory Organizations (SROs).

⁵³

See www.iccwbo.org.

Potential benefits to industry and consumers

The code is seen as helping to establish standards that should work to boost consumer confidence in advertising. For industry, the code helps to pool and share global expertise, reflects buy-in from companies from all sectors, of all sizes, and from many developed and developing countries. The code provides a basis for the development of national codes by professional associations.

III. E-commerce

Confianza Online

Overview

Confianza Online was established in 2003 by two non-profit associations representing e-commerce traders and advertisers. The scheme covers firms operating in Spain. It was prompted by the European Parliament's Directive on electronic commerce (2000) which encouraged member states to promote codes of conduct (Article 16) and by a concern to avoid undesirable proliferation of self-regulatory schemes.

The code covers existing legal requirements as well as requirements going beyond the law, for example, relating to protection of minors, trader transparency, payment security, advertising and privacy. Alternative dispute resolution procedures have been adopted to deal with consumer complaints. Participants in the scheme must comply with the code and display the trustmark known as *Sello de Confianza*. There were more than 2 700 participants as of March 2014. A government logo was awarded in 2005 to Confianza Online.

Operation and enforcement

The scheme is funded by participant fees, which are higher for non-Association members and for larger turnovers, and sponsor fees, including from the Ministry of Industry, Trade and Tourism. Monitoring by Confianza Online is sporadic with some mystery shopping being conducted. There is provision to temporarily suspend a trader for non-compliance and in the longer term to withdraw the trustmark.

Potential benefits to industry and consumers

The trustmark mitigates consumer concerns about purchasing online. If a problem associated with the purchase and the problems is not resolved in a business's internal complaint handling, the consumer can file a complaint for free to Confianza Online. For industry, the trustmark can enhance consumer confidence in the business's website.

Online Interest-Based Advertising Accountability Program (United States)⁵⁴

Overview

The Online Interest-Based Advertising Accountability Program, launched in 2010, is a horizontal self-regulatory program for addressing Internet behavioural advertising issues. The programme is supported by the members of the US Digital Advertising Alliance (US DAA) including the 4A's, ANA, DMA, IAB and CBBB; these associations represent more than 5 000 corporations in the United States.

⁵⁴ See www.asrcreviews.org/2014/05/online-interest-based-advertising-accountability-program/ and www.iab.net/about_the_iab/recent_press_releases/press_release_archive/press_release/pr-100410.

The programme provides companies using online behavioural advertising with specific implementation practices in support of the “Self-Regulatory Principles for Online Behavioural Advertising” which was developed by industry associations and released in 2009. The principles apply to a wide range of players involved in online behavioural advertising (OBA) which includes advertisers, advertising agencies, web publishers, Internet service providers and online advertising networks.

The principles are intended to address consumer concerns about the use of personal information and Interest-based advertising by giving consumers knowledge of and control over the information collected about them. This also draws on a 2009 proposal by the US FTC on OBA which called for more far-reaching self-regulation. The principles contained in the programme cover: *i)* education, *ii)* transparency, *iii)* consumer control, *iv)* data security, *v)* material changes, *vi)* sensitive data and *vii)* accountability.

The programme provides its participants with an option to use an “Advertising Option Icon”.⁵⁵ The icon indicates that data is being collected and used for behavioural advertising and that the business adheres to the principles guiding the programme. By clicking on it, consumers will link to a disclosure statement regarding the company's online behavioural advertising data collection and use practices as well as an opt-out option.

The programme is not limited to the United States. In 2012, US DAA licensed use of the icon to the European Interactive Digital Advertising Alliance (EDAA) for businesses in Europe. In Canada, the Canadian Self-Regulatory Program for Online Behavioural Advertising also uses this icon as the core feature of its programme.

*Operation and enforcement*⁵⁶

The Accountability Program is managed by the National Advertising Review Council and is administrated by the CBBB. Any person or company may file questions or complaints regarding compliance with the principles among a person or entity engaged in OBA whose activities are covered by the principles (covered entity); such actions can also be self-initiated. Both the person who filed the complaint and the covered entity may participate in the review, during which they will have opportunity to submit materials. When a decision is made to initiate a review, the covered entity will be notified and required to indicate whether they will participate in the review, within 15 business days. If the covered entity decides not to participate, the case could be referred to a government agency.

After completion of a review and issuance of an Accountability Program Decision, a press release which includes a brief summary of the decision will be issued and the decision will be posted on the organisation's web site. The party concerned may be asked to submit a report on the status of its progress on implementation of the recommendations; in the event of non-compliance, as above, the case could be referred to a government agency.

Potential benefits to industry and consumers

The ISR scheme provides consumers with enhanced control over the collection and use of their personal data. It also provides information on what OBAs are and how they work. Consumers can further benefit from the opt-out provisions and the possibility to file complaints.

⁵⁵ See www.aboutads.info/.

⁵⁶ See www.bbb.org/us/storage/113/documents/online-behavioral-advertising/OAB_Procedures.pdf.

For industry, the programme can help to improve a business's image and boost consumer confidence. The growing use of the "Advertising Option Icon" globally could further enhance a participating business's image.

IV. Financial services

Financial Ombudsman Service (Australia)⁵⁷

Overview

To help address issues in financial services, the Australian government requires that all retail businesses licensed to provide financial services to be a member of an external dispute resolution scheme (EDR) approved by the Australian Securities and Investment Commission (ASIC). The Financial Ombudsman Service (FOS) is one such scheme. Its more than 16 000 members include banks, credit unions, building societies, credit providers, general and life insurance companies and brokers, superannuation providers, fund managers, mortgage and finance brokers, financial planners, stockbrokers, investment managers and time share operators.

The FOS considers that it is suited to the industry and the market because individual consumers can be particularly vulnerable in their relationship with financial institutions, so providing an effective mechanism for the resolution of disputes is desirable. EDR schemes are also particularly well suited to disputes involving relatively small amounts of financial loss that would not be worth pursuing in a court. The FOS can provide specialist expertise in the area. This is particularly important in the financial services market which can be very sophisticated and is continually developing new services and procedures that require specialist knowledge.

Operation and enforcement

The FOS is managed through an independent board with the day to day operations managed by the Ombudsman and his/her deputies. The board is independent of participating firms and the industry, and consists of consumer representatives and financial services industry representatives, with an independent chairperson. The scheme is funded through a combination of annual fees and fees per complaint.

The scheme is administered by the staff of the FOS, which is an incorporated entity, headed up by the Chief Ombudsman. The FOS regularly reports to the board on the results of monitoring and review and summaries of the FOS's performance are provided in annual reports. In addition, the scheme is reviewed every three years. To be ASIC approved dispute resolution scheme, FOS must commission regular independent reviews of its operations and procedures. The independent review assesses FOS's operation with regard to accessibility, independence, fairness, accountability, efficiency and effectiveness.

The scheme does not include procedures for disciplining non-complying members. However, failure to comply with a decision of the Ombudsman would be a breach of the contractual agreement between the Ombudsman and the member, and the membership could be terminated as a result. In addition, non-compliance can be reported to ASIC. Loss of membership to an approved EDR scheme would mean that a financial services licence holder would be in breach of their licence.

⁵⁷

See www.fos.org.au.

Potential benefits to industry and consumers

The FOS is accessible for consumers as it is free and offers procedures that are simple enough to use without the need for lawyers. For example in contrast to more formal court proceedings, a dispute can be initiated by telephone call, a letter or by completion of an online dispute form. Further, consumers are not exposed to the risk of incurring the other party's legal costs if they are unsuccessful. Finally the FSO has inquisitorial powers which assist in creating a level playing field because disputants are not reliant on their own ability to put forward their case and the evidence to support it, as they would be in a court of law.

FOS decisions are binding on a scheme member, but not on the consumer. Consumers therefore retain their right to seek alternative remedies (through the court or other proceedings) should they be dissatisfied with the decision of the scheme.

For financial institutions, EDR schemes significantly improve internal dispute resolution. Membership of the FOS can provide a positive impression of willingness to engage with consumers if there is a dispute. Members can also benefit from publications and educational seminars produced by the FOS.

Credit Ombudsman Service Ltd (Australia)*Overview*

The Credit Ombudsman Service LTD (COSL), established as the Mortgage Industry Ombudsman Service Limited in 2003, aims at providing consumers with an accessible, independent and fair external dispute resolution service. The COSL was approved by the Australian Securities and Investment Commission (ASIC) in December 2003 (Credit Ombudsman Service Ltd, 2004). As mentioned above, financial services operated in Australia are required to be a member of an ASIC-approved external dispute resolution scheme. COSL has almost 17 000 participating financial services providers, include credit unions, building societies, non-bank lenders, mortgage and finance brokers, financial planners, investment managers, debt services and a wide range of other financial services and product providers. COSL can deal with a complaint on a financial service if the complainant's loss resulting from the Member's conduct does not exceed or appear to COSL to exceed AUD 500 000 (about EUR 331 200).

Operation and enforcement

The Board of the COSL consists of an equal number of consumer and industry Directors, and an independent Chair (Credit Ombudsman Service Ltd, undated *a*). The service is funded by membership and complaint fees paid by financial services providers. A COSL decision is only binding on a complainant if the complainant accepts it. A determination of the Credit Ombudsman is binding on a financial service provider concerned if a complainant accepts the determination (Credit Ombudsman Service Ltd, undated *b*).

Potential benefits to industry and consumers

Consumers benefit from a free and independent dispute resolution service. Members of the Credit Ombudsman Service also benefit from the inexpensive and effective dispute resolution mechanism and can receive practical help to improve internal complaints handling (Credit Ombudsman Service Ltd, undated *c*).

V. Telecommunications services

*Telecommunications Industry Ombudsman (Australia)*⁵⁸

Overview

The Telecommunications Act 1991 stated that as a condition of obtaining a telecommunications service licence, carriers had to commit to and fund an independent ombudsman scheme to address consumer complaints. The three dominant providers at the time established the Telecommunications Industry Ombudsman (TIO) in 1993, which was formalised as the sole scheme. In developing the scheme, carriers consulted with a broad range of consumer and community groups, as well as government authorities. The TIO scheme is operated under the Telecommunications Consumer Protection (TCP) industry code, which is registered by ACMA.

Operation and enforcement

The TIO investigates complaints about telephone and Internet services and analyses systemic problems (i.e. a problem with or the failure of a system, process or practice of an operator that causes detriment (that is not trivial) to a significant number or a class of end users). The TIO has the authority to make binding decisions (i.e. decisions that a telecommunications company is legally obliged to implement), up to the value of AUD 50 000 (about EUR 33 060), and recommendations up to the value of AUD 100 000 (about EUR 66 120). The decision is not, however, binding on consumers.

The TIO is governed by a Board of Directors consisting of an equal number of directors with industry and consumer experience (three of each); two independent directors and an independent chair (Telecommunication Industry Ombudsman, 2014). Before appointing the chair, the Board must inform the federal ministers responsible for consumer affairs policy and communications policy about the proposed appointment and consider any comments they make. The Board's responsibilities include the selection of the Ombudsman, who manages the scheme. The TIO is fully industry funded on a cost recovery basis and adequate funding is safeguarded by the governance arrangement.

The Board must commission reviews of the scheme and develop proposals for the continued operation or termination of the scheme as required by legislation or when it otherwise considers it necessary or desirable. Such reviews must allow sufficient time for consultation with members and community and consumer groups. The Board must also consider any recommendation made at any time by the Ombudsman about amendments to the Scheme the Ombudsman considers necessary or desirable.

The TIO releases an annual report, detailing the number and types of complaints received for the financial year. The TIO also releases newsletters three times a year and posts determinations, recommendations and directions it has made on its website.

In 2011, ACMA published a public inquiry report (Reconnecting the Customer) which examined issues concerning the complaints-handling services provided by telecommunications providers. Following this report, a new TCP code was registered by ACMA, on September 2012, which includes improved and faster complaints-handling. The TIO also changed its constitution in February 2014, to improve independence. ACMA reports that due to improvements to industry practices, the maturation of the telecommunication market, and the strengthened customer care provisions of the revised TCP code, customer complaints to the TIO was falling by more than 20 % in 2014.

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See www.tio.com.au.

Potential benefits to industry and consumers

Consumers benefit from being able to access an independent, which has authority to reach a decision which is binding on the service provider, but not the consumer.

For industry, the TIO can be cost effective mechanism for resolving consumer complaints. Membership in the TIO can increase consumer confidence in a provider as potential and existing customers know they can contact the TIO if they have a problem they cannot resolve directly with their provider. The TIO encourages cooperative relationships with its members, and where possible, to help its members to implement strategies to prevent complaints from escalating. Finally, the TIO provides statistics to members on the number and nature of complaints received about them which can assist members to identify complaint drivers.

Framework Agreement for Mobile Content and Payment Services (Denmark)⁵⁹*Overview*

The Framework Agreement for Mobile Content and Payment Services was agreed by the four major telecommunications companies in Denmark. The agreement was developed in response to public criticism and to avoid a possible legislative response. The scheme aims at establishing a framework for the provision of mobile payment systems for use with premium rated services and products, which ensures standardised and correct communication to the consumers.

Operation and enforcement

The agreement is operated by the industry, under the supervision of the Consumer Ombudsman, which is an independent public authority that oversees compliance with Danish marketing law.

The scheme covers: *i*) right of withdrawal; *ii*) administration and assignment of short codes (i.e. SMS); *iii*) maximum prices that can be charged for various products and services; *iv*) content of content-rated SMS and payment services; *v*) contests; *vi*) chat; *vii*) adult content and *viii*) agreement between content providers and operators on matters such as the handling of consumer inquiries.

The agreement is monitored by independent parties which regularly test the operators' performance to determine whether it is in compliance with Danish laws and the terms of the framework agreement. The parties report to the operator concerned on a quarterly basis; the operator then reports to the Consumer Ombudsman, who can release the report to the public.

If a "major breach" of the framework agreement occurs, an operator is obliged to suspend access to its mobile platform to an offending content provider, for a period of time. Fines are imposed on content providers by operators ranging from DKK 500 (about EUR 67) for a lack of information about a premium charge, to DKK 3 000 (about EUR 400) for minor breaches and DKK 6 000 (about EUR 800) for major breaches.

As indicated above, the scheme contains an obligation for the providers of content-rated SMS products and the mobile companies to handle consumer complaints. Consumers can contact their mobile companies directly for enquiries about registration and billing content services. Enquiries about marketing, contract issues and the content of a content-rated SMS can be referred by the mobile company directly to the content provider, but consumers have to be informed that they can contact the mobile company again if

⁵⁹ See www.rammeaftalen.dk/english/.

the content provider does not give a satisfactory response to the enquiry. Furthermore, the mobile companies are required to suspend collection of a disputed amount from when they receive a written complaint from a consumer until such time as the consumer has been notified of the company's decision in writing.

The telecommunication industry established a private complaint board in partnership with the Danish Consumer Council, in 2003; the board was approved by the Ministry of Economic and Business Affairs. Complaints that are not resolved by the industry itself can be submitted to the National Consumer Complaints Board under the National Consumer Agency. The agency handles complaints about goods or services with a minimum price of DKK 800 (about EUR 107).

Potential benefits to industry and consumers

For consumers, the scheme sets standards that should make it easier to compare products, and it provides rights that go beyond existing legislation. It also sets limits on the charges that can be made for certain products. For industry, the scheme has enabled the telecommunication industry to avoid government intervention in this area, providing it with greater control and flexibility.

Spam Control Code (Denmark)⁶⁰

Overview

A spam control code aimed at minimising spam has been agreed by the members of the ISP Safety Forum which provides 98 % of Internet services to Danish households. The code complements the Danish Marketing Practices Act that makes spam illegal and the Danish Criminal Code that regulates spam that contains fraudulent elements.

Operation and enforcement

The scheme is administered, monitored and enforced by the ISP Safety Forum. While the signatories have an obligation to follow the agreement, no sanctions are specifically provided for if firms do not comply. The scheme does not include consumer complaint resolution procedures.

Potential benefits to industry and consumers

Consumers benefit to the extent that the volume of spam is lower than would otherwise be the case. For industry, successful operation of the code reduces the chance of government intervention, providing companies with greater flexibility for addressing the problem.

VI. Other

Entertainment Software Rating Board (United States)⁶¹

Overview

The Entertainment Software Rating Board (ESRB) was established in 1994 by the Entertainment Software Association. It assigns ratings for video games and apps to assist parents to make informed choices regarding the appropriateness of the content of these products for their children. The ESRB rating

⁶⁰ See http://fivu.dk/en?set_language=en&cl=en.

⁶¹ See www.esrb.org.

system encompasses guidance about age-appropriateness, content, and interactive elements. As part of its self-regulatory role for the video game industry, the ESRB also enforces industry-adopted advertising guidelines and helps ensure responsible web and mobile privacy practices among companies participating in its Privacy Online program.

The ESRB rating system was devised in 1994 after consulting a wide range of child development and academic experts, analysing other rating systems and conducting nationwide research with parents.

Participation in the ESRB is voluntary, although virtually all video games that are sold at retail in the United States and Canada are rated by the ESRB. Publishers of packaged or boxed games carrying an ESRB rating are contractually bound to follow the industry-adopted Principles and Guidelines for Responsible Advertising Practices, along with numerous additional requirements addressing how rating information must be displayed on game packaging and in advertising and certain restrictions on where ads for mature-rated games may appear.

Operation and enforcement

The ESRB is governed by a Board of Directors, composed of senior executives from various computer and video game manufacturers, and is legally part of the industry's trade association. The ESRB acts independently to rate games, monitor compliance with marketing and content disclosure guidelines, and impose sanctions for non-compliance. ESRB also measures retailers' compliance with their voluntary store policies regarding the sale or rental of games rated Mature (17+) and Adults Only (18+), as well as the display of in-store ratings education signage, among other provisions set forth in the ESRB Retail Council (ERC) "Commitment to Parents" Code.

The ESRB raises awareness about its labelling scheme through radio and TV public service announcements. It also employs print and online public service announcement campaigns aimed at the general public and specifically targeted at the game enthusiast audience. The ESRB also promotes its efforts through partnerships with organisations such as the Parent Teacher Association.

The ESRB's Advertising Review Council monitors industry compliance, and in the event that a game publisher is found to have inappropriately labelled or advertised a product, the ESRB is empowered to compel corrective actions and impose a wide range of sanctions, including monetary fines of up to USD 1 million. Each violation carries warning points, fines and/or corrective actions. At all times, ESRB reserves the right to revoke a rating or suspend rating services. Sanctions have a significant deterrent effect, and are viewed as some of the most stringent amongst self-regulatory bodies.

Consumers can file complaints with the ESRB receive a response. Where appropriate, ESRB may contact the manufacturer. The retailers' voluntary code sets out a consumer complaint process, with which members must comply. This process requires providing a full refund or store credit for any product sold in violation of a store's policy not to sell games rated "M" (for Mature) to those under 17. Consumers can submit a complaint to ESRB if this type of issue is not resolved at the store level.

ESRB tracks and categorises all the consumer complaints it receives and, on occasion, has shared such information with government or regulatory agencies if requested and warranted.

The scheme conducts periodic self-review on an ongoing basis and makes changes to the system approved by its Board of Directors as needed. The Federal Trade Commission periodically seeks information from ESRB for its reports to the US Congress regarding the video game (and other entertainment) industries and publishes its findings. Over time, ESRB has implemented various suggestions on improving the scheme; for example, it overhauled its enforcement system in 2006 based on a review by two separate and independent legal advisers.

ESRB encourages all participating manufacturers to centralise ESRB operations and appoint staff dedicated to effectuating compliance with the scheme. It offers annual training seminars, in several locations, for manufacturers to discuss rating submission, disclosure, and advertising issues. The retailers' voluntary code requires employee training and enforcement of individual retailers' disciplinary procedures for failures to enforce store policies.

Generally, sanctions and disciplinary proceedings are not published. However, the public may be apprised of corrective actions in cases where consumer interest is considerable.

The FTC has been conducting reviews of this scheme. Its first review of ratings systems (conducted in 2000) included an undercover "mystery shopper" survey. The survey found that 85% of unaccompanied children aged 13-16 were able to purchase electronic games rated mature (M) despite the "Commitment to Parents" programme of the industry-based Entertainment Software Rating Board (ESRB), which discouraged the sale of computer and video games rated M to persons under the age of 17 without parental permission (FTC, 2002). As a result of the FTC's reports, the ESRB improved and expanded its self-regulatory program, by establishing an ESRB retailer council, comprised of the most of the major sellers of video games. In its most recent undercover shopper survey conducted in 2013, the FTC found that retailers had made steady improvement pursuant to the ESRB and other self-regulatory schemes; the percent of underage shoppers who were able to purchase M-rated video games had fallen to 13% (FTC, 2013).

Potential benefits to industry and consumers

For video game manufacturers, there are several incentives to participate in the scheme. First, participation and compliance fulfil an established consumer and market demand for product information. Second, by complying with the scheme, manufacturers are protecting children from viewing inappropriate content. Third, participation allows video game manufacturers to comply with separate requirements by the retailers and the console manufacturers.

The scheme is useful to the public by providing details on age appropriateness and content to help inform purchasing decisions. The scheme is rooted in helping parents to make up their own mind about individual video games. It also helps shield children from content that may be inappropriate.

Safety Toy mark (Japan)

Overview

The Safety Toy mark (ST mark) is a standard for toy safety, developed in 1971 by the Japan Toy Association in consultation with relevant ministry, academics and consumer representatives. Toys which meet the standards are allowed to display the ST mark on the product. If an accident happens with a toy which has the ST mark, consumers are entitled to receive redress.

Operation and enforcement

A business which would like to display the mark on its product would be examined by a third party assigned by the association to ensure that the product meets the standard. The business would then be obliged to report the usage of the ST mark to the association annually. The association is responsible for ensuring compliance with the standard mark and to notify the public when a business does not comply with the code.

Potential benefits to industry and consumers

The ST mark allows consumers to choose a toy that ensures the safety standards. If an accident happens, consumers benefit from the redress scheme that the ST mark has. For industry, a product with the ST mark can increase consumer trust in their products.

Electricity and Gas Complaints Commission (New Zealand)*Overview*

The Electricity and Gas Complaints Commission (EGCC) was set up by electricity distributors and retailers in 2001 to provide consumers with a dispute resolution service. It was established at the time of significant reform in the electricity sector and to avoid the imposition of a regulated dispute resolution scheme. Gas distributors and retailers joined the scheme in 2005. In December 2009, the EGCC Scheme became the approved consumer complaint resolution scheme for the electricity and gas industries under the Electricity Industry Act 2010. Since April 2010, all energy companies should be the members of the Scheme (Electricity and Gas Complaints Commission, 2010).

Operation and enforcement

The Electricity and Gas Complaints Commissioner Scheme is independent and free to consumers. The EGCC is funded by member companies. If a complaint is not resolved, either party can ask the Commissioner to make a recommendation. If the company concerned does not accept the recommendation, the Commissioner may make a binding decision (Electricity and Gas Complaints Commission, undated).

Potential benefits to industry and consumers

Consumers and member companies benefit from an independent complaint handling scheme that is free for consumers. Members also benefit from educational seminars.

Direct Selling Association Code of Practice (New Zealand)⁶²*Overview*

The Direct Selling Association Code of Practice, which was developed in 1998 and then amended in 2009 with the assistance of the Ministry of Commerce, aims to ensure:

- Advertising and promotion is not misleading or deceptive.
- Sales conduct respects the rights and privileges of the individual customer in the privacy of his or her own home.
- Product demonstrations give full explanation and cease on request.
- Disclosure of the direct salesperson's full identity, address and reason for approaching the consumer.
- A minimum 10 days cooling off period.
- Terms of payment are advised at the time the product is ordered.
- Provision of comprehensive complaints and disputes procedures.

⁶² See www.dsanx.co.nz.

- Mechanisms exist to ensure that the code is reviewed periodically.

Many of these objectives reiterate or extend existing consumer legislation.

The code requires the Direct Selling Association (DSANZ) members to have internal complaints handling process and DSANZ to have an external dispute resolution process. If the DSANZ receives a complaint from a consumer, it will be referred back to the direct selling company for its designated complaints person to try and resolve. If there is no resolution using the company's internal complaints procedure, the Code Administrator will arbitrate following the process set out in the code, at no cost to the consumer. The Code Administrator is independent of participating firms to ensure a fair, unbiased decision. All costs of complaint resolution are currently met using the member subscription charges. The constitution and rules of the DSANZ provide the disciplinary measures for any member who fails to adhere to the code of practice.

Although the DSANZ is voluntary to join, upon joining all members agree to abide by the DSANZ Code of Practice. The code only extends to members of the Direct Selling Association. There are different levels of membership – full, associate or provisional. Associate members are members who supply or service the direct selling industry with industry component products, goods, packaging or other services. New applicants to the DSA will be offered provisional membership for up to 2 years before being granted full membership at the discretion of the executive.

Operation and enforcement

The DSANZ implements and maintains the code, which is administered by a Code Administrator. The functions of the administrator include monitoring and reporting on the code's operation, investigating systematic and recurring problems, undertaking full investigation of any complaint referred by the DSANZ, directing and binding resolution to complaints heard, and directing suitable action or sanctions for contraventions of the code.

If the DSANZ receives a complaint from a consumer, it will be referred back to the direct selling company for its designated complaints person to try and resolve. If there is no resolution using the company's internal complaints procedure, the Code Administrator will arbitrate following the process set out in the code, at no cost to the consumer. The Code Administrator is independent of participating firms to ensure a fair, unbiased decision. All costs of complaint resolution are currently met using the member subscription charges.

The code provides timelines for complaint handling, defines the process of what will happen when, and provides for both reporting and review of the code at regular periods. Each year a report on the code and its operation is made and circulated to government and consumer bodies.

The constitution and rules of the DSANZ provide the disciplinary measures for any member who fails to adhere to the code of practice. If violations in the code occur, the DSANZ can

- Issue a warning letter.
- Require a detailed explanation and undertaking for future membership to be retained.
- Suspend of membership for a prescribed period.
- Cancel membership.
- Publishing the reasons for removal of membership in the media.

While DSANZ cannot discipline non-members, it is proactive in writing to non-members who are in breach of the law. DSANZ also usually forwards this correspondence to the Commerce Commission, which may decide to take action under the Fair Trading Act.

Potential benefits to industry and consumers

The DSANZ provides incentives for direct selling companies to become members and abide by the code including: offering guidance; sharing information, and holding workshops and seminars. The DSANZ also provides benefits for consumers, including additional rights with respect to guarantees, advice to consumers on who its members are and what their rights are when dealing with direct sellers. The DSANZ also provides consumers with a contact point if they have a dispute with a direct seller and offers a means of resolving the dispute at no cost to the consumer.

*Collision Repair Industry Code of Practice (New Zealand)*⁶³

Overview

The Collision Repair Association (CRA) is an industry association that provides support to its membership of around 550 businesses. The objectives of the Association are to promote, protect and further the interests of its members, to conduct activities that further the business conditions of members, to communicate with government or other entities on behalf of members, to formulate and promote good practice and to ensure a good relationship with the public.

The CRA has both a code of ethics and a code of practice. The code of ethics is a high level value statement explaining the principles to which association members subscribe. The code of practice, which was established by the industry itself, is a practical set of rules that spells out the standard of workmanship and customer service that the association expects from its members. The goals of the code are:

- Maintaining and enhancing the reputation, standing and good name of the CRA.
- Ensuring that the public interest is foremost in all consideration of the standards of competitive trading between members.
- Offering a guarantee in respect of all work undertaken.
- Resolving complaints by users on any aspect of repair work.
- Providing a procedure for conciliation or simple arbitration when complaints cannot be settled directly between a member and customer.
- Encouraging initiative in the belief that properly regulated competitive trading by and between members of the association will best serve the public interest and the well-being of the repair industry.

Operation and enforcement

The code of practice is administered by the CRA. There is no formal representation of other stakeholders in the scheme. The CRA has a disputes procedure for dealing with any problems with repairs. This complaints scheme is set out in *Guide to Good Membership*.

⁶³ See www.collisionrepair.co.nz.

Customers who are dissatisfied with the treatment of a complaint at a business are advised to approach the national office of the association. The national office will then pass the complaint on to a mediator. The member should cooperate with the mediator and give assistance to ensure the speedy and satisfactory resolution of the complaint. If the complaint cannot be resolved, the customer will be offered the facility of the Branch Disputes Committee.

The defendant business is encouraged to settle the dispute in-house first, if this fails the CRA national office will organize for the dispute to go to mediation and failing any resolution, the dispute will be heard by a CRA disputes committee. All members must adhere to the decision of this committee. A member who fails to co-operate with the disputes committee or fails to honour the findings of the disputes committee may be expelled or placed on a probationary period on terms and conditions determined by the CRA national executive.

A consumer must pay NZD 287.5 (about EUR 178) to lodge a complaint with the CRA. They receive this money back if the disputes committee finds in the consumer's favour.

Potential benefits to industry and consumers

The scheme provides consumers with a means to identify businesses which have subscribed to a set of principles aimed at providing consumers with good service; the scheme includes a dispute resolution process that is free, if resolved in favour of the consumer. Members of the scheme benefit from improved image they are likely to have with consumers, which should boost demand for their services.