

e-consumer protection

A public consultation on proposals

July 2010

OFT1252con

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Scope of this consultation

Topic of this consultation	In response to issues identified in the Consumer White Paper, ¹ the UK Government has asked the Office of Fair Trading (OFT) to develop a longer term national strategy for consumer protection on the internet.
Scope of this consultation	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.
Geographical scope	There is no specific geographical dimension to this consultation.
Impact assessment	Not applicable

Basic information

To	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.
Duration	23 July 2010 – 13 October 2010
Enquiries	By email to: eprotection@oft.gsi.gov.uk By post to: Marcia Poletti Office of Fair Trading, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX

¹Consumer White Paper: A Better Deal for Consumers, July 2009
www.berr.gov.uk/files/file52072.pdf

How to respond	<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>On the internet: see link www.offt.gov.uk/eProtection</p> <p>By email: eProtection@oft.gsi.gov.uk.</p> <p>By post: Please send responses to Marcia Poletti, Office of Fair Trading Fleetbank House 2-6 Salisbury Square London EC4Y 8JX by 13 Oct 2010 at the latest.</p>
Additional ways to become involved	<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>

After the consultation	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 www.offt.gov.uk/eProtection
Compliance with the <i>Code of Practice on Consultation</i>	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

Getting to this stage	<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,² 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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²Consumer White Paper: A Better Deal for Consumers, July 2009
www.berr.gov.uk/files/file52072.pdf

Previous engagement	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

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.

CONTENTS

<i>Chapter/Annexe</i>	<i>Page</i>
1 Executive Summary	1
2 OFT's approach to markets and objective of the strategy	4
3 The challenges: building on success	11
4 Proposed Initiatives	28
A Summary of questions	41
B List of consultees	46
C Consultation criteria	47
D Glossary of terms	48

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.³ 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.

³ 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'⁴ and OFT's Drivers of compliance work⁵).

- **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.

⁴ See: stakeholders.ofcom.org.uk/binaries/consultations/coregulation/statement/statement.pdf

⁵ See 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.

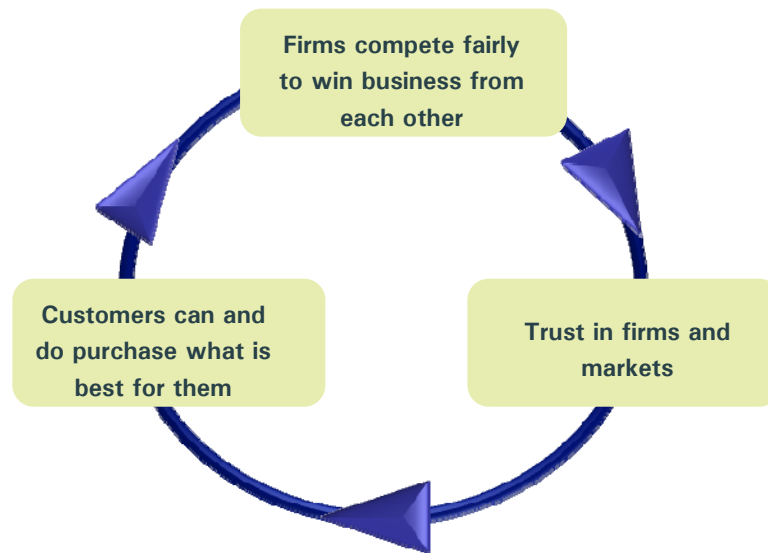


Diagram 1: Virtuous Circle

- 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 Strategy⁶) and guidance (such as OECD guidelines on e-commerce⁷). 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

⁶ ec.europa.eu/information_society/digital-agenda/index_en.htm

⁷ 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

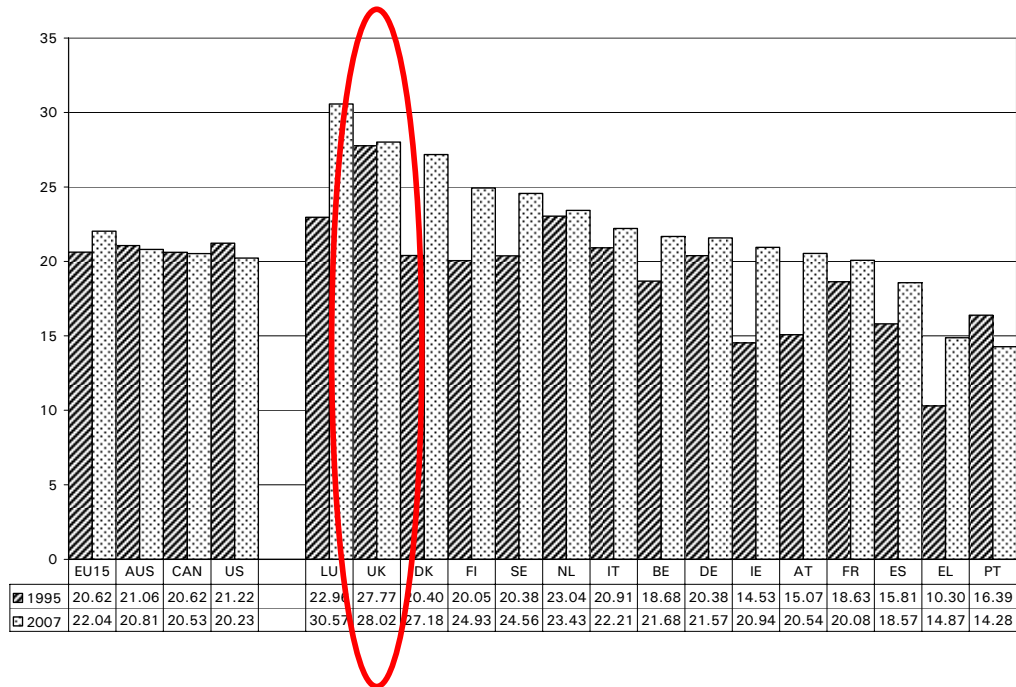
- 3.3 On the supply side, the UK has the highest percentage of retailers who use e-commerce/internet sales channels for retail (71 per cent). This compares against the EU27 median of 51 per cent, and the next highest retail penetration of 58 per cent, in Ireland.⁸
- 3.4 Taking a broad definition of ICT,⁹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

⁸ The Consumer Markets Scoreboard, 3rd Edition, European Commission, 2010.

ec.europa.eu/consumers/strategy/docs/3rd_edition_scoreboard_en.pdf

⁹ 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.

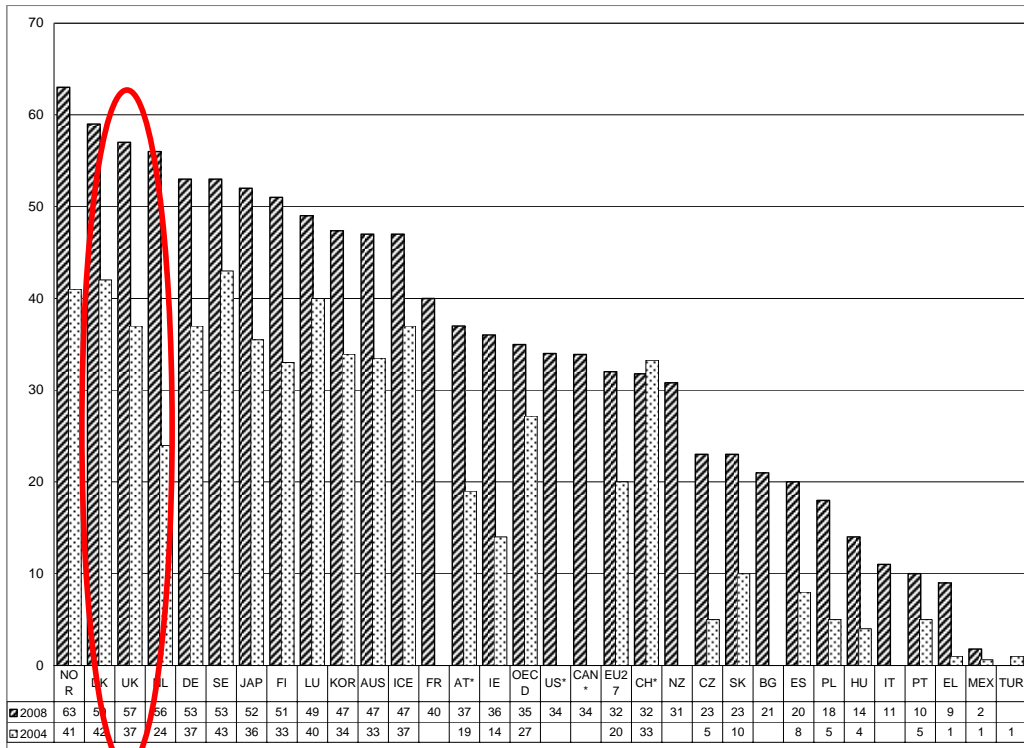
Diagram 1 Relative strength of ICT employment in the total economy, based on a broad definition of ICT skills



Source: www.oecd.org/dataoecd/37/13/34963969.xls (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

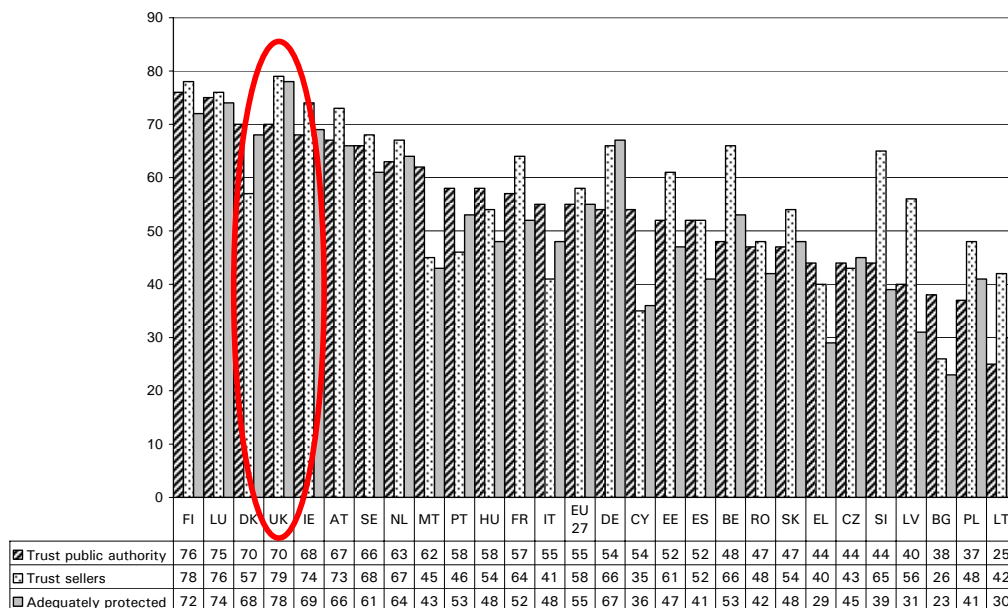


Notes: (*) Australia (data for 2007 instead of 2008), Belgium (data for 2005 instead of 2004), Canada (data for 2003 instead of 2004, 2007 instead of 2008), Italy (data for 2005 instead of 2004), New Zealand (data for 2006 instead of 2008), Switzerland (data for 2005 instead of 2008), United States (data 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.

Diagram 3 Consumer feelings about adequate protection and trust relating to internet transactions within the EU



Source: The Consumer Markets Scoreboard 3rd edition, European Commission, 2010¹⁰

- 3.7 Not only do UK adults have comparatively high participation rates and relatively robust feelings of trust in online sellers, they also spend significant amounts online compared with other countries. In the UK, internet users spent £38 billion in 2009 or 9.5 per cent of UK retail trade, making them Europe's biggest online shoppers.¹¹
- 3.8 The one area where the UK scores just over the EU median is on cross border purchases, with 33 per cent of UK consumers having made one cross-border purchase (EU27 is 29 per cent). This compares against Luxembourg (79 per cent), Ireland (62 per cent) and Denmark (60 per cent). This is probably driven by relative price differentials, and the size of the UK market. UK consumers, when searching on the internet, are

¹⁰ ec.europa.eu/consumers/strategy/docs/3rd_edition_scoreboard_en.pdf

¹¹ Source: Centre for Retail Research and the Retail Sales Statistical Bulletin, 'Online Trends 2010'

the least likely of all EU consumers to find the cross border total price cheaper than the best domestic price.¹²

Opportunities to build on UK's success

3.9 However, notwithstanding the strong performance of the UK digital economy, there are three broad areas where the UK could build further on its successes:

- **Developing sustainable confidence** in UK consumers, particularly amongst the most vulnerable, and promoting greater competition across the economy driven by effective consumers.
- **Increasing the capability and improving the effectiveness of enforcement**, with a focus on using current resources more effectively, focussing on those areas, such as fraud, where enforcement can have the greatest impact.
- **Responding effectively to rapid change**, concentrating on industry led solutions to emerging problems.

Sustainable confidence

3.10 Within the UK, consumer confidence in the internet is relatively high compared to other European countries (see Diagram 4). However recent research by the OFT indicates that 19 per cent of UK internet users are not transacting online, and approximately one third of these people are not doing so due to worries about the security of their personal and financial details. As a total of all internet users, this represents around six per cent overall. A similar percentage, around seven per cent of non-

¹² The Consumer Markets Scoreboard, 3rd Edition, European Commission, 2010.
ec.europa.eu/consumers/strategy/docs/3rd_edition_scoreboard_en.pdf

internet users, say they do not feel confident about using the internet (as opposed to finding it difficult).¹³

3.11 There are other areas of concern: two thirds of internet users are worried about others accessing their personal details on the internet. One quarter of internet users engaging in e-commerce are much more worried about losing out to or being conned by companies when they buy online compared to when they buy offline, and 37 per cent are a little more worried.¹⁴ These sorts of concerns can easily translate into lower levels of internet usage than consumers and businesses consider ideal.

Attitudes to Online Markets (March 2010): Key Survey Findings

Fourteen per cent of those engaging in e-commerce have experienced a problem where they felt they had lost out to – or been conned by – a company they were buying from. In over half of these cases, the problem was resolved. The experience had a negative impact on their confidence in 37 per cent of cases. Although the figures are not directly comparable, consumers offline also experience problems: in 2009 nine per cent of consumer encountered problems when buying something (and in 2008 the figure was 27.7 per cent).¹⁵

As a result of online identity theft, six per cent of all internet users have lost money. In three quarters of cases they managed to recover all their loss from their bank, credit-card company or Paypal. The experience had a negative impact on their online confidence in 54 per cent of cases.

One in eight internet users have concerns about things that might go wrong on the internet borne out of their own personal experience while one in ten are concerned as a result of what they have heard in the media.

Amongst internet users not buying online, concern about the security of personal and financial details is by far the most important reason for not going online to check bank or credit card balances (41 per cent) and not buying goods and services online (33 per

¹³ Attitudes to Online Markets (OFT1253), OFT, July 2010, www.offt.gov.uk/shared_offt/consultations/eProtection/oft1253

¹⁴ *ibid*

¹⁵ The Consumer Markets Scoreboard, 3rd Edition, European Commission, 2010. ec.europa.eu/consumers/strategy/docs/3rd_edition_scoreboard_en.pdf

cent). It also features as one of the main reasons for not transferring money between accounts online (34 per cent).

Not surprisingly, those worried about others accessing their personal details online are significantly less likely to be frequent buyers of goods and services online.

Consumers engaging in e-commerce who are worried about internet security, around 42 per cent of the population, protect themselves by only going to websites they trust (40 per cent of this group). This has implications for the competitiveness of the internet, and increases the barriers to entry for small to medium sized enterprises which may have lower brand presence.

Trustmarks, codes of practice and seals of approval give confidence to one in three internet users. Around 30 per cent of those visiting foreign websites (about one third of internet users) are deterred from buying from them by safety concerns and lack of trust in the security of these sites – only a quarter because they see no need to buy from them.

3.12 Unnecessarily low levels of confidence will tend to result in lower levels of demand, and consequently lower levels of supply:

- Online demand will grow at a slower rate than it otherwise might. That will affect demand for upstream infrastructure, affect the ability of content providers to commercialise online advertising, and impede retailers from achieving critical mass online.
- Large companies may be able to build trust in their brands, however smaller players and new entrants may find it more difficult. Enabling technologies such as search engines and online market platforms to overcome reputational barriers and help small companies develop. These initiatives need to be complemented by appropriate levels of trust.¹⁶
- Consumers who are not confident are also likely to demand further regulation. The history of consumer policy suggests that 'fear-driven' regulation, especially during and after a crisis, can create unnecessary regulation and may actually harm consumers. This is

¹⁶ See ' Online markets: discussion paper, OFT, July 2010 www.of.gov.uk/news-and-updates/press/2010/78-10

not to dismiss the role that properly thought-through regulation can play.

- It is also a threat to the success of the theme of Digital Britain which seeks to encourage greater internet use and encourage online those less net-savvy consumers, some of whom may be both more vulnerable to and more concerned about problems associated with internet transactions.

- 3.13 **Consumers are becoming complacent, paying even less attention to security now than previously.** Some shoppers are apparently being less cautious - for example, the proportion of internet shoppers checking whether the padlock symbol is present on a website fell from 71 per cent in 2006 to 60 per cent in 2009.¹⁷ In this context, sustainable confidence is important – ideally consumers will take an approach to online transactions that is commensurate to the risk (in the same way they do offline).
- 3.14 There also seems to be a gap between perception and reality - consumer concerns decreased in 2008-2009, but UK online banking fraud losses climbed 55 per cent in the first half of 2009, and phishing scams increased 22 per cent during that period.¹⁸
- 3.15 Consumers can also lack awareness about new and emerging problems and their impact on the functioning of markets. In recent research conducted by the OFT as part of the 'Online targeting of advertising and prices' market study,¹⁹ only a quarter of users understood how cookies work although a further 28 per cent said that they had some understanding. This lack of awareness shown by consumers is of

¹⁷ OFT (2009), Findings from Consumer Surveys on Internet Shopping

¹⁸ Financial Fraud Action Plan (2009)

¹⁹ OFT Market Study: Online targeting of advertising and prices, May 2010

concern, given that both types of targeting practices make use of cookies and there is potential for such targeting to distort markets.²⁰

- 3.16 These research findings need to be taken in context. The study went on to investigate the extent of consumers' concerns about behavioural advertising. We found that attitudes to online targeted advertising are mixed with 40 per cent of consumers holding neutral views, 28 per cent disliking it and 24 per cent welcoming it. Concerns were much stronger in relation to online targeted prices.
- 3.17 In addition, a further piece of OFT research suggests that when exposed to new product pricing strategies, such as drip pricing (where the consumers see only part of the full price up front and price increments are dripped through the buying process), or complex pricing (where the unit price requires some computations: '3 for the price of 2') consumers rapidly develop strategies to cope.²¹
- 3.18 **Households are missing out on potential savings** of an estimated £560 per year per household by not shopping or paying bills online. The total benefits to the UK of getting everyone online are estimated to be in excess of £22bn.²² Weak consumer confidence is bad for consumers and bad for business in a narrower e-commerce sense. In 2007, we calculated that it meant between £175m and £350m in missed savings for consumers every year (for example, Which? list typical online savings on a range of household goods, which range from 14 per cent on books to 29 per cent for CDs/Plasma TVs).

²⁰ See www.offt.gov.uk/shared_offt/business_leaflets/659703/OFT1231.pdf 'The OFT does not currently have any information about any firms increasing prices to consumers on the basis of their online behaviour at the moment. Of course, many sites offer tracked consumers discounts. For example, firms may track the purchases of consumers who are logged on to their websites and use that information to email discount offers.'

²¹ Interim Report 'The impact of price frames on consumer decision making' May 2010

²² Source: The Economic Case for Digital Inclusion, October 2009

- 3.19 These online savings generally arise as a result of the increased competition due to market transparency, the elimination of intermediaries and the impact of operational savings.
- 3.20 This loss of potential savings is of particular concern for low income households (LIH, those earning less than 60 per cent of the median equivalised household income), which make up approximately 20 per cent of all households.²³ LIH face a variety of disadvantages in terms of price (higher prices for prepay, risk-based pricing etc), quality and accessibility. The internet can compensate for these disadvantages, it is one of a set of enablers for LIH, alongside bank-accounts and car ownership.
- 3.21 Without effective use of (and trust in) the internet by LIH, competition in other markets (such as energy markets, or financial services) is likely to be adversely affected. The internet facilitates competition, and may increase the range of offerings that are provided to LIH, who in general as not as well served as other segments of the population.
- 3.22 Even when LIHs have access to the internet, they typically have much lower participation levels in online markets. Those from social classes DE are far less likely to be frequent users than those from classes AB (32 per cent vs. 68 per cent),²⁴ and while 11 per cent of users from social class AB have never used the internet, this rises to 44 per cent of classes DE. People from classes DE are also likely to be significantly more worried about others accessing their personal details on the internet (75 per cent of people from classes DE vs. 61 per cent of people from classes AB).

²³ Research commissioned by the OFT 'Markets and Households on Low Income', J Green (Europe Economics), P Kenway (New Policy Institute), June 2010

²⁴ Attitudes to Online Markets (OFT1253), OFT, July 2010, www.of.gov.uk/shared_of/consultations/eprotection/oft1253

Capability and effective use of resources

- 3.23 **The UK enforcement environment is challenging for internet enforcement.** TSS operate at local authority level – mainly addressing traders, rogues and scammers in their area. In recent years, Regional Intelligence Officers (RIOs) and regional Scambusters teams have started helping authorities to share information and investigate problems that cross their borders.
- 3.24 This model works well for many problems but is ill-suited to the internet, because the sources of consumer harm are often in a different region (or even country). As a result, TSS may receive internet-related complaints relating to many different problem-creators falling outside their boundaries. Likewise, individual TSS may only record a very small number of complaints about one 'trader', but across the whole country, the number of consumers experiencing a problem with that 'trader' could be very high. Whilst Consumer Direct (CD) passes individual complaints on to TSS, the identification of the relevant body is increasingly hard as internet transactions become more complex and more prevalent.
- 3.25 RIOs can provide a regional perspective but not a national or international one. A TSS may therefore have no way of knowing that their area harbours a major source of problems.
- 3.26 **Local priorities can mean complaints risk falling through the gaps.** A TSS which receives complaints from consumers in its area about a trader, rogue or scammer in another area will need to identify the location of the source of those complaints. If the TSS can determine a UK location, the TSS may then approach the trader directly, provided they have agreed this with the relevant Home Authority (HA), or they can pass the information to the HA for them to decide how to proceed. However, this leads to ad-hoc, unpredictable, and varying responses to similar problems across the UK, or even no action being taken. In the case of complaints referring to traders, rogues or scammers based outside the UK, the 2007 Market Study found that TSS were often unsure what to do.

- 3.27 Whilst problems that cross boundaries have always been associated with enforcement difficulties, the internet has amplified this. Furthermore, TSS priorities and budgets are set by their local authority, and unless the internet enforcement has been identified as a priority, local authorities may well choose to focus on their many other responsibilities.
- 3.28 **Overlaps occur with other enforcers, and gaps may emerge.** The existing institutional framework is complex. Within the UK, a number of enforcers and agencies may be operating (see Diagram 3), some of whom (for example, consumer focused bodies such as the TSS, OFT and Ofcom) have traditionally been organised on a local, regional or sectoral basis with the advantage that the enforcer is 'closer' to the place of business of the trader.
- 3.29 Yet in internet consumer protection, this may lead to a fragmentation of enforcement efforts. Different agencies are responsible for consumer protection laws, data protection laws, copyright issues and general criminal prosecution on the internet. The challenge here is to delineate different areas of responsibility and to ensure enforcement against certain types of consumer harm does not fall between the gaps of the enforcement powers of various agencies.
- 3.30 At the global level, enforcers face additional problems: not only are there an increasing number of enforcers involved, but there is the further concern over applicability of jurisdiction. The consumer and the trader may be located in two different countries and rogue traders may try to escape enforcement by systematically targeting consumers in another jurisdiction. It may be unclear which national enforcement authority (NEA) has jurisdiction to act.

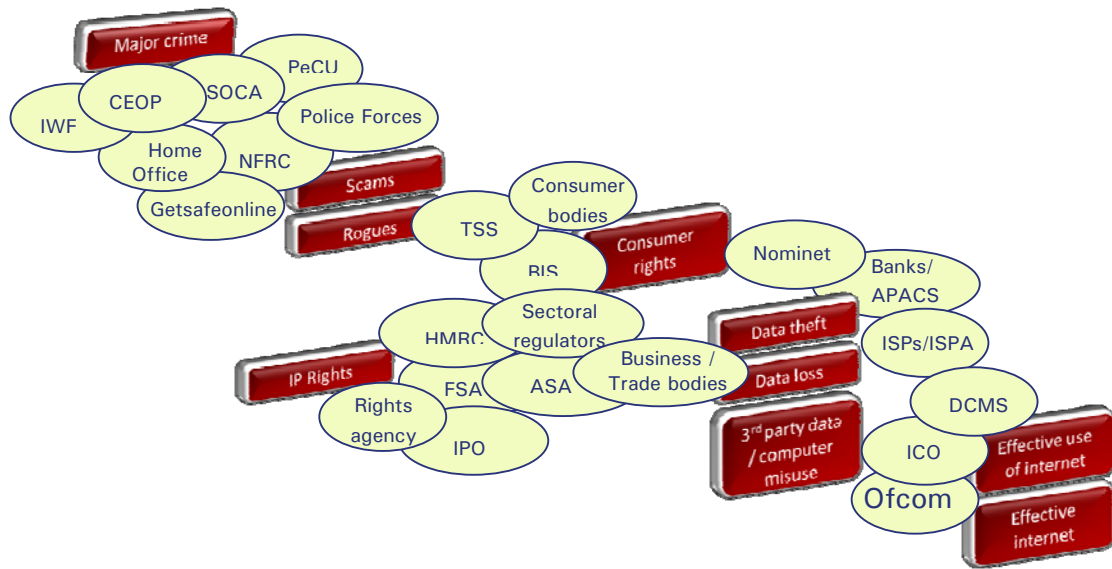


Diagram 4 Overlapping institutional arrangement

3.31 **Internet enforcement of e-consumer protection in the UK is building, but from a low base.** A number of organisations are beginning to develop a strong e-enforcement capability, for instance the Police and the Serious Organised Crime Agency (SOCA). This resource tends to be focussed on high detriment criminal enforcement. Across parts of the UK, individual or regional groupings of TSS have developed strong internet enforcement capability. The OFT recently established a focused e-enforcement group in October 2009 with funding from BIS. BIS is also providing funding for capacity building across the TSS network. However effort is required to build on and extend this nascent enforcement and protection capability. In addition consumer enforcement is more likely to be global, and require international cooperation, hence a different style of working, with different tools, is required.

Rapid change

- 3.32 Since the launch of the first popular browser in 1994,²⁵ the shift to online activity has been significant. In the UK alone, internet sales continue to grow dramatically – users spent £38 billion in 2009, making them Europe's biggest online shoppers.²⁶ This represents an increase of 12 per cent on the previous year, with a 12.4 per cent increase forecast for 2010.
- 3.33 The pace of internet development and innovation has challenged many aspects of the regulatory framework within which we operate, and has raised questions for government and enforcement bodies.
- 3.34 Emerging business models may expose gaps in existing legislation, which predominantly focuses on 'business to consumer' transactions, and on goods and services. An example of this is in consumer-to-consumer (C2C) transactions, where consumers currently have only limited protection available under the UK legal system (both off and online). There is thus a substantial difference in levels of protection between buying from businesses and buying from consumers. In addition, there is lack of clarity, both legally and on C2C platforms themselves over whether the seller is acting as a consumer or business for the purposes of consumer protection legislation. This may result in some level of consumer detriment.
- 3.35 The definition of goods and services is also challenged by the internet in a way that would not be possible offline. A computer disk which contains a defective programme may be a good subject to the Sale of Goods Act 1979 but this is not the case for intangible downloads which may result in uncertainty.²⁷ In addition the ability of sellers to alter the

²⁵ Netscape

²⁶ Source: Centre for Retail Research and the Retail Sales Statistical Bulletin, www.retailresearch.org/reports/onlinetrends_2010.php

²⁷ *St Albans City and DC v International Computers Ltd* Court of Appeal (Civil Division), 26 July 1996, [1996] 4 All E.R. 481.

licence conditions or operability of digital products post-purchase raises new and complex issues and may lead to consumer detriment.

- 3.36 Other gaps may exist now, or could emerge in the future as the internet evolves. In order to ensure enforcement powers are updated and fit for the twenty-first century, the Government has stated that it will review the powers available to consumer law enforcers in an online world.
- 3.37 Although discussions between BIS and OFT on these areas are ongoing, issues such a review may touch on include: whether the OFT and TSS have powers to take action against traders within the UK even if their behaviour is not causing harm to EU consumers;²⁸ whether current laws adequately allow enforcers to act against scammers using malware or spyware either alone or bundled with other software.

²⁸ Under the EU Regulation on Consumer Protection Cooperation certain protections already exist in relation to traders based in one Member State whose acts and or omissions may be causing detriment to the consumers in another Member State in breach of specified EU consumer protection laws. See www.offt.gov.uk/shared_offt/business_leaflets/general/offt884.pdf

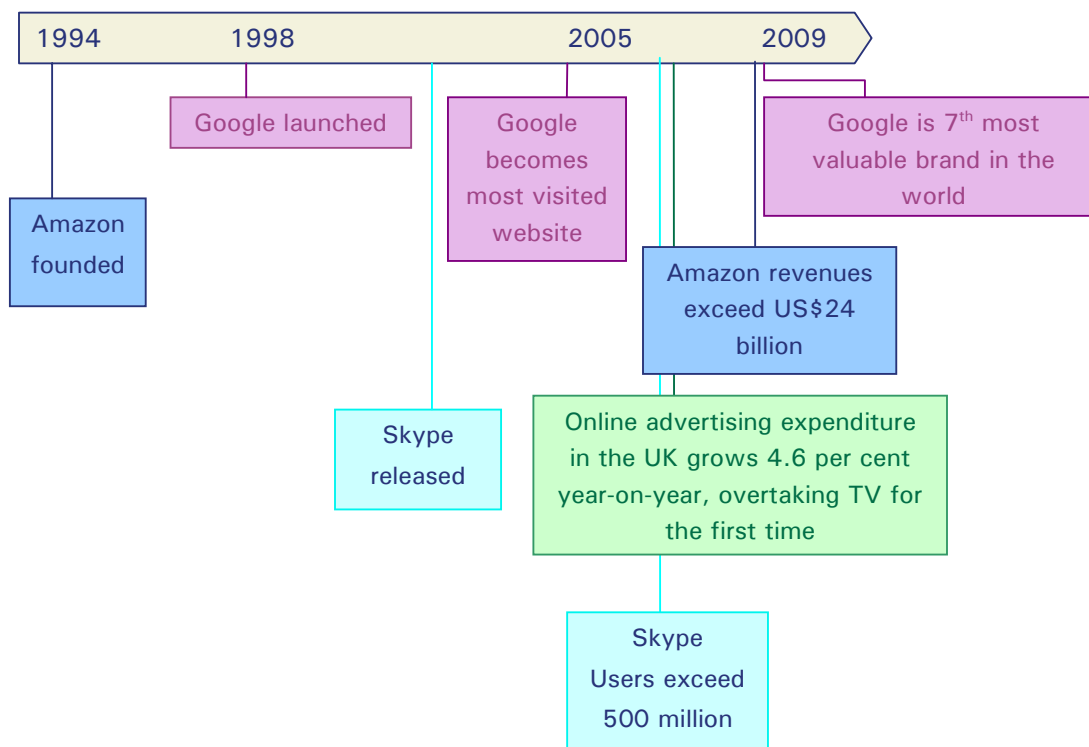


Diagram 5 Rapid change on the internet

- 3.38 Emerging business models, potential gaps in legislation and the increasingly industrialised 'high-volume' nature of transactions will require different approaches to improve consumer protection and reduce the level of detriment within the UK. Low-cost automated solutions (for both consumer and business education, and internet enforcement) are likely to be required in responding to the rapidly changing environment, as is an increase in cooperation between local regional, national and international enforcers.
- 3.39 Examples of such solutions may include targeted informational warnings from consumer marketplaces and social network sites in response to specific terms in emails, and automated letters from enforcers to companies where credit licensing checks or other enforcement activity highlight gaps in compliance. In essence, as fraud, spam and consumer protection problems evolve on the internet, responses by enforcers will

also need to change, leveraging the reach of the internet and the increasing sophistication of data processing and computer power.

4 PROPOSED INITIATIVES

4.1 The proposed e-consumer protection strategy approach (set out in more detail in the Annexes) continues OFT's wider approach to consumer protection, but addresses some of the specific challenges which arise when consumers transact on the internet. These challenges include the rapidly changing environment, the complex, global nature of transactions and the changing role of consumers. We suggest that increasing consumer protection in online markets might involve agencies in the UK working together to focus on the following areas:

- **Empowering consumers** – educating consumers on their rights, making them more internet-savvy as consumers, such as 'target-hardening', and providing them with tools to fix problems themselves.
- **Promoting business compliance** – improving the effectiveness of guidance (use of, access to, quality of), facilitating industry led solutions to emerging problems, and sharing intelligence.
- **Developing effective enforcement** – joining-up enforcement work, building capacity, avoiding duplication, removing enforcement gaps, making better use of intelligence and working in partnership with businesses.

4.2 The three tables below provide a high level summary of the proposed actions, which are outlined in more detail in separated annexes.

High-level summary of actions

Empowering Consumers – currently not all consumers know their rights, have easy access to redress, or take steps to keep themselves safe		
Theme	Proposed solution	Proposed action
Educate	1. Develop online point of contact and maximise the benefits from the information gathered	Single online reporting system for CD by December 2010 Further leverage data gathered
Educate	2. Joint education and awareness campaigns	Key e-consumer protection bodies to work together to determine common themes and to agree content and timing, work with industry, recognising that there is a current freeze on paid marketing activity by Government
Provide tools	3. Increase effectiveness of consumer redress	OFT to further develop CD BIS and OFT to monitor EU developments on collective action and alternative dispute resolution mechanisms OFT to investigate options for improving business complaints handling processes, and understand barriers to redress
Target Harden	4. Increase effectiveness of low cost consumer education channels	Consumer protection bodies and industry to further develop and extend alternative low cost consumer education channels OFT to work with business
Target Harden	5. Increase mechanisms to share consumer learning and feedback	Highlight importance of research by consumers OFT to include advice and tools on consumer learning on CD to minimise risk of repeating transactional errors Investigate impact of defamation suits
Target Harden	6. Strengthen payment protection in order to improve consumer trust when purchasing over the internet	Strengthen payment systems for online purchasing and educate consumer about the various redress options attached to specific payment mechanisms

Promoting Business Compliance – currently not all businesses know what they need to do to comply, and enforcers and businesses could work more closely to develop solutions for increased consumer protection and sharing intelligence

Theme	Proposed solution	Proposed action
Inform	1. Understand business need for simplified guidance and act on findings	OFT to build on 'Drivers on Compliance' research, working with SMEs and industry to define problems and address issues
Cooperate	2. Clarify for consumers the level of protection available for C2C transactions	Industry and the OFT to work together on improving clarity for consumers Facilitate development of options for increased C2C consumer protection
Cooperate	3. Work with internet businesses to encourage voluntary information sharing for enforcement (on rogue traders, spammers and fraud) and horizon scanning	OFT and other enforcers to work with internet intermediaries and other e-businesses to share information on rogue traders, spammers and incidences of fraud OFT to investigate sharing data OFT to develop fora for horizon scanning/information (1-2-1s, workshops)
Cooperate	4. Increase use of self and co-regulation and work with Industry Associations	OFT to examine effectiveness of co-and self- regulation, building on Ofcom's Principles for Self- and Co-Regulation ²⁹ OFT to work with Industry Associations
Deter	5. Ensure an effective strategy to combat spam	OFT will work with the Information Commissioners Office (ICO), the Police Central e-crime Unit (PCeU), Industry and other key stakeholders to explore approaches to reducing the detriment that spam causes

²⁹ 'Identifying appropriate regulatory solutions: principles for analysing self and co-regulation', 10 December 2008, Ofcom.

stakeholders.ofcom.org.uk/binaries/consultations/coregulation/statement/statement.pdf

Deter	6. Investigate low cost solutions for checking non-compliant high-risk websites, and alerting companies to oversights and required changes	OFT to investigate feasibility of web crawlers and other software tools and analyse possibilities for automated responses
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Enforcement – there are capability and co-ordination gaps, and sub-optimal levels of information and intelligence sharing

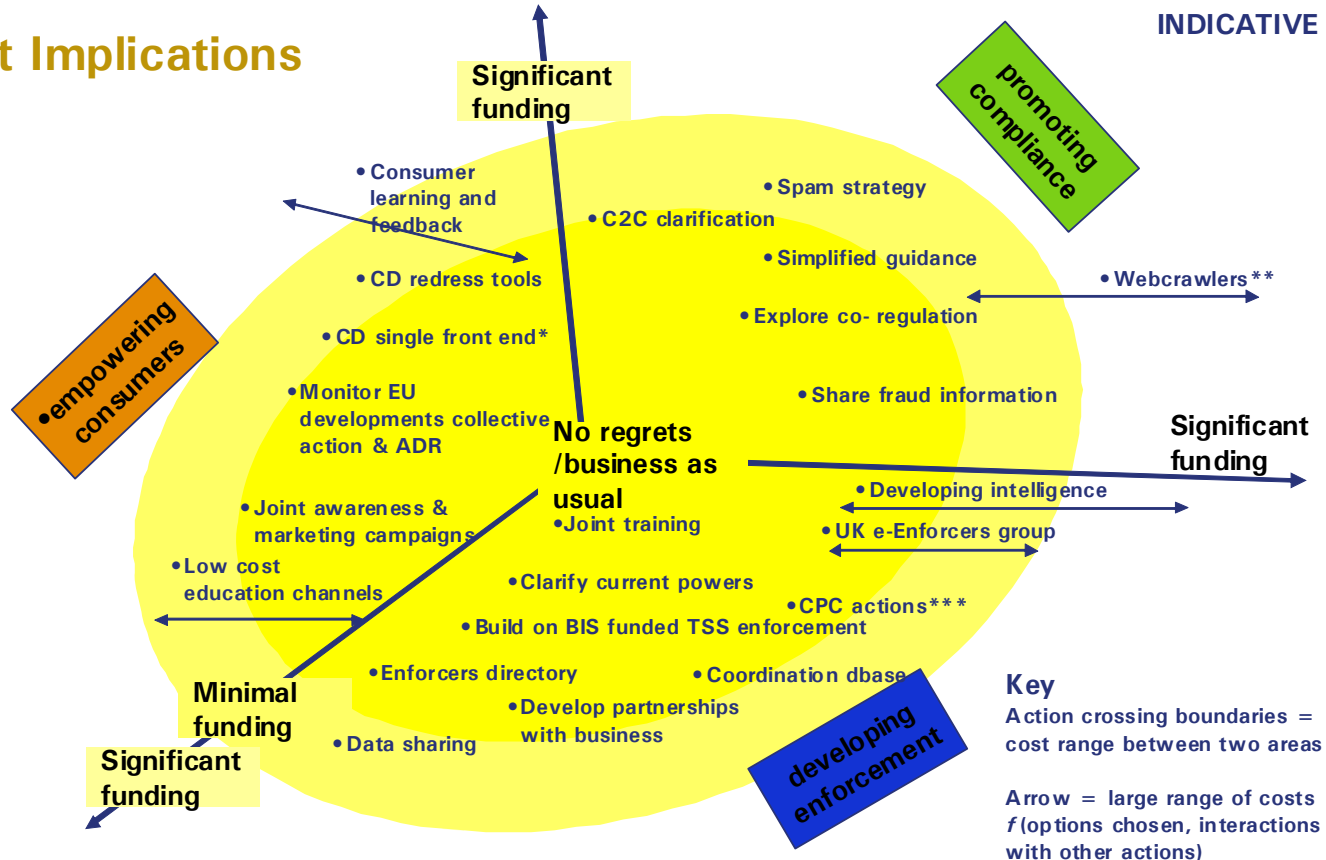
Theme	Proposed solution	Proposed action
Build capability	1. Develop internet enforcement capability	<p>a) Build on BIS funded project for TSS e-protection:</p> <ul style="list-style-type: none"> • Provide tools, standard documentation and training • Joint training TSS/OFT/Police/SOCA/ICPEN and industry, secondments and buddy system, joint working on cases. <p>b) Leverage existing networks and exploit opportunities for joint training, development and capability sharing:</p> <ul style="list-style-type: none"> • Joint training, capability sharing and development program with CPC • OFT to investigate options for producing a secure country directory for enforcement authorities, similar to LAP spam directory
Build capacity	2. Monitor internet market developments, responding where necessary to ensure legislative framework remains effective	<p>a) OFT/BIS to work with legal community to evaluate extent of current legislation, (with a view to self- and co- regulation, or regulatory change if appropriate)</p> <p>b) OFT to work with Legal Professional training bodies</p>
Coordinate	3. Minimise duplication of enforcement effort by coordinating action	OFT to investigate options for recording interest in a case, for example CRW website, the OFT's Intelligence Management Database (IMD) etc
Coordinate	4. Establish a UK e-consumer protection Enforcement Group and work with Industry	<p>OFT coordinate Enforcement meetings on: agency focus, future threat, over/underlap, operations</p> <p>Horizon scanning:</p> <ul style="list-style-type: none"> • OFT to link to SOCA and national threat assessment work to help develop priorities and emerging threats • OFT to build on current partnerships and existing relationships with business to form a voluntary working group, meeting 1-2 times a year to discuss emerging threats, current levels of compliance, ambiguity in guidance or legislation, burdensome legislation
Leverage intelligence	5. Increase data sharing and intelligence gathering	<p>a) OFT to investigate data/intelligence sharing with global consumer protection authorities, agencies to work towards increased data/intelligence sharing</p> <p>b) OFT/TSS to further leverage Memex IMD</p> <p>c) OFT to develop systems to monitor emerging enforcement gaps, feed into UK e-protection Enforcement Group</p>

What issues might the approach create?

- 4.3 **Cost.** We are aware in publishing this consultation document that we are entering a period of further contraction in the level of resources available to address competition and consumer policy problems. In thinking about possible solutions we have attempted to identify actions which make more effective use of resources and leverage existing initiatives. Diagram 5 provides an indication of the relative indicative costing of the proposed initiatives.
- 4.4 A number of these initiatives can be seen as desirable actions under any circumstances: their costs are minimal and they can be incorporated into business as usual. These actions are often enablers, and should make compliance, education and enforcement more effective. As such they are priorities. These actions include:
- **exploiting the economies of scale across the UK (enforcement:** sharing information with other enforcers, sharing tools, guidance, training and enforcement infrastructure)
 - **working collaboratively with a wider group of stakeholders (empowering consumers:** joint marketing, **business compliance:** sharing fraud, scam and rouge trader information with companies, clarifying C2C levels of consumer protection, potentially co-regulation)
 - **Reducing duplication/facilitating co-ordination (enforcement:** e-consumer protection investigation database, contact database).
- 4.5 Some actions require resources, in particular where we propose changing the underlying approach to e-consumer protection. This includes developing low cost education channels (which potentially include text alerts, and informational online warnings), automating responses (webcrawlers and automated letters) and moving more quickly to in-depth intelligence-led enforcement. These actions need to be analysed in more detail to understand the likely costs and benefits, and sources of funding.

Diagram 6 Schematic Cost Implications of Proposed Actions – Indicative Only

Cost Implications



* Funding from BIS guaranteed 2010/11. HMT may delay business case sign-off, risk of increased cost
 ** Stand alone, webcrawlers would be £25k plus, however it is possible to leverage other OFT areas – e-enforcement or credit licencing, so the incremental cost would be significantly lower
 *** Funding potentially available through the Commission

- 4.6 It is inevitable however that some of the possible actions will not be able to be funded from within existing budgets, or may only be possible by deferring spending elsewhere.

Consultation Question 1. What should the priorities be for e-consumer protection?

- 4.7 Part of the consultation touches on resource issues, and asks for input on these concerns. In particular we ask for views on what we should prioritise and why, and suggest some areas for prioritisation.
- 4.8 **Further regulation of internet markets, particularly with regards to C2C transactions.** There are limits to the extent to which UK consumer protection legislation covers the internet. The level of coverage varies significantly from market to market, with some markets having particularly low levels of legally guaranteed consumer protection (for example online auction websites, consumer to consumer transactions). Sometimes where the status of the seller is unknown (such as whether they are a business or a consumer), the extent of consumer protection is unclear to consumers. Digital rights can also raise issues. Other issues may evolve over time. (see paragraph 3.34-3.35 for more detail)
- 4.9 There have been calls for further regulation, particularly in relation to C2C markets. The OECD is suggesting updating its 1999 B2C guidelines to include C2C markets.³⁰ The government has also recognised internet regulation as an issue and OFT and BIS are in ongoing talks aimed at clarifying legislation and determining whether UK enforcers have appropriate powers. These discussions and any review are focused on the B2C markets, whether there is an existing body of consumer protection legislation that is in the process of being 'tested' by the internet.

³⁰ See www.oecd.org/document/51/0,3343,en_2649_34267_1824435_1_1_1_1,00.html

- 4.10 There are a few areas where there is lack of clarity surrounding legislation.³¹ It may be necessary to seek further legislation should the clarification expose further weaknesses to the regime. However, we do not believe that the implementation of large-scale consumer protection regulation for C2C transactions is appropriate at this stage of internet market development.
- 4.11 In the absence of regulation, the implicit assumption is that we are relying primarily on the market to develop flexible solutions for C2C markets. However, it is important that developments in this area are monitored and keep pace with market requirements. The market on its own is unlikely to provide comprehensive solutions to consumer protection problems. Gaps in market based solutions are likely to develop unless there is the credible threat of enforcement or regulation and there is some appropriate nudging or influencing from industry bodies, consumer bodies or government agencies. This approach also requires balancing short term consumer protection decisions with the impact on innovation and the potentially longer term benefits to consumers.
- 4.12 The focus of solutions in this consultation document is on increasing the effectiveness of enforcement and influencing, empowering consumers and promoting compliance amongst businesses.
- 4.13 **Market solutions for consumer protection.** A number of different market-based solutions are being developed for those C2C transactions that are not fully covered by current consumer protection regulation. The market solutions range from generic guarantees, such as Amazon's A to Z guarantee, or eBay and Paypal's buyer protection programme, to websites providing 'privatised' consumer protection, such as Seatwave or Viagogo for ticket sales. Other broader solutions exist including informational warnings (Marktplaas in Holland scans emails generated from their C2C classified site and warns users of potential scams, Facebook also warns users), and third party or intermediary payment protection options and dispute resolution, such as 'Trustedfriend'. As

³¹ For more detail refer to paragraph 3.37

new business models emerge we would expect similar innovations to help overcome demonstrated weaknesses.

- 4.14 Other C2C solutions are being developed, for example, Gumtree is looking at the possibility of developing two-way anonymity for email exchanges, which can then be monitored for scams.
- 4.15 **Wider market solutions:** Market solutions are also developing for consumers and businesses operating more widely, for example, with Cisco's 'scansafe' technology for corporate users that blocks access to known scam sites, or where the browser bar colour changes to warn of fraudulent sites. Payment providers and banks, which facilitate most internet transactions, are continuously developing measures to reduce fraud and increase consumer trust online transactions online. These measures include address verification and card security code software, and MasterCard SecureCode and Verified by Visa schemes. As a result, fraud on debit and credit cards, while high in absolute numbers, is falling as a percentage of overall sales, from 0.183 per cent 2001 to 0.124 per cent in 2009.³²
- 4.16 In spite of the range of market based solutions, there are still gaps in available consumer protection (for example, eBay's protection does not extend to eBay classified style listings (or other items such as vehicles, businesses for sale etc³³). Other classified ad sites do not provide protection for consumers to the same extent – on some ticketing sites, the 'cost' of consumer protection in the form of commission is comparatively high, and some markets have higher levels of fraudulent activity. While all these organisation recognise the importance of consumer trust and ensuring user safety on their sites, there are still

³² 'Fraud, the facts 2009', APACs

www.cardwatch.org.uk/images/uploads/publications/Fraud%20the%20Facts%202009.pdf

Whilst card usage and transaction volumes continue to grow, plastic card fraud losses against total turnover – at 0.124 per cent – are still significantly less than in 2001 (before the introduction of chip and PIN), when fraud-to-turnover was 0.183 per cent.

³³See exclusions 'Exclusions from eBay Buyer Protection' pages.ebay.co.uk/help/policies/buyer-protection.html#3

improvements that could be made to increase basic levels of consumer protection.

4.17 Gaps in market based solutions are likely to develop unless there is the credible threat of enforcement or regulation and there is some appropriate nudging or influencing from industry bodies, consumer bodies or government agencies.

4.18 This approach also requires balancing short term consumer protection decisions with the impact to innovation and potentially longer term consumer benefits. Addressing these gaps and clarifying consumers' rights is likely to be an iterative process, and will require:

- working with businesses to clarify for consumers what rights apply, and develop or adopt solutions for increased consumer protection
- working with consumers to educate them on the limitations of their rights when they buy from other consumers, and the need for healthy scepticism and independent research
- monitoring outcomes and re-evaluating market developments and gaps over time.

4.19 Lastly, effective development of comprehensive market solutions are likely to occur if there is:

- a real threat of enforcement should businesses overstep the boundary between competitive behaviour and practices which are detrimental to consumers and infringe consumer protection legislation
- a real threat of regulation should businesses not prove able to solve consumer protection issues as part of their competitive offering
- effective influence from industry associations, trade bodies, consumer and government agencies.

It is worth noting that to provide this enabling framework to allow market solutions to develop may well require additional resourcing.

Consulation Question 2. Do you agree with the general approach of encouraging market based solutions supported by targeted enforcement, education, and influencing? Why or why not?

Consulation Question 3. Do you agree with the focus of the three areas of empowering consumers, promoting business compliance and making enforcement more effective? Why or why not?

Consulation Question 4. Are there any key areas in relation to businesses or consumers that we are missing?

Consulation Question 5. Are there any general comments you would like us to take into account when developing the e-consumer protection strategy?

[Additional questions, specific to each proposed action will be found in the Annexe pages on Actions.]

ANNEXES

A SUMMARY OF QUESTIONS

1. What should the priorities be for e-consumer protection?
2. Do you agree with the general approach of encouraging market based solutions supported by targeted enforcement, education, and influencing? Why or why not?
3. Do you agree with the focus of the three areas of empowering consumers, promoting business compliance and making enforcement more effective? Why or why not?
4. Are there any key areas in relation to businesses or consumers that we are missing?
5. Are there any general comments you would like us to take into account when developing the e-consumer protection strategy?

Empowering Consumers (The background information for these questions can be found in Annexe A: 'Empowering Consumers' www.ofc.gov.uk/eProtection)

- EC1. Besides providing advice and information, how else can we encourage consumers to report problems to the online reporting system? Would providing feedback on the outcome of their complaint be a strong incentive for consumers if it can be done cost effectively?
- EC2. What other things should OFT do to fully utilise this online point of contact?
- EC3. What are the barriers to carrying out joint education/marketing campaigns?
- EC4. Which organisations should be involved? Are businesses interested in becoming involved? How?
- EC5. Are there other tools that could assist consumers in seeking redress?

- EC6. What barriers are there to consumers obtaining redress?
- EC7. How could we ensure that Alternative Dispute Resolution processes are used by consumers, and taken seriously by business?
- EC8. How can we encourage businesses to improve their complaints handling processes?
- EC9. What do you or your organisation consider to be best practice to effectively target consumer education messages to those who need it?
- EC10. Do you agree that reviews or other research mechanisms are a useful tool for consumers? How can consumers be encouraged to use these prior to carrying out a transaction?
- EC11. How can we encourage consumers to share experiences in order to reduce collective consumer detriment online?
- EC12. How can we encourage businesses to make payment systems safer?
- EC13. How can we encourage consumers to transact more safely online?
- EC14. What can be done to improve the information provided to consumers on instant cash transfers or the security arrangements relating to these payments?

Promoting Business Compliance (The background information for these questions can be found in Annexe B: 'Promoting Business Compliance' www.offt.gov.uk/e-protection)

- BC1. Why do businesses not use guidance more often, and what can we do to encourage them to?
- BC2. How can we make guidance on existing and future regulation in this area more accessible and user friendly (for example, are there exemplars we could follow and is there a specific location where guidance should be held such as Directgov, OFT website, etc)?

- BC3. Is the current level of consumer to consumer regulation sufficient, given the nature of the market?
- BC4. If not, what additional essential consumer protection would be required?
- BC5. Other jurisdictions have positive reporting requirements (such as requiring businesses to provide information to authorities) – should the UK? What are the advantages and disadvantages?
- BC6. Should the database generated by businesses about suspected fraud be searchable to contributing businesses? If not, what incentive is there for businesses to contribute?
- BC7. Should the UK be using co-regulation more extensively to help shape consumer protection on the internet, or is self-regulation sufficient? Why?
- BC8. Given other challenges for UK internet enforcers, should the UK be doing more to reduce spam and if so, what?
- BC9. Do you agree with the approach set out below (on spam)? Specifically who is best placed to do it, how and who should pay?
- BC10. Should the OFT be focusing effort on inspections and websweeps (using software tools where appropriate)? What other approaches could we take and why?

Enforcement (The background information for these questions can be found in Annex B: 'Enforcement' www.offt.gov.uk/e-protection)

- E1. Do you agree with our approach of building on the BIS funded project to develop the enforcement capability of the Office of Fair Trading (OFT) and TSS? What else could the OFT and other enforcers do to help support and build on the project?
- E2. Are the suggested skills and types of cases specified at each level of the enforcement framework appropriate and achievable (See Diagram 1:

Internet Enforcement Framework)? If not, please state why not, and any alternatives you can suggest.

- E3. Local authorities have many competing priorities for their resources. What can we do to ensure that developing the minimal level 1 set of capabilities is given an appropriate amount of priority?
- E4. What else could we be doing with the CPC network that would benefit the UK?
- E5. Will the approach outlined above provide a balance between appropriate consumer protection and innovation (please give reasons)? What level of ongoing evaluation of this area is appropriate?
- E6. Is there currently lack of clarity, or do gaps exist in relation to how legislation applies to online markets (please give reasons and examples where possible)?
- E7. Are there any e-consumer protection areas where the legal community would find further clarification helpful?
- E8. Will the benefits of using a database to avoid duplication in the manner proposed outweigh the costs (the additional time needed to input meaningful data)? Is CRW an appropriate focus in terms of trying to minimise duplication through greater coordination?
- E9. What could be done to minimise the burden of inputting data? Is this a substantial problem?
- E10. Are there better established alternative systems for recording case interest and development?
- E11. Do you consider that a cross agency enforcement group would be useful? What are sensible alternatives?
- E12. Which agencies should be included as part of the group and what other roles do you think the group should play?

- E13. In terms of horizon scanning, do you see any merit in developing small groups to monitor new and emerging developments?
- E14. What do you see as the biggest barriers to sharing intelligence or data?
- E15. What do you believe could be done to remove barriers and increase and improve intelligence and data sharing practices?
- E16. Are there any additional third-party data sources that could be used to help enhance the intelligence capabilities of the OFT and TSS?
- E17. How can we maximise the use of IMD and other data sources?
- E18. Do you agree that developing systems to monitor emerging trends, etc, will be valuable in terms of intelligence gathering and an appropriate use of resource in this area?
- E19. Is the OFT the right body to coordinate and analyse consumer protection intelligence arising from the various sources that exist?

Monitoring the strategy and developments in online markets

- M1. Do you agree with our approach to monitoring the impact of the strategy and wider developments in online markets?
- M2. Do you agree with the anticipated outcomes we expect to achieve from the implementation of the proposed actions?

B LIST OF CONSULTEES

The following organisations and individuals have been consulted. We would welcome suggestions of others who may wish to be involved in this consultation process.

Association of Chief Trading Standards Officers
Amazon
Department for Business, Innovation and Skills
Cisco
eBay
Get Safe Online
Google
Gumtree (eBay Classifieds Group)
Hewlett Packard
IMRG
Local Government Regulation
Local Better Regulation Office
Local Authority Trading Standards Services
Microsoft
Nominet
Ofcom
Police e-Crime Unit
Scambusters
securetrading
Serious Organised Crime Agency
Trading Standards Institute
Worldpay

C CONSULTATION CRITERIA

Public bodies are required to perform consultations in accordance with the following criteria wherever possible:

When to consult – formal consultation should take place at a stage when there is scope to influence the policy outcome.

Duration of consultation exercises – consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Clarity of scope and impact – consultation documents should be clear⁴ about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Accessibility of consultation exercises – consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

The burden of consultation – keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Responsiveness of consultation exercises – consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Capacity to consult – officials running consultations should seek guidance in how to run effective consultation exercises and share what they have learned from the experience.

The full *Code of Practice on Consultation* can be found on the website of the Department for Business, Enterprise and Regulatory Reform:

www.berr.gov.uk/files/file47158.pdf

D GLOSSARY OF TERMS

List of terms used in the consultation document

Term	Definition
BIS	Department for Business Industry and Skills
CRW	Consumer Regulation Website
CPC	Consumer Protection Cooperation regulations
CRC	Central Register of Convictions
C2C	Consumer to consumer
EA	Enterprise Act (2002)
EC	European Commission
Forum des droits sur L'Internet	French Internet Rights Forum (largely government funded)
IAB	Internet Advertising Bureau
ICF	Internet Crime Forum
ICO	Information Commissioners Office
ICPEN	International Consumer Protection and Enforcement Network
IMD	National Intelligence Management Database
ISP	Internet Service Provider
Internet Enforcement Framework	The Internet Enforcement Framework is being developed as part of the e-consumer protection strategy. It is intended to act as a guide for establishing the appropriate agency to take action (this is a function of the level of consumer detriment, complexity of investigation and skill/technical resource required). It can also be used to identify capability gaps and areas of excellence across the UK.
Market Study	Market studies involve an analysis of a particular market, or practices, with the aim of identifying and addressing any aspects of market failure from competition issues to consumer detriment and the effect of government regulations
Member State	State that has signed and ratified the treaties of the European Union
MoU	Memorandum of Understanding
NFIB	National Fraud Intelligence Bureau

OECD	Organisation for Economic Cooperation and Development
Part 8	Part 8 of the Enterprise Act 2002
Part 9	Part 9 of the Enterprise Act 2002 relating to information disclosure
PCeU	Police Central e-crime Unit
Sentinel (or Consumer Sentinel)	A secure online database (and investigation tool) that provides members (enforcers) of the Consumer Sentinel Network with access to consumer complaints.
SOCA	Serious and Organised Crime Agency
Spam	Unsolicited commercial email
TSS	Local Authority Trading Standards Services
US FTC	United States Federal Trade Commission

Member States of the European Union and their abbreviations

Abbreviation	Country
AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czech Republic
DE	Germany
DK	Denmark
EE	Estonia
EL	Greece
ES	Spain
FI	Finland
FR	France
HU	Hungary
IE	Ireland
IT	Italy
LT	Lithuania
LU	Luxembourg
LV	Latvia

MT	Malta
NL	Netherlands
PL	Poland
PT	Portugal
RO	Romania
SE	Sweden
SI	Slovenia
SK	Slovakia