

# **e-consumer protection**

## **A public consultation on proposals**

July 2010

OFT1252con

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## Scope of this consultation

<b>Topic of this consultation</b>	In response to issues identified in the Consumer White Paper, <sup>1</sup> the UK Government has asked the Office of Fair Trading (OFT) to develop a longer term national strategy for consumer protection on the internet.
<b>Scope of this consultation</b>	The consultation is intended to give all those who have an interest in e-Commerce the opportunity to provide views and comments on the proposed approach to e-Consumer Protection, which will feed into a final e-Consumer Protection Strategy.
<b>Geographical scope</b>	There is no specific geographical dimension to this consultation.
<b>Impact assessment</b>	Not applicable

## Basic information

<b>To</b>	All those who have an interest in e-Commerce, including businesses, trade associations, consumer organisations, other government departments, those who have experience of, or interest in buying online and the general public.
<b>Duration</b>	23 July 2010 – 13 October 2010
<b>Enquiries</b>	By email to: <a href="mailto:eprotection@oft.gsi.gov.uk">eprotection@oft.gsi.gov.uk</a> By post to: Marcia Poletti Office of Fair Trading, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX

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<sup>1</sup>Consumer White Paper: A Better Deal for Consumers, July 2009  
[www.berr.gov.uk/files/file52072.pdf](http://www.berr.gov.uk/files/file52072.pdf)

<b>How to respond</b>	<p>We would welcome your comments on options and proposals set out in this document. Please respond to as many questions as you are able and provide any comments in writing (by internet, e-mail, or alternatively by letter as indicated above). Chapter 1 contains general questions, while the annexe on actions contains questions specific to each action.</p> <p>When responding to this consultation, please state whether you are responding as an individual or on behalf of an organisation. If the latter, please make clear who the organisation represents and, where applicable, how the views of members were collated.</p> <p><b>On the internet:</b> see link <a href="http://www.offt.gov.uk/eProtection">www.offt.gov.uk/eProtection</a></p> <p><b>By email:</b> <a href="mailto:eProtection@oft.gsi.gov.uk">eProtection@oft.gsi.gov.uk</a>.</p> <p><b>By post:</b> Please send responses to Marcia Poletti, Office of Fair Trading Fleetbank House 2-6 Salisbury Square London EC4Y 8JX by <b>13 Oct 2010</b> at the latest.</p>
<b>Additional ways to become involved</b>	<p>We have contacted a number of individuals, businesses and organisations to ask for their views. We would also welcome the opportunity to discuss views with other interested parties and anticipate holding broader feedback sessions during the consultation period.</p>

<b>After the consultation</b>	We will collate responses to the consultation and publish a formal summary of these within a final version of the Strategy in December 2010, taking responses into consideration. The document will be available on our website at <a href="http://www.offt.gov.uk/eProtection">www.offt.gov.uk/eProtection</a>
<b>Compliance with the <i>Code of Practice on Consultation</i></b>	This consultation complies with the Better Regulation Executive's Code of Practice on Consultation. A list of the key criteria, along with a link to the full document, can be found at Annexe C.

## Background

<b>Getting to this stage</b>	<p>The OFT has considered the impact of the internet on markets as an element of its ongoing business, for instance in Market Studies on 'Commercial Use of Public Information', 'Consumer Contracts' and 'Barriers to Entry, Expansion and Exit in Banking', Scambusters work, research on the impact of price frames on consumer decision making, and Mergers work.</p> <p>Work specifically focused on the internet includes Market Studies on 'Internet Shopping' (2007) and 'Online Targeting of Advertising and Prices' (2010). In October 2009, the OFT re-launched its internet lab and established its e-enforcement.</p> <p>In response to issues identified in the Consumer White Paper,<sup>2</sup> the UK Government has asked the Office of Fair Trading (OFT) to develop a longer term national strategy for consumer protection on the internet.</p>
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<sup>2</sup>Consumer White Paper: A Better Deal for Consumers, July 2009  
[www.berr.gov.uk/files/file52072.pdf](http://www.berr.gov.uk/files/file52072.pdf)

<b>Previous engagement</b>	Since September 2009, the OFT has had discussions with a number of interested parties, including government departments and consumer organisations, businesses, online platforms, and internet intermediaries (such as payment providers and search engines). We also formed a working group consisting of local and central government agencies, as well as range of internal OFT representatives to provide input and advice to the e-consumer protection strategy.
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## **Feedback about this consultation**

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

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Email: [jessica.nardin@oft.gsi.gov.uk](mailto:jessica.nardin@oft.gsi.gov.uk)

A copy of the key criteria from the Better Regulation Executive's *Code of Practice on Consultation* can be found in Annexe C.

## **Data use statement for responses**

Personal data received in the course of this consultation will be processed in accordance with the Data Protection Act 1998. All information received (including personal data) is subject to Part 9 of the Enterprise Act 2002. We may choose to refer to comments received in response to this consultation in future publications. In deciding whether to do so, we will have regard to the need for excluding from publication, as far as that is practicable, any information relating to the private affairs of an individual or any commercial information relating to a business which, if published, would or might, in our opinion, significantly harm the individual's interests, or, as the case may be, the legitimate business interests of that business. If you consider that your response contains such information, that information should be marked 'confidential information' and an explanation given as to why you consider it is confidential.

Please note that information provided in response to this consultation, including personal information, may be the subject of requests from the public for information under the Freedom of Information Act 2000 (FOIA). In considering such requests for information we will take full account of any reasons provided by respondents in support of confidentiality, the Data Protection Act 1998 and our obligations under Part 9 of the Enterprise Act 2002.

If you are replying by email, these provisions override any standard confidentiality disclaimer that is generated by your organisation's IT system.

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# 1 EXECUTIVE SUMMARY

- 1.1 This consultation is intended to give stakeholders the opportunity to provide views and comments on the OFT's suggested approach to e-consumer protection. The document sets out:
- OFT's general approach and the objectives of the e-consumer protection strategy
  - the challenges: building on success
  - a summary of proposed actions.
- 1.2 The need for an e-consumer protection strategy arose in response to concerns identified by the government in the July 2009 Consumer White Paper. The objective of the strategy, to be delivered by the end of 2010, is to enable the OFT, local authority Trading Standards Services and other agencies to work together more effectively and will consider the implications in terms of resources, training and staffing requirements.
- 1.3 The result of the strategy will be to improve effectiveness of online markets, thereby increasing the level of sustainable trust.<sup>3</sup> It will also ensure that the UK is one of the global leaders in online enforcement. Ultimately the goal is to ensure consumers, where they so wish, can take advantage of the range and prices of products and services offered online.
- 1.4 In general, the UK has a successful internet economy, with strong online participation, high levels of trust and comparatively substantial online spend. Consumers on the whole feel they have the right level of protection, and trust public authorities.

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<sup>3</sup> Sustainable trust occurs when consumer trust reflects the reliability of the transaction - ensuring that trust (and ultimately participation in the market) is not eroded over time as a result of consumers experiencing risks they had not anticipated.

- 1.5 Nonetheless, there are three broad areas where the UK could build still further on its successes:
- developing sustainable confidence in UK consumers, particularly amongst the most vulnerable, thereby promoting greater competition across the economy driven by effective consumers
  - responding effectively to rapid change
  - increasing the capability and improving the effectiveness of enforcement, with a focus on more effective use of resources.
- 1.6 OFT in the first instance seeks to use the power, flexibility and innovation of markets to solve competition and consumer problems, intervening only when the market is clearly failing and alternative solutions are unlikely to develop. Internet markets are clearly addressing some of the e-consumer protection issues. However the market on its own is unlikely to provide comprehensive solutions. Gaps in market based initiatives are likely to appear without the credible threat of enforcement or regulation and appropriate influencing from industry bodies, consumer bodies or government agencies.
- 1.7 Within the current constraints on public sector expenditure, the e-consumer protection consultation document outlines possible actions that the OFT, other agencies, the wider industry and consumers might undertake. These possible actions would focus on three broad areas:
- **Empower consumers** by educating consumers on their rights and the benefits of transacting online, making them more internet-savvy, and providing them with tools to fix problems they may encounter.
  - **Promote business compliance** by improving the effectiveness of guidance (use of, access to, quality of), facilitating industry led solutions to emerging problems, sharing intelligence, and building on

existing work (for example Ofcom's 'Principles for analysing self- and co-regulation'<sup>4</sup> and OFT's Drivers of compliance work<sup>5</sup>).

- **Develop effective enforcement** through increased coordination, building enforcement capacity, making better use of intelligence, and working in partnership with businesses and other enforcers, focusing on areas where enforcement has the most impact.

1.8 We are keen to hear from anyone with an interest in internet markets. We will collate responses to the consultation and publish our final e-consumer protection strategy in December 2010.

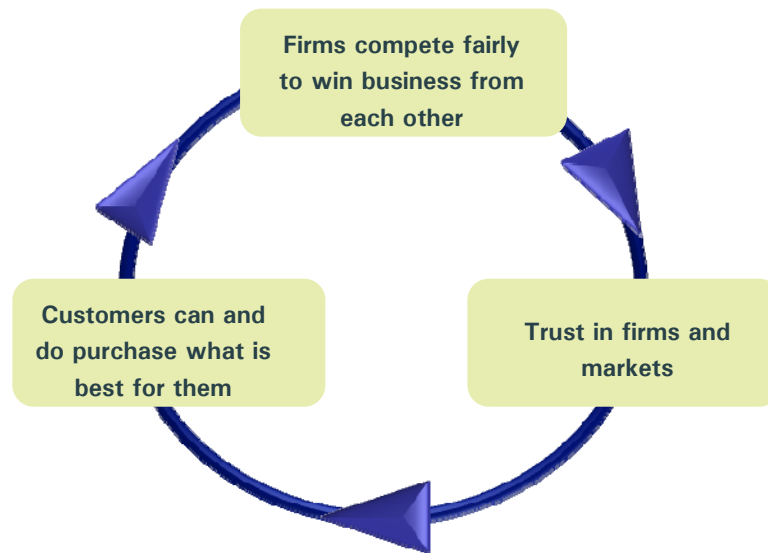
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<sup>4</sup> See: [stakeholders.ofcom.org.uk/binaries/consultations/coregulation/statement/statement.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/coregulation/statement/statement.pdf)

<sup>5</sup> See [www.ofcom.gov.uk/OFTwork/policy-and-research/drivers/](http://www.ofcom.gov.uk/OFTwork/policy-and-research/drivers/)

## **2 OFT'S APPROACH TO MARKETS AND OBJECTIVE OF THE STRATEGY**

- 2.1 The Office of Fair Trading (OFT) is the UK's competition and consumer authority. Our mission is to make markets work well for consumers. Our goal is for competitive, efficient, innovative markets where standards of consumer care are high, consumers are empowered and confident about making choices and where businesses comply with consumer and competition laws but are not overburdened by regulation.
- 2.2 Competitive, well-functioning markets drive long-term productivity growth without adding costs to government or business. Consumers, working through markets select the most efficient firms, and market discipline ultimately makes companies more competitive and more productive. This grows the UK economy. Competitive pressure can also promote efficiency in public services. Competitive markets benefit consumers through greater product innovation and lower prices. However, where consumers lack trust in a legitimate market, these competitive pressures fail to function effectively.
- 2.3 Where consumers distrust legitimate firms and markets, a vicious circle develops. Without trust, consumers lack the information, knowledge and confidence to make the best online purchases, and they therefore fail to reward innovative, high quality firms. This consumer behaviour weakens competitive pressure on firms, and leads to higher prices, lower quality and poor service.
- 2.4 Conversely, when consumers shop around, they increase incentives for businesses to offer higher standards and drive down production costs. When consumers are able to learn about new goods and services, and are confident enough to try them out, this should provide signals to firms encouraging innovation and the development of better products. By behaving in this manner, active consumers can drive economic growth and reduce the need for regulatory interventions in markets.



**Diagram 1: Virtuous Circle**

- 2.5 In order for innovation to take hold, consumers have to be able to trust new products and business models that are developed. There are a number of markets that have failed to get off the ground due to a lack of consumer trust.
- 2.6 Making internet markets work well for consumers is not a stand-alone activity. The offline and online markets are already interconnected, and becoming increasingly more so. Our enforcement and compliance efforts concern businesses which operate across a range of channels (including mobile commerce, the internet, mail-order, through intermediaries and through physical store fronts). Our consumer protection activities involve educating consumers on their rights across all these markets.
- 2.7 The OFT has undertaken a number of pieces of work with an online element, including market studies on:
- 'Commercial Use of Public Information' (published June 08) – found that more competition in public sector information could benefit the UK economy by around £400m a year, and identified a need for internet businesses, amongst others, to have access to data on an equitable footing.

- 'Home buying and selling' (published November 2009) – found that traditional estate agents provide a good service but there is limited choice for consumers who may prefer different, and cheaper, ways of buying and selling a home. The study concluded that innovation in this sector could have a dramatic impact on the cost of buying and selling a home, in particular through online services.
- 'Consumer Contracts' (launched February 2010) – an ongoing market study to examine when, how and why contracts may cause difficulties for consumers. The OFT intends to look at how well consumers understand typical contracts and how this varies when contracts are, for example, presented online, over the phone, or during a face-to-face sales pitch.
- 'Barriers to Entry, Expansion and Exit in Banking' (launched May 2010) – an ongoing review of barriers to entry, expansion and exit in retail banking, which is currently calling for evidence to identify any obstacles facing new entrants and smaller banks seeking to expand. The study will specifically take into account the influence of the internet

## 2.8 Other work undertaken by the OFT includes:

- Action against mass-marketed scams (for instance lottery scams) – 2010 research found email is now the most common delivery mechanism for scams and that 73 per cent of adults have received a scam email in the past year. This is followed by letter (21 per cent) and via text message (12 per cent). Social media sites appear to be emerging as a new route for scammers – nine per cent adults have received an approach this way.
- Research on the impact of price frames on consumer decision making, with a focus on the internet, a controlled economic experiment that analyses whether or not the way prices are presented or 'framed' to consumers has effects on consumer decision making and consumer welfare.

- Merger work – a review of the media mergers regime as a part of the Digital Britain initiative confirmed that the general merger regime is in principle flexible enough to address the digital media sector and take into account in its assessment the increasing constraint from the internet.

2.9 However some elements of the internet require more focus. The OFT has run market studies on:

- Internet Shopping (published 2007) – plus follow up work including: guidance to business and consumers, web sweep with local authority Trading Standards Service (TSS) to monitor compliance and a compare/contrast research and report in 2009
- Advertising of prices (launched October 2009) – will consider various pricing practices which may potentially mislead consumers. The study will look in particular, but not exclusively, at how these practices are used online, for example, the impact of pricing practices such as drip pricing, baiting sales, time limited offers and complex pricing
- Online Targeting of Advertising and Prices (published 2010) – the study looked at the practice of behavioural advertising, in which a computer user's online behaviour is used to target online advertising, and has the potential to offer customised pricing, where prices are individually tailored using information collected about a consumer's internet use. We have found that online behavioural advertising has benefits, but there are concerns, primarily over privacy. The study went on to recommend focussing on improving and supporting self-regulation.

2.10 In October 2009, the OFT re-launched its internet lab and established its e-enforcement team with seed funding from BIS. The OFT continues to be involved in a number of capability building initiatives, such as international internet sweeps and Best Practice workshops through International Consumer Protection and Enforcement Network (ICPEN)

and other networks, London Action Plan events, and work with other European enforcers.

- 2.11 Enforcement and compliance action includes cases with an internet focus (for example transparency in airline ticket advertising), and supermarkets (supermarkets offering grocery shopping online agreed to give customers better price information following action by the OFT). Horizon scanning and research areas include 'consumer to consumer transactions' and 'Barriers to entry for SMEs online'. Some consumer education campaigns are targeted at known internet market problems, for example the '2010 Just Tick It' campaign and other campaigns tackling cyberdating scams and miracle health cures.
- 2.12 While a significant number of initiatives have been undertaken by various national agencies and organisations, to date there has been no comprehensive study of e-consumer protection across the UK. In recognition of this, in the Consumer White Paper, the Government asked the OFT to develop a longer term national strategy for consumer protection and enforcement on the internet. This strategy, to be delivered by the end of 2010, will enable the OFT, local authority Trading Standards Services (TSS) and other agencies to work together more effectively and will consider the implications in terms of resources, training and staffing requirements.

### **What general principles guide our approach to internet markets?**

- 2.13 The proposed e-consumer protection strategy approach is framed within a set of principles that guide the OFT's general approach across internet markets. These five principles also address specific differences between shopping online and in more traditional retail environments (such as bricks and mortar stores), as well as the global nature of the internet.
- 2.14 **Market based:** There are costs to consumers and the economy both when regulators intervene and also when they choose not to. The OFT in the first instance seeks to use the power, flexibility and innovation of markets to solve competition and consumer problems, intervening only

when the market is clearly failing and alternative solutions are unlikely to develop.

- 2.15 **Equivalence:** Consumers should have consistent levels of consumer protection across all sales channels. This may mean adapting approaches to specific channels to accommodate technological differences and ensure consistency (for example distance selling regulations attempt to compensate for the non-tangible nature of the transaction).
- 2.16 **Responsibility:** Assuring the protection of consumers is not just the responsibility of governments and their agents. Industry, voluntary organisations and consumers themselves all contribute to improving consumer protection. We will work with all parties, building on their knowledge and capabilities.
- 2.17 **Trust:** We will support actions that build and maintain sustainable trust in online markets, which is essential for their durability and long term growth.
- 2.18 **International context:** The global nature of the internet means we cannot develop initiatives in isolation. We will take into account the international developments, and operate within the framework of international initiatives (such as the EU Digital Strategy<sup>6</sup>) and guidance (such as OECD guidelines on e-commerce<sup>7</sup>). We should also contribute to the development of guidance and initiatives to ensure the UK's voice is heard.

## **The objective of the e-consumer protection strategy**

- 2.19 The Government has asked the OFT to develop a longer term national strategy for consumer protection and enforcement on the internet. This strategy, to be delivered by the end of 2010, will enable the OFT, TSS and other agencies to work together more effectively to promote the

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<sup>6</sup> [ec.europa.eu/information\\_society/digital-agenda/index\\_en.htm](http://ec.europa.eu/information_society/digital-agenda/index_en.htm)

<sup>7</sup> [www.oecd.org/document/51/0,3343,en\\_2649\\_34267\\_1824435\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/51/0,3343,en_2649_34267_1824435_1_1_1_1,00.html)

safe and vibrant operation of internet markets. The strategy will also consider the implications in terms of resources, training and staffing requirements.

- 2.20 The objective of the e-consumer protection strategy is to improve the effectiveness of online markets, thereby increasing the level of sustainable trust. The focus is on ensuring consumers, where they so wish, can take advantage of the range and prices of products and services offered online. This does not imply that all transactions should move to the internet, but it does mean that consumers should have a real choice available to them in terms of what channel they use to buy, and that this choice should not be constrained by lack of trust. A secondary objective, outlined in the white paper, is making UK online enforcement as good as anywhere else in the world.

### **3 THE CHALLENGES: BUILDING ON SUCCESS**

#### **Overview**

- 3.1 The UK has a strong internet economy. On the supply side, the UK has a retail sector with a sophisticated internet presence, a robust and innovative digital economy, and a comparatively high share of ICT-related occupations in the total economy. On the demand side the picture is similar: consumers have high participation rates in online markets and high levels of spend.
- 3.2 However, notwithstanding the strong performance of the UK digital economy, there are three broad areas where the UK could build still further on its successes: developing sustainable confidence and promoting greater competition across the economy, responding effectively to rapid change, concentrating on industry led solutions to emerging problems, and increasing the capability and improving the effectiveness of enforcement.

#### **The UK's relative position**

- 3.3 On the supply side, the UK has the highest percentage of retailers who use e-commerce/internet sales channels for retail (71 per cent). This compares against the EU27 median of 51 per cent, and the next highest retail penetration of 58 per cent, in Ireland.<sup>8</sup>
- 3.4 Taking a broad definition of ICT,<sup>9</sup> the UK is second only to Luxembourg in terms of level of ICT employment as a fraction of total employment.

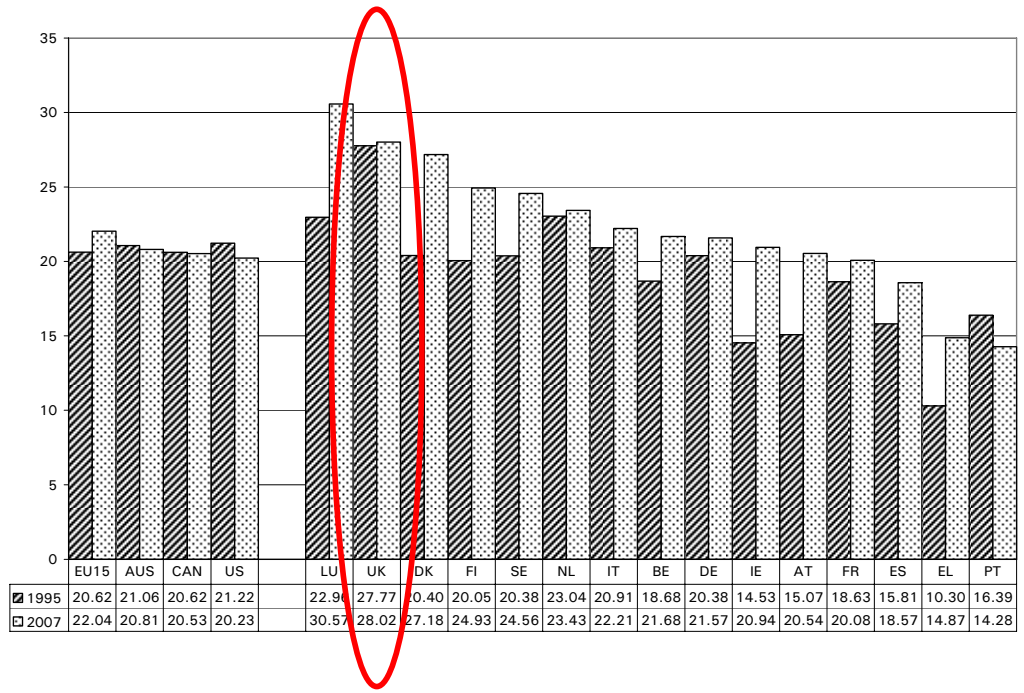
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<sup>8</sup> The Consumer Markets Scoreboard, 3<sup>rd</sup> Edition, European Commission, 2010.

[ec.europa.eu/consumers/strategy/docs/3rd\\_edition\\_scoreboard\\_en.pdf](http://ec.europa.eu/consumers/strategy/docs/3rd_edition_scoreboard_en.pdf)

<sup>9</sup> The Broad Definition of ICT includes: ICT specialists, who have the ability to develop, operate and maintain ICT systems: as well as basic and advanced users (those who use a range of basic generic to advanced, and often sector-specific, software tools. See Information and Communications Technologies, OECD Information Technology Outlook 2004, Chapter 6.

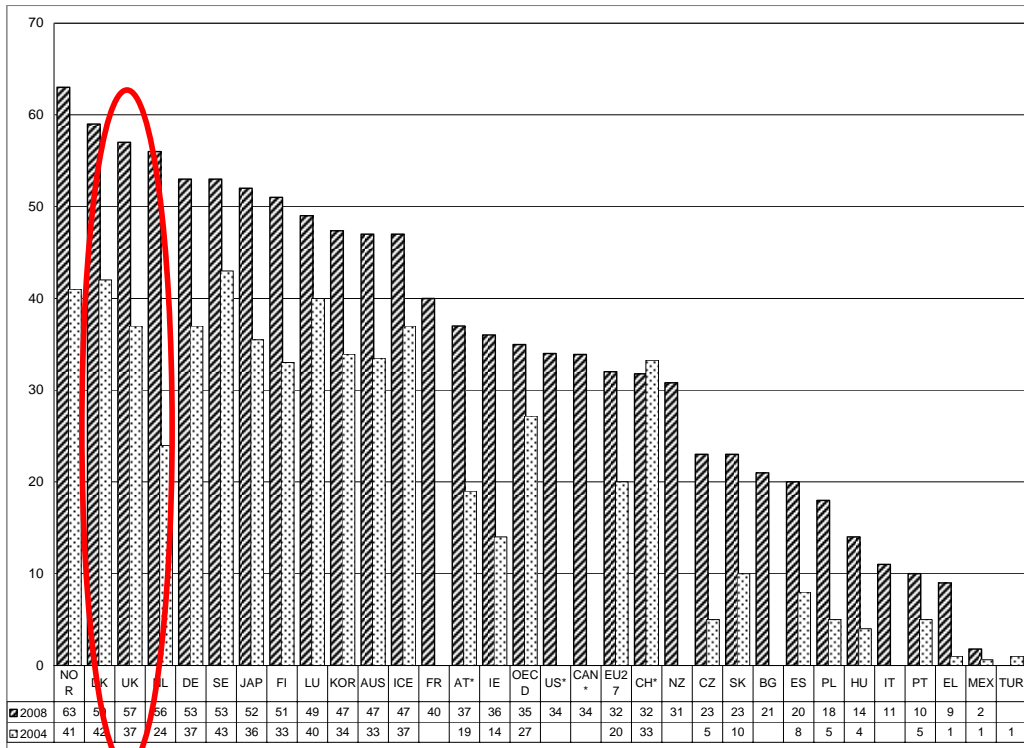
**Diagram 1** Relative strength of ICT employment in the total economy, based on a broad definition of ICT skills



Source: [www.oecd.org/dataoecd/37/13/34963969.xls](http://www.oecd.org/dataoecd/37/13/34963969.xls) (IT Outlook 2008)

3.5 Participation rates amongst individuals who order or purchase goods or services on the internet are amongst the highest in the OECD.

**Diagram 2** Individuals who ordered or purchased goods or services on the Internet, as a percentage of adults



Notes: (\*) Australia (data for 2007 instead of 2008), Belgium (data for 2005 instead of 2004), Canada (data for 2003 instead of 2004, 2007 instead of 2008), Italy (data for 2005 instead of 2004), New Zealand (data for 2006 instead of 2008), Switzerland (data for 2005 instead of 2008), United States (data for 2003 instead of 2004). (\*\*) OECD average (simple average of available data). Generally, data from the EU Community Survey on household use of ICT, which covers EU countries plus Iceland, Norway and Turkey, relate to the first quarter of the reference year. For the Czech Republic, data relate to the fourth quarter of the reference year. Individuals aged 16-74 years, except for Canada (18-74), the Czech Republic (15+), Japan (6+), Mexico (18+), Switzerland (14-74). Data generally refer to Internet use in the last 12 months for non-Eurostat countries and for Eurostat countries.

Source: OECD ICT Database.

3.6 Consumers in the UK were the most likely to agree that sellers/providers in their country respect consumer rights (consumers feel they can trust sellers). High levels of UK consumers also agree that they feel adequately protected by existing measures to protect consumers.









































































