

MODULE 6

BUSINESS AND CONSUMER TRUST

Article 6.1: Definitions

For the purposes of this Module:

unsolicited commercial electronic message means an electronic message which is sent for commercial or marketing purposes to an electronic address, without the consent of the recipient or despite the explicit rejection of the recipient, through an Internet access service supplier or, to the extent provided for under the laws and regulations of each Party, other telecommunications service.

Article 6.2: Unsolicited Commercial Electronic Messages

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:

- (a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of those messages;
- (b) require the consent, as specified according to the laws and regulations of each Party, of recipients to receive commercial electronic messages; or
- (c) otherwise provide for the minimisation of unsolicited commercial electronic messages.

2. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraph 1.

3. The Parties shall cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

Article 6.3: Online Consumer Protection

1. The Parties recognise the importance of transparent and effective measures to protect consumers from fraudulent, misleading or deceptive conduct when they engage in electronic commerce.

2. The Parties recognise the importance of cooperation between their respective national consumer protection agencies or other relevant bodies on activities related to cross-border electronic commerce in order to enhance consumer welfare.

3. Each Party shall adopt or maintain laws or regulations to proscribe fraudulent, misleading or deceptive conduct that causes harm, or is likely to cause harm, to consumers engaged in online commercial activities. Such laws or regulations may include general contract or negligence law and may be civil or criminal in nature. “Fraudulent, misleading or deceptive conduct” includes:

- (a) making misrepresentations or false claims as to material qualities, price, suitability for purpose, quantity or origin of goods or services;
- (b) advertising goods or services for supply without intention to supply;
- (c) failing to deliver products or provide services to consumers after the consumers have been charged; or
- (d) charging or debiting consumers’ financial, telephone or other accounts without authorisation.

4. Each Party shall adopt or maintain laws or regulations that:

- (a) require, at the time of delivery, goods and services provided to be of acceptable and satisfactory quality, consistent with the supplier’s claims regarding the quality of the goods and services; and
- (b) provide consumers with appropriate redress when they are not.

5. Each Party shall make publicly available and easily accessible its consumer protection laws and regulations.

6. The Parties recognise the importance of improving awareness of, and access to, policies and procedures related to consumer protection, including consumer redress mechanisms, including for consumers from one Party transacting with suppliers from another Party.

7. The Parties shall promote, as appropriate and subject to the respective laws and regulations of each Party, cooperation on matters of mutual interest related to misleading and deceptive conduct, including in the enforcement of their consumer protection laws, with respect to online commercial activities.

8. The Parties endeavour to explore the benefits of mechanisms, including alternative dispute resolution, to facilitate the resolution of claims relating to electronic commerce transactions.

Article 6.4: Principles on Access to and Use of the Internet

Subject to applicable policies, laws and regulations, the Parties recognise the benefits of their consumers having the ability to:

- (a) access and use services and applications of a consumer's choice available on the Internet, subject to reasonable network management;¹²
- (b) connect the end-user devices of a consumer's choice to the Internet provided that such devices do not harm the network; and
- (c) access information on the network management practices of a consumer's Internet access service provider.

¹² The Parties recognise that an Internet access service supplier that offers its subscribers certain content on an exclusive basis would not be acting contrary to this principle.