

**BUSINESS* COMMENTS ON THE CORE-GROUP DOCUMENTS IN VIEW OF THE NEXT WIDER
STAKEHOLDER GROUP MEETING ON 23 APRIL 2001**

I. INTRODUCTION

On-line consumer confidence is a shared objective between business and the European Commission. At national, European and international levels, business is actively involved in confidence-building initiatives such as trustmarks, codes of conduct and the establishment of alternative dispute resolution mechanisms (ADRs) in both off-line and on-line environments.

Business believes that the border-free nature of the Internet necessitates such initiatives, and that their effective provision requires consumers and business to work together. A Commission initiative will add value to the activities already undertaken by the private sector only if it encourages a European approach that brings together the experience of both businesses and consumers regarding best practices on the Internet.

As such, business welcomes the Commission's initiative to encourage the establishment of guiding principles for codes of practice. However, business wishes to underline several concerns which, in its view, must be addressed to boost consumer confidence and bring the full benefits of electronic commerce to all parties. Specifically, we believe that:

- The general principles and specific guidelines merit further discussion in light of practical and technical considerations.
- The existing provisions on ADR do not take into account the range of existing mediation and conciliation schemes that offer adequate solutions to consumer disputes.
- The current approval and monitoring options fail to capitalize on the potential of web-based tools. They would require heavy bureaucratic structures and would not stimulate the cross-border dimension.

In the following sections, the concerns of business are elaborated. Concrete suggestions are made that we believe could provide a path to building consumer confidence.

II. GENERAL PRINCIPLES AND SPECIFIC GUIDELINES FOR CODES OF PRACTICE

The working documents drafted in the "core-group" of stakeholders contain general principles and specific guidelines for codes of practice. Although there was no final agreement by members of the core group on these documents, business feels that the dialogue should continue with the following in mind.

In general, any guidelines and principles for codes of conduct should focus on essentials, and not contain so much detail as to render them inflexible and unworkable. As currently drafted, the specific guidelines go beyond the scope of many existing codes and trustmark schemes. If all code subscribers had to meet these criteria, participation in them would no longer be viable.

Business has over the course of the e-confidence effort proposed several alternative models of the core group work. Certain of these have been put forth in the core group meetings, and others have

* UNICE in consultation with ICC, GBDe, FEDMA and Eurochambres

been elaborated since the last meeting of the core group. Business urges the Commission and the wider group to continue the dialogue in light of all models put forth out of due consideration.

III. ALTERNATIVE DISPUTE RESOLUTION MECHANISMS (ADRs)

Although the present Commission initiative does not explicitly address ADRs, business believes that it is an essential part of boosting consumer confidence in the on-line world.

Electronic commerce, especially between consumers in one country buying goods or services from businesses based in other countries, will grow only if consumers feel confident that their interests are sufficiently protected in case of disputes.

Recourse to courts for such disputes is often complicated and costly. Furthermore, court proceedings can be expensive, often exceeding the value of the goods or services in dispute. If this were the only means of dispute settlement, it would certainly not enhance consumer confidence in electronic commerce and would strongly induce merchants to restrict the geographic scope of their offers. This, in turn, would limit competition and consumer choice.

Through ADRs, consumers' concerns can be addressed fairly and in a timely manner. ADRs allow both parties to avoid the delays and the costs of appealing to either a government administrative agency or to the courts. Nevertheless, a consumer's right to seek legal redress should they be dissatisfied with the results of the ADR process must remain. Finally, ADRs can be more flexible and creative for finding solutions that satisfy both parties.

Business believes that the 1998 Commission Recommendation which sets the criteria for valid ADR schemes does not provide for appropriate ADR mechanisms in the on-line world. It does not consider as ADRs complaint-handling, conciliation or mediation systems, even though these are good means of encouraging confidence and offer cheap, fast, simple and effective solutions for consumers. They should, therefore, be incorporated into the Commission's considerations. In this context, we would like to recall the statement made by Commissioner Byrne in his address to the Kangaroo Group in September last year:

*"(...) I do recognise that we need to go further to ensure ADR really works in cyber space. The 1998 Recommendation covered ADR schemes involving a decision by a third party. These can be quasi-judicial processes, not really suited to lower value consumer transactions. Many e-commerce disputes may well be better served by **mediation or conciliation**, where the outcome is arrived at by the parties to dispute themselves (...)"* *

Business welcomes the Commission's communication [COM(2001)161final] on "widening consumer access to alternative dispute resolution" adopted on 4 April 2001. We consider it a positive step as it underlines that ADRs that meet the requirements of the 1998 Recommendation are not sufficiently adapted to electronic commerce and developments in communications technology. In this context, business supports the Commission taking further appropriate steps to recognize ADRs such as conciliation or mediation systems.

IV. APPROVAL AND MONITORING SYSTEMS

Business believes that national approval schemes should not be required where no need has been demonstrated, as this could lead to fragmentation of the single market. Moreover, formal government-led approval and monitoring systems for codes of practice and trustmark schemes should not be required as this will pre-empt the private-sector's role in coordinating, evaluating and monitoring joint national, European and global efforts to enhance consumer confidence.

* Speech by Commissioner Byrne "Cyberspace and Consumer Confidence" to the Annual Conference of the Kangaroo Group of MEP's on 18 September 2000

At European level, awareness-raising of trustmark schemes should be fostered via the use of web-based initiatives. Business would like to see the European Commission's e-confidence website used to achieve this end.

Business therefore welcomes the idea of a central e-confidence website containing a wide range of consumer information. This should include a global map that would display to consumers trustmarks in different countries and at European and global levels. Principles and components agreed by business and consumers at EU level should also be included in this website and used as a benchmark for self-assessment of trustmarks on the map. It may also be useful to include links to available studies of trustmark schemes as well as relevant consumer information about ADR schemes. These features would make an e-confidence website a real resource for business and consumers alike.

Trustmark placement on the map would be voluntary and based on self-assessment by the trustmark owner. Participant owners would be expected to provide a neutral party assessment of compliance with criteria agreed by business and consumers. They would also be expected to produce and make available a periodic report on complaints against a user of that trustmark.

In addition, cooperation between trustmark owners could be encouraged at an annual meeting and regularly via an on-line forum of discussion to be available on the web site. A national body in every Member State is not essential to maintain such cooperation.

V. CONCLUSIONS

In the light of the above comments, business would like to reiterate its concerns as follows:

- ❑ **General principles and specific guidelines:** Business agrees with the spirit of the general principles and specific guidelines drafted in the "core-group." Nevertheless, business believes that the principles and guidelines merit further discussion if they are to pave the way for good practices that code owners can support and code subscribers can sign up to.
- ❑ **Alternative dispute resolution mechanisms (ADRs):** If a link is to be established between a code of conduct for electronic commerce and an appropriate ADR scheme, business believes it essential to explore also new ADRs other than the ones which meet the requirements of the 1998 Commission Recommendation on out-of-court settlement bodies. Existing traditional ADRs used in the off-line environment do not necessarily respond successfully to the principles and challenges of the on-line medium. Business urges the Commission to include in its considerations all useful and appropriate ADRs which fall outside the scope of the above Recommendation (i.e. mediation and conciliation services).
- ❑ **Approval and monitoring:** Business believes that the focus of this initiative should be on trustmarks and trustmark owners. A web-based e-confidence resource for trustmarks should be established at European level. The resource should include a global map of confidence. Overall, it should be flexible and transparent to the extent that revision and reassessment can be undertaken to the benefit of both consumers and business. The e-confidence website could also include information on ADR schemes. Such a resource would benefit consumers, consumer organizations, code owners, trustmark owners and merchants.

Business very much hopes that these comments will be taken into account. This work reflects our interest in this initiative and our belief that consumers and business should continue to work together and share expertise in helping to build on-line trust and confidence.