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# Electronic Trade War, Détente or Entente Cordiale?

## Introduction

Innovation, removal of geographic obstacles, improved service and lower costs achievable through electronic commerce are the key to economic prosperity in global markets. However, differing national and regional interpretation of the issues within the EU has given the USA an opportunity to exploit the divisions and impose its own trading regime. **We must use the UK Presidency of the Union to lead a European response to the, initiatives announced by President Clinton in July 1997. If we do not, we risk growing conflicts on legal jurisdiction, encryption policy, data protection and intellectual property rights, with US-based operations powering ahead while we try to negotiate from positions of ever-increasing weakness.**

We need a pan-European framework that will not only enable those companies based in the UK and the other Member States to be competitive with those based across the Atlantic, but will also provide the basis for global frameworks that will be acceptable to all trading nations and cultures.

Technology solutions, political action and commercial agreements will resolve today's issues, but the consumer interest is currently relegated to run second to the political, legal and technical debate. We need a catch-up policy. This must include awareness for business leaders, training for employees and education for the next generation in the importance of e-commerce to future prosperity and cultural development and the principles involved. The current generation, which is, as yet, only dimly aware of the new technologies and has little understanding of how to interface with them nor how their lives are on the brink of major change, needs particular encouragement. This approach is applicable to all three e-commerce scenarios: business to business, business to consumer, and government to citizen.

## Recommendations

1. HMG should take a lead in the creation of a collective negotiating position on electronic commerce issues within the EU and foster this by working with others with common interests to achieve *de facto* progress in advance of such agreement.

2. The Commission should produce recommendations based on the analysis in the recent European Commission Report, *Ensuring Security and Trust in Electronic Communications*, for agreement during the UK Presidency (or at the latest, that of Austria).

3. The Commission should produce clear and unambiguous guidance regarding acceptable contractual conditions governing the exchange of personal data with nations which do not have Data Protection legislation equivalent to that required in the Data Protection and draft Data Protection (Telecommunications) Directives.

4. HMG should announce a timetable for UK legislation (compatible with that under way in other Member States) covering electronic signatures, contracts and other legislative changes necessary to ensure that electronic commerce is not disadvantaged *vis-à-vis* paper based commerce.

5. As a matter of urgency, HMG must consider how best to create a UK regime for the licensing of Trusted Third Party (TTP) services which fosters the creation of a UK "centre of excellence" for these activities which is comparable, in global terms, to the reputation and standing of the City of London as a globally trusted trading centre.

6. The UK Government should lead by example in its own use of electronic commerce to achieve the aims of better government.

7. HMG should endorse an electronic education and training programme, complete with courses and qualifications on all aspects of cross border electronic trade and should proposed to the Commission that it becomes pan European.

8. As proposed in EURIM Briefing 18, *Re-skilling Europe for the Information Society*, HMG should lead the way by building such concepts into the National Grid for Learning to enable interoperability and economies of scale in procurement and delivery.

In particular:

- the National Grid for Learning should be considered as the basis for an e-commerce trials project, designed to teach and also to serve as a test bed for the technology, the new services and the interface to them;
- under this project "play trade" (according to age and ability) could be carried out within schools and between groups of schools;
- a monitoring process should be superimposed to keep track of outcomes and to plan new activities. The project should be run by an industry-led Board and should enjoy government support.

## Today's Opportunities

The widely accepted definition of electronic commerce as "doing business electronically" covers many commercial and consumer activities, some long standing, others only just emerging. Large organisations have been involved in electronic data interchange (EDI) for many years and internationally agreed and effective protocols have been developed. Continuing systems advancements mean this type of e-commerce will be extended. Small businesses can now use their PCs and the Internet to provide input to, and take output from, established EDI networks. Tools required for authentication and confidentiality already exist.

Many businesses already trade electronically with other businesses, largely by placing on-line orders for items selected from catalogues. This type of

"ad hoc" purchasing is the vast growth area, nurtured by the visual impact of multimedia and easy access through the Internet. Critically, electronic shopping has become a consumer activity, which is available via the television set, as well as the PC and kiosks. Small enterprises, who, unlike the established "household names", have no brand loyalty to lose, are prepared to experiment with new products and services and to accept the risks involved in operating in an area that is markedly ahead of legal and regulatory constraints. Consumers, while happy to order goods on the telephone, seem hesitant about electronic shopping. The potential market, however, is so huge that reaching only a tiny percentage of it can still provide volume sales for successful traders.

## Today's Problems

The barriers to e-commerce are technical, cultural, legal and psychological and may be considered under four headings: Consumer and Business Confidence, Access to Systems and Services, Electronic Payment Methods and Legal and Regulatory Processes.

### *Consumer and Business Confidence*

- There is insufficient focus on educating CEOs concerning the real benefits to businesses, both large and small. Nor is there sufficient emphasis on advertising the benefits to the consumer. In consequence, there is little sign of a critical mass emerging in terms of market size. Government Departments could exercise significant influence on the market by leading by example.
- National self-interest is standing in the way of a global agreement on the regulatory framework and technical standards in areas such as the use of cryptography, on the ready exchange of data, and on copyright.
- While there are some software-based 'bridging solutions' on offer to the early SME adopter, the costs and technological complexity of entry are still sufficiently high to act as deterrents. Many SMEs have not yet embraced e-commerce and ways should be found to enable them.
- Consumers have been given no authoritative advice confirming that electronic transactions are safe: alternatively they have no estimate of the degree of risk inherent in such trade.

- The penetration of the technology in terms of access terminals (such as PC modems and set-top boxes) is still far below the threshold of critical mass for a viable consumer market.
- The use and mis-use of brand names and domain names is an important area and is being studied by the EURIM IPR working party.
- Sellers in the EU have yet to demonstrate electronically to EU buyers that they have something to offer. This lack of innovation is not repeated to the same extent in the USA and global exposure of the difference in approach could well force a re-appraisal of the European attitude to investment in innovation.

### *Access to Systems and Services*

- In business to business terms, the principal barrier to ready access is the cost of achieving interoperability, exacerbated by the lack of global standards.
- The convergence of fixed and mobile telecommunications offers the potential of accessing e-commerce services on the move. However, there are still problems to be overcome, such as bandwidth and mid-transaction connection dropout, and these are being addressed, *inter alia*, within the cross-sector partnership of the Global Mobile Commerce Forum.
- Within the business to consumer channel, the barriers are seen as the lack of cost-effective access to services (again an issue of critical

market mass) and the need for certainty of contract, jurisdiction and redress where such trade is across borders. There is also a requirement for multilingual presentation of products. All except the last factor are likely to decline in importance as the market grows and international co-operation develops.

- While other barriers to entry may be lowered by the use of digital signatures and cryptographic protection, the effective implementation of a security regime, ensuring both privacy and quality of service, paradoxically militates against simple, cheap and ready access to services. Unless there are properly regulated TTP services, and the security architecture can be made transparent to the end user, this (largely technical) issue will be difficult to overcome, especially where relatively large transactions (say, greater than £100) are involved.
- A key issue determining ease of access is the provision of consumer education and training: education in the availability of the range of services on offer and training in the means of access to those services and their use.

#### *Electronic Payment*

- Development has been based on compatible, proprietary standards, but the expense of card readers in shops inhibited wide scale take-up. However, international payment groups are coming together, leading, hopefully, to a unified set of global payment standards. Interoperability at the point of sale remains a key issue.
- The issue of consumer protection is as relevant to e-cash as it is to access to services. Not only is there much more of an international dimension to on-line commerce, but there is also a greater need to harmonise national laws in this area.
- The prospect of additional taxation being levied on electronic trade has receded with the declaration by President Clinton that e-commerce should not be impeded by new tax burdens, and by a similar statement by EU Heads of State. Nevertheless, any massive switch from conventional forms of trading to e-trade could result in a significant loss of tax revenues, especially in the transition period.
- Financial transactions on-line can succeed only if there is mutual trust built on system security. The US-EU dialogue over the use of military strength cryptography keys is slowly being resolved as the commercial pressures increase and the EU begins to exert its negotiating strength. However, there is still much to be

decided - specifically on the roles and functions of the TTP and the finalisation of international, trustworthy payment systems.

- UK trials of electronic cash have shown that the issue of usability is central to the success of the technology. While pilot schemes have in general been well received, the public has yet to be sufficiently convinced of the benefits of e-cash over real cash to ensure the emergence of a significant demand.

#### *Legal and Regulatory Processes*

- The lack of global (or even, in some cases, national) consistency in regulation of communications content and infrastructure, and also in trading sector regulation, is a deterrent to market entry and hence to market growth and the achievement of critical mass. This is a long term issue, especially in the area of content regulation, where local cultural differences will dictate the pace of change. It is exacerbated by the tendency for technological change to outstrip the regulatory process (eg: the Data Protection Directive).
- The wide variation in the approach to personal data protection taken by the USA and by the EU (and by nations within Europe) will, unless resolved, inhibit the exchange of even basic information across borders and will stop the evolution of e-commerce. Different countries in the EU are running at different speeds in different areas. Sweden, for example has a very liberal approach to the disclosure of personal information. Achieving a balance between what constitutes reasonable access and sensible levels of protection requires an informed consumer able to understand the total argument when seeking the benefits that e-commerce can bring to his quality of life. This education process has hardly begun.
- The liability of the service provider for the legality or decency of the content of his offering must be clarified. At present there is uncertainty about the existing law and how it might be applied.
- There is no globally harmonised legal framework for electronic contracts. Neither is there an international consumer contract. It is the consumer, perhaps also the SME, who trades across borders, who needs advice on contract, jurisdiction and redress. UNCITRAL could be asked to produce a Model Contract.
- There is no international agreement on how to deal with cross-border enforcement issues. Investigation and redress are subject to jurisdiction disputes which have their origins in

an earlier age.

## What's Being Done?

The main agencies at work on the global issues include the EU, the USA, the G7 Group, OECD and the WTO. Elsewhere, at lower levels, standardisation bodies, trade associations, commercial partnerships, law associations and national governments are pursuing their own priorities in removing the barriers to roll-out. International progress is recorded in the list of documents and other sources at Appendices

A and B. Despite all this activity, however, those in schools and colleges, and the existing consumer, have yet to be educated on the benefits of e-commerce and the methodologies involved. The relationship between the degree of market enlightenment and rapid changes in the political, technical and legal environment is depicted as:

## What's to Be Done?

The forthcoming UK Presidency of the Union offers a unique opportunity for rapid action aimed at reversing the drift towards US domination of the European and global e-commerce market. The plethora of reports and recommendations originating from within the EU (Appendices A-C) offer a sound basis for such action.

However, while governments and other bodies are attacking the political, legal and technical issues which act as barriers to e-commerce, the human interests are being left in the wake of the debate and in turn this debate is lagging behind the technology. The urgent need is for a catch-up policy, based on awareness, education and training, to ensure the rapid growth of business and consumer demand.

By encouraging existing consumers to use this new electronic channel we might reasonably

expect to see an upswing in the "consumer awareness" curve, just as the barriers are coming down. But the rising curve won't happen UNLESS specific actions are taken to encourage it. The declining curve WILL happen because of on-going work. The unknown is the specific time scale - which can be shortened by encouraging the business focus to drive and co-ordinate a programme in the schools and colleges.

It is only by achieving a far better understanding of the potential of electronic commerce that sustainable and accelerating growth will be achieved after the barriers have been removed and the risks reduced. The earlier this is achieved, the sooner the benefits of electronic commerce, as depicted in the diagram above, will be realised.