Response to the public consultation on the future of electronic commerce in the internal market and the implementation of the Directive on Electronic commerce (2000/31/EC)

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About Experian

Experian is the leading global information services company, providing data and analytical tools to clients in more than 90 countries. The company helps businesses to manage credit risk, prevent fraud, target marketing offers and automate decision making. Experian also helps individuals to check their credit report and credit score, and protect against identity theft.

Experian plc is listed on the London Stock Exchange (EXPN) and is a constituent of the FTSE 100 index. Total revenue for the year ended 31 March 2010 was $3.9 billion. Experian employs approximately 15,000 people in 40 countries and has its corporate headquarters in Dublin, Ireland, with operational headquarters in Nottingham, UK; Costa Mesa, California; and São Paulo, Brazil.

For more information, visit http://www.experianplc.com.
**Executive summary**

Experian welcomes the opportunity to respond to the Commission’s review of the e-commerce market and the implementation of the e-commerce directive.

Experian is the largest credit bureau in the UK and operates across a number of member states in the EU either as a credit bureau or as a supplier of complementary services. Broadly speaking Experian has three main areas of operation in e-commerce:

- as a provider of on-line consumer services including credit reports and automotive checks in the UK
- analysis of web traffic for competitive intelligence globally
- online marketing services across the EU.

Clients in the latter two sectors include Google, EBay and Audi.

The e-commerce Directive has provided a legal framework for businesses to operate under and Experian successfully trades in several member states offering both on and off line services and products. The development of e-commerce is of particular interest to Experian both as the provider of on-line services in the UK for consumers and also as a service provider for on-line intelligence and marketing. Marketing, digital data analytics and analysis of web traffic are just some of the products that are offered to national, EU and global clients. In themselves these services may not make a direct contribution to on-line revenue but they are an integral part of driving the digital economy forward.

In order to support Experian’s response to this consultation; information has been derived from research and analysis by Experian’s operating companies. Some questions raised in the consultation are outside the scope of Experian's trading experience but the growth of the e-commerce market, marketing communications, cross border trade and specific technical difficulties encountered when trading are all relevant.

In general Experian is:

- Supportive of and engaged in the development of e-commerce and the opportunities this brings in the form of providing on-line intelligence, analysis of consumer web behaviour including shopping preferences, benchmarking analysis and an array of on-line marketing services covering the internet and mobile communication. These are drivers of an e-commerce market and as these develop it can only enhance the development of on-line transactions. Experian has seen enormous growth in these areas and has been able, in some cases, to realise these opportunities cross border.

- An advocate of cross border trade with businesses operating throughout the EU. Transacting with businesses and consumers cross border can be difficult with differences in the interpretation of Directives across some member states. For Experian this is particularly true for member state’s internal interpretation of the Data Protection Directive and implementation of local legislation governing the extraction and use of personal data. There can also be difficulties with the way in which different items of legislation interact.

- Keen to demonstrate the ways in which the on and off line markets can, and do, complement each other. One example from the UK is that a full and comprehensive credit bureau has had associated benefits for consumers transacting on-line in terms of identity verification. On-line verification can lead to more user friendly access to competitive financial services such as savings accounts as well as credit cards or products such as mobile phones.

The Directive provides a legal framework that is rightly technology neutral and has allowed the development of a strong web based market in the UK (which Google has recently announced to be the
most internet engaged country in the World) and Experian supports the structure and content broadly as it is. However, Experian suggests that the Commission considers:

- Simplifying legislation where possible. For example, both the Electronic Commerce Directive and the Privacy and Electronic Communications Directive deal with commercial communications. The subject of commercial communications could therefore be dealt with in a single Directive to avoid overlap and conflicting legislation.
- Updating the Directive to deal with the increasing use of specialist service providers to send commercial communications.

This response has been written mainly from a UK perspective.
Background

Experian is a global information and analytics organisation and delivers a number of services electronically either directly to consumers or as services in support of other commercial organisations.

Probably the best known electronic services in the UK associated with Experian are those under the CreditExpert brand which offers consumers access to their credit report on line https://www.creditexpert.co.uk/ . Experian also offers a fraud monitoring service direct to consumers http://www.protectmyid.co.uk .

An example of another online consumer service provided by Experian in the UK is AutoCheck (http://www.autocheck.co.uk). This transactional website allows consumers interested in purchasing a second hand car to check if it has outstanding finance recorded, is recorded as an insurance write-off, is recorded as stolen with the police and/or whether the mileage has been tampered with i.e. ‘clocked’.

Experian Interactive also offers a free online service for consumers to compare low rates on a range of products such as utilities and credit products and thereby reduce the cost of living. LowerMyBills.com offers savings through relationships with service providers across multiple categories including home loans, credit cards, auto and health insurance and long distance and wireless services.

Experian also provides online service for businesses and such swift and simple solutions have contributed to a growth in the use of e commerce activity enabling businesses to make better decisions about who to trade with, or not. Experian’s e-business website provides access to an extensive database of business and consumer information to enhance business decisions on credit and risk. The online database includes access to copies of documents filed at Companies House and contains information about all UK limited companies and directors, other non-limited UK businesses and proprietors and some international companies. A second online business service is Experian’s B2B Prospector website that provides access to marketing data on over one million businesses.

Experian CheetahMail provides multi channel broadcast capabilities for digital marketers. This includes email marketing, social media marketing and mobile marketing. CheetahMail also provides digital data analytics, creative services and integrations with many major complementary technologies such as web analytics tools, recommendation engines, CRM platforms, ratings and reviews systems, data warehouses and more. These services are provided via a mixture of technology and client services staff (with skill sets in data, creative, strategy, execution and integration. Experian CheetahMail is a global organisation with service personnel located in our offices in the US, UK, France, Germany, Spain, Holland, China, Australia, New Zealand, South Africa, India and Japan. Cheetahmail sends globally around 10 billion emails per month increasing year on year for a large number of the worlds most recognizable brands across multiple sectors, but with key strengths in Retail, Travel & Leisure, Finance and Media/Technology.

Experian Hitwise is the leading global online competitive intelligence service, helping clients protect and grow their market share through the application of internet measurement data. Experian Hitwise measures the largest sample of internet users – 25 million worldwide, including 8 million in the UK. This sample size allows clients to understand internet behaviour and competitive activity through data that is unmatched in timeliness, depth and breadth.

These products and services afford Experian a unique view of the digital sector.

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Response to the Consultation

19. What are your views on the growth of the economic development of electronic commerce and information society services in Europe, in general and compared to its most important competitors?

The UK has a reasonably mature e-commerce market that has seen rapid growth in the past and now accounts for just fewer than 10% of UK retail sales\(^2\). It is still a sector capable of growth despite the current economic climate with a general consensus that the Christmas shopping period for 2009 saw a 10% uplift against on-line sales for 2008. In several sectors of online commerce in the UK there are mature markets such as the travel industry where the default method of purchasing flights is now online. Another example of a mature market in the UK is consumer electronics where essentially retailers are competing on price. Growth is predicted to come from retailers that have individual distinct products particularly in fashion or home and garden. For these retailers distinguishing brand and increasing conversion rates from site visits will be key to success.

Another vital sector has been the growth of consumer to consumer sales through on-line auction sites like eBay and classified advertisement sites such as Gumtree in the UK. Ebay was a very successful early adopter of on-line services and according to Experian Hitwise statistics it is still the most visited on-line retail site in the UK. However as a total percentage of e-commerce sales it is in decline as growth has slowed substantially at the same time as other retailers are increasing online revenue.

An important and not to be overlooked factor in the growth of e-commerce in the UK has been the growth of social networking sites. Facebook, the largest social network site, currently accounts for 1 in every 6 web pages viewed in the UK. The behaviour of consumers visiting these sites has and is changing as they learn from the virtual social communities. Two trends that have emerged from this have are the growth in on-line discount vouchers and the impact of customer reviews. The use of discount vouchers is now wide spread as communities discuss who has the best deals and what vouchers are available. Consumer reviews have also proved to be extremely powerful and have been proven to enhance conversion rates. This works particularly well in the mature markets. Trip Advisor, a site where consumers review hotels and resorts, is so regularly used that if a Google search for any hotel worldwide is performed then an associated link to Trip Advisor will also appear on the first page. Amazon is another example of an on-line retailer that harnesses the power of customer reviews with reviews available on thousands of products.

The growth of on-line marketing services and the need for on-line intelligence is one area where Experian has seen significant growth. In comparison similar services in the offline market such as direct marketing and offline business and competitor analysis have not seen a similar trend.

27. Are you aware of statistics or general or sectoral studies at national level on the electronic commerce market and in particular its cross-border aspects? If in the affirmative, which?

In the UK Experian uses a variety of industry sources from internal services such as HitWise to industry experts such as eMarketer, DataMonitor, Council of Mortgage Lenders, ComScore to provide trends on the ecommerce market as required. Experian also liaises with clients and suppliers on services such as LowerMyBills along with industry contacts e.g. in the motor industry for AutoCheck – partners such as AutoTrader. For the UK consumer products these cover the country and there is minimal cross border activity.

\(^2\) Office of Fair Trading e-consumer protection public consultation on proposals July 2010
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Experian recently commissioned research from YouGov that asked consumers in the UK, France, Germany, Spain and the Netherlands about the messages they did and did not like receiving via email, SMS and social media. This research gives a good insight into the behaviour and expectations of online consumers. Online interviews were conducted across the five countries, with almost 6,500 consumers responding.

**Key Findings:**

- Consumers from all countries surveyed who have a mobile phone are most receptive to SMS messages confirming purchase/appointments (50 per cent) or delivery dates (56 per cent)
- Half (51 per cent) of consumers are prepared to engage with brands on social media sites
- Top reasons for following brands on social media sites include: to find out about sales and special offers (24 per cent), to hear other users experience/reviews (23 per cent ), and for product and customer services information (20 per cent)
- One in three (32 per cent) consumers under the age of 35 ‘follow’ or ‘friend’ the company they work for on social media sites
- 48 per cent of consumers would respond to an email discount offer for a product they had recently been researching online
- A quarter (25 per cent) of people under the age of 35 would respond to an email alert about an abandoned online shopping basket
- Two out of three (66 per cent) consumers want brands to ask them about their channel preference before communicating

(Based on responses from 6,441 European consumers)

28. Are you aware of information on the types and growth of e-commerce businesses and on whether this substitutes or complements off-line retail services? If so, please specify

The Office for National Statistics provides monthly data on internet sales and their share of total retail sales. In August this stood at 8.7%, almost double the share of a few years ago. Where sales are completed by taking goods from the shelves of traditional shops, the threat to the High Street and shopping malls is not great, although there is some reduction in sales opportunities as shoppers do not engage in ‘window shopping’. However when retailers service sales from dedicated warehouses, there is reduced demand for traditional shops and this will in turn lead to increased vacancies in high streets/out-of-town shopping malls where voids already account for some 13.5% of space.

Experian’s latest estimate of Special Forms of Trading (internet, mail order and market stalls) is 10% of total retail sales. This forecast a few months ago that this share would rise to 12.6% by 2016, but the recent pace of internet growth is such that the share could easily reach 15% by mid-decade. In contrast development activity for new retail space is at its lowest for 15 years.

Experian Hitwise believes that this recent and future growth in e-commerce will predominantly come from retailers that have an existing physical high street presence. In the UK this would include companies like Argos, Next, John Lewis and Tesco. Part of the growth that has been witnessed is due to the growth of distinct product sectors such as fashion but there are other determining factors. Delivery has always been a key issue when purchasing online and in the UK high street retailers offer the ability to deliver to store which many consumers find more convenient than a delivery to their home address. Similarly the ease of returning an item bought online has always played a part in determining the ease of purchase.

Argos, listed by Experian as the third most popular UK online retailer includes its ‘click and collect’ service within its web-derived revenue. Sainsbury’s has recently followed suit and now offer a similar ‘click and collect’ service for home goods. The service allows consumers to reserve items online that are then purchased in a retail store.
Experian Hitwise published the UK Top 100 e-Retailers in May 2010 demonstrating that six of the top ten have physical stores. In the same analysis thirty three of the top fifty retailers had physical stores, up from twenty three in 2006. Offline retailers are using e-commerce to complement existing business to provide online sales and in many cases driving a visit to a physical store following an online purchase or enquiry.

Experian also has a number of products that are delivered on line many of which complement and build on services previously or still offered offline. As many Experian services are not provided directly online it is assumed that much of the growth is complementary to offline retail services rather than substitutional.

As an example, Experian as a licensed credit reference agency has a legal obligation to provide consumers with a credit report within a statutory period of 7 working days. Hitherto, that report was delivered in paper form, by post, to the consumer’s home address. Since Experian launched an online version of the report the interest in obtaining this information and the volume of requests has increased significantly thus supporting the objective of the UK Government to get consumers more engaged in their financial behaviour.

The UK credit bureau data is very comprehensive holding data from the public sector as well as the credit database. The primary reason for the sharing of this data is for responsible lending decisions and the prevention of over indebtedness. However, the non financial data (person and residency information) may also be used, with the consent of the data subject, to validate the identity of persons applying for financial services products such as deposits and investments as well as credit. This has made access to the plethora of internet based low cost highly competitive products much easier for UK citizens – thereby increasing choice and accessibility.

In the commercial space Experian delivers data about companies and businesses in a low cost manner via the internet thus increasing access to such services to business users and making them more likely to perform checks before transacting with new suppliers or buyers.

29. In your view, what are the economic sectors where electronic commerce has developed significantly over the past decade and the fields where, on the other hand, its potential has not yet been sufficiently exploited?

In the UK there has been significant growth in several areas and the more mature online markets are the travel industry, consumer electronics and general insurance products such as motor or household insurance. Those that Experian believe will be exploiting the potential in the near future include fashion retailers, home and garden retailers, and providers of more complex financial service such as mortgages or life insurance. Generally consumption of entertainment content has not fully developed to take advantage of digital media and p2p or group communication still has huge opportunities to grow. Other sectors such as health, education information have not yet exploited the potential of digital media.

37. In your view, are there other rules or practices which hinder the provision or take-up of cross-border on-line services? If so, which?

Experian believes that there are a number of areas that affect the provision of cross-border services. Some of these are outside the scope of regulation and may need to be addressed through different initiatives, others could be resolved by harmonising standards.

The provision of cross-border on-line services, particularly by retailers, can be influenced by currency fluctuations, delivery and return mechanisms and language. Consumers will instinctively look for products that they consider to be the best value for money and historically this provided the opportunity for the provision of goods from the US into the UK in favour of the EU to the UK. The ease of delivery of overseas goods and the return of unwanted or faulty items also present a difficulty for cross-border trade
as these are the very things that promote the growth in e-commerce as mentioned earlier. Cultural and language barriers must also be overcome and these lie outside the control of any directive.

Practical difficulties also exist for entry into the UK and Experian has clients from overseas, both EU and non-EU, looking to enter the UK online market. In order to do so they endeavour to ‘localise’ their own websites as much as possible sometimes to the extent of having UK based servers. These initiatives are primarily designed to help the functionality of search engines as UK sites gain prominence in UK searches. This in turn drives e-business as 40% of all retail site visits in the UK are as a result of a Google search.

Experian is also involved in the provision of online marketing services and has clients throughout the EU. The current review of the Data Protection Directive has highlighted the differences in interpretation and application of the Data Protection regime across member states. Within some of the current interpretations certain member states view certain data collection practices differently such as cookies and IP addresses. Behavioural advertising is coming under close scrutiny and the provision of online services cross-border would undoubtedly be unworkable if for example one country were to require explicit consent for the placing of cookies while another felt that the use of privacy settings in browser controls was appropriate.

In financial services it is well documented that the demand for cross border access to services is relatively low. There are a variety of reasons for this but there is most certainly an issue in getting data about citizens of member states when they move country. Some of this is due to a lack of information in the first place and some is because of limitations on what and how data may be provided cross border. So, for example, when a person moves from France to the UK it is difficult for UK banks and other lenders to make a decision about whether to offer that person services as they have no access to information about their past behaviour in the way that they would if they received an application from a person who had lived in the UK. Global banking groups will all confirm that operating in countries where sufficiently robust data is not available is a challenge and this is exacerbated when the residents of such countries move across border.

38. Are you aware of any mechanisms in your Member State which guarantee that unsolicited commercial communications can be identified in a clear and unambiguous manner by the addressee?

We are not aware of any such mechanisms.

Guidance from the governments of Member States on this issue may be helpful, but we are unaware of any way of guaranteeing the identification of commercial communications in such a manner.

The UK Department for Business, Innovation and Skills (under its former name, the Department of Trade and Industry) issued guidance on compliance with the UK implementation of Articles 6 and 7 in 2002: http://www.bis.gov.uk/files/file14635.pdf. It would be helpful to businesses if Member State government guidance such as this were consistent across the EU.

As a separate point, Directive 2002/58 on Privacy and Electronic Communications also addresses the subject of commercial communications. Having this subject addressed in a single Directive would reduce the complexity of legislation and avoid overlap and potential conflicts between legislation. Obviously Member States have a part to play here in their implementing legislation.

39. Do measures exist in your Member State which guarantee that the service provider who sends unsolicited commercial communications by email regularly consults "opt-out" registers (in which natural persons who do not wish to receive this type of communication can register)? If so, are these registers respected?

The UK does not currently have an opt-out register for unsolicited commercial communications by email although opt-out marketing registers for other forms of communications are in place. In the UK, there is
the Telephone Preference Service (http://www.mpsonline.org.uk/tps/) and the Fax Preference Service (http://www.mpsonline.org.uk/fps/).

Experian always give consumers in the UK the option to opt-out of receiving communications. This is done by allowing the consumer access to a preference centre where they are able to choose the types and method of communications they wish to receive or to opt-out of receiving any form of communication. The data from the preference centre is then held centrally and consulted before any messages are despatched. The option to access the preference centre is given on every email communication and this system is regarded as best practice in the UK.

40. Is the legislation of your Member State sufficiently clear on the criteria making it possible to determine if a commercial communication can be regarded as unsolicited or not?

In the UK the implementing legislation does not define “unsolicited”. However, the Information Commissioner’s Office provides a guide for consumers on email marketing that includes a definition of unsolicited:

This defines “unsolicited” as:

“This means something that is not invited. However, it does not mean something that is ‘unwanted’. For example, you might welcome information about special promotions from an organisation that you trust and who always offers a good deal. You have not specifically ‘invited’ these offers but you have told the organisation that you don’t mind receiving information about special promotions that they choose to send you. You may or may not take up the offer.”

41. Is the ‘acquis communautaire’ (European law) on unsolicited commercial communications and national regulations well-adapted to new forms of commercial communications?

We would suggest that Articles 6 and 7 need to be updated to reflect how commercial communications are sent in an era of “cloud computing”. The trend is increasingly for businesses to outsource their IT and communications infrastructures to third party specialists, rather than have the burden of having to invest in and maintain their own infrastructures. Experian’s Cheetahmail service and competing email deployment services are a good example of this. Clients use Cheetahmail to send their commercial communications. We suggest that Articles 6 and 7 should be amended to make clear that responsibility for compliance is with the organisation or person that is using a third party service to send commercial communications.

54. Have you had any difficulties with the interpretation of the term “expeditious” in Articles 13(1)(e) and 14(1)(b) with respect to the removal of problematic information?

No, but it would be helpful to have more certainty in relation to what is “expeditious”. For example, a set number of days.

64. Are you aware of specific problems with the application of the liability regime for Web 2.0 and “cloud computing”?

Providers of so-called “web 2.0” and “cloud computing” services do not always fit easily into any of the liability exclusions in Section 4 of the Directive. These service providers sit somewhere between hosts (e.g. data centres) and actual users but their place in the Directive’s liability regime is unclear. See our response to question 41 for one example of this.