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The policy debate on electronic commerce – the OECD's contribution

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Electronic commerce is central to the OECD's vision of a networked integrated world and the potential it holds for economic growth and more jobs, for the expansion of world trade and investment and improved social conditions. E-commerce has very great potential to make transborder transactions and relations more efficient and effective, and its successful development at global level depends on transborder solutions. The policy challenges it poses require the kind of analysis, policy evaluation and public-private sector dialogue for which the OECD is well suited. To move the analytical and policy debates forward, the OECD has developed a series of action plans setting out the policy requirements for meeting the rapid development of ICT and electronic commerce, and for reaping and sharing the benefits. These have been developed in a coordinated work programme involving almost all parts of the Organisation and most of its working committees.

1 Some history

Since the mid-1990's, electronic commerce and the policy issues it raises have been the topic of a number of international meetings, most notably the G7 Ministerial Conference on the Information Society held in Brussels in February 1995 and the Ministerial Conference on Global Information networks held in Bonn in July 1997. In November 1997, the OECD held its first major conference on e-commerce, entitled "Dismantling the Barriers to Global Electronic Commerce" in Turku, Finland. At the time, the attention focused on defining the general principles necessary for e-commerce to prosper, discussing approaches to reconcile industry self-regulation with government regulation, and identifying the most appropriate international organisations to help develop and implement solutions. The 1997 report "E-commerce: Opportunities and Challenges for Government"

(also known as the "Sacher Report", OECD 1997; see Riehm 1998 for a discussion) produced by a high-level group of private sector experts also helped shape the discussion between governments, business and international organisations on how to reduce the barriers and uncertainties constraining the expansion of e-commerce.

This led to the OECD Ministerial Conference in Ottawa in 1998. The OECD's work programme has to a great extent been implementing the "OECD Action Plan for Electronic Commerce" (OECD 1998) endorsed by Ministers in Ottawa along the following thematic lines:

- building trust for users and consumers,
- establishing ground rules for the digital marketplace,
- enhancing the information infrastructure for electronic commerce, and
- maximising the benefits of electronic commerce.

As a first stock-taking stage in implementing the OECD Action Plan, an "OECD Forum on Electronic Commerce" was held in Paris in October 1999 with three goals: (1) to promote and strengthen the broadly based dialogue among the stakeholders in the digital economy which had begun in Ottawa, (2) to take stock of progress in meeting commitments to implement the work described in the Ottawa action plans, and (3) to assess priorities and share views on what remained to be accomplished in the light of the expanding global electronic marketplace. Some of the main conclusions included the recognition that there is no contradiction between regulation and self-regulation and that the challenge is to get the mix between these complementary approaches right. "Co-regulation" and an "integrated approach" were discussed as means of achieving this. A basic legal framework which gives scope to innovation and competition was seen to be necessary, and upon which self-regulatory approaches can be built. Responsibility stays with national governments, notably to protect vulnerable groups, but the regulatory environment should be a balance between broad regulatory frameworks of government and international bodies developed co-operatively by government, busi-

ness and civil society and self-regulation by industry.

Another important milestone was to recognise the need to include a wider group of non-OECD countries in the dialogue on how to best develop and implement policies. A significant change in priorities in the OECD's e-commerce work is the move currently underway towards outreach to non-Member countries. This has involved greater attention to non-Member countries in all work areas in the Action Plan and important activities have started in the domains of ICT and electronic commerce policies for emerging market and developing economies.

"OECD-Dubai 2001", the OECD Emerging Market Economy Forum on Electronic Commerce, took place in Dubai, U.A.E., 16-17 January 2001, and was the first of its kind to be held outside the OECD's own membership (OECD 2001f). It was preceded on 15 January by two parallel events: the Public Voice Conference, organised by civil society groups, and a Business-Government Forum, organised by the business community. At this meeting OECD countries acknowledged that accessing and using information and knowledge are fundamental for the economic growth and social development of the emerging market and developing economies as well as for the OECD Member countries. The matter is now a priority issue at the highest political level across the range of OECD and non-Member countries participating in Dubai.

Subsequently, OECD held an important Global Forum in March 2001 on "Exploiting the Digital Opportunities for Poverty Reduction", to focus more narrowly on the opportunities and implications for development in less developed and poor countries. The OECD is also contributing to the work of the Digital Opportunity Task Force (Dot Force) set up in line with the Okinawa Charter on the Global Information Society by the G8 at their summit in July 2000.

What work has been undertaken in the four thematic areas outlined above to implement the "OECD Action Plan for Electronic Commerce" endorsed by Ministers in Ottawa in 1998? These four areas are treated in turn below.

2 How to build trust for users and consumers?

Trust is central to developing e-commerce. It largely hinges on assuring consumers and businesses that their use of network services is secure, reliable and verifiable. Similarly, consumers want control over the collection and use of their personal data, and assured access to appropriate redress mechanisms. Businesses need a framework that is predictable and workable for global transactions. Creating the appropriate level of confidence requires a mixture of trustworthy technologies, appropriate regulatory and self-regulatory arrangements and an educated public. The mechanisms for redress and the role of law enforcement must also be clarified to ensure that there is an appropriate and effective response to misuse or abuse.

Consumer protection

The OECD Guidelines for Consumer Protection in the Context of Electronic Commerce, completed in December 1999 by the Consumer Policy Committee represent international consensus on the core characteristics of an effective global approach to consumer protection for online business-to-consumer transactions (OECD 1999). The Guidelines were followed by public workshops bringing stakeholders together to discuss online Alternative Dispute Resolution (ADR) (The Hague, December 2000) and Guideline implementation efforts (Berlin, March 2001). Subsequently the OECD has worked on implementing a number of discrete elements of the Guidelines, highlights of which include:

- Fostering the development of effective online ADR by: (1) expanding an inventory of business-to-consumer ADR mechanisms, (2) developing a series of questions to guide potential parties to an ADR, and (3) examining the cross-border legal challenges to resolving privacy and consumer-related disputes through ADR;
- Developing a report on consumer protection for payment cardholders that includes an educational section for consumers and that is based on a survey of Member country laws and industry practices;

- Developing a catalogue of best practice examples to help educate businesses and consumers about aspects of the Guidelines;
- Examining the policy challenges to enforcing consumer protection laws in a global electronic marketplace.

Privacy protection

Privacy protection is a critical element of trust. The 1980 OECD Privacy Guidelines are still universally accepted as providing the basic principles of protection of personal data and transborder data flow. The thrust of the OECD's work (in the Working Party on Information Security and Privacy (WPISP)) is to provide practical guidance on implementing the Guidelines on global networks. The OECD Online Privacy Policy Generator (http://cs3-hq.oecd.org/scripts/pwv3/pwhome.htm) promotes transparency by helping web sites create privacy policy statements. Other work included an inventory of instruments for privacy protection, an analysis of the use of contractual solutions for transborder data flows and an examination of online alternative dispute resolution mechanisms. Current activities include exploring the role of privacy-enhancing technologies in the wider package of solutions for privacy protection online, and promoting user education and awareness about online privacy issues and the tools available to users for protecting privacy.

Security and authentication

OECD and G8 Ministerial meetings and other international fora have underlined repeatedly that international collaboration is needed regarding security and authentication. In the WPISP the OECD continues to examine policy and regulatory issues related to the development of secure information and communication infrastructures and technologies while promoting information exchange among various stakeholders.

In response to a Ministerial mandate, the OECD has prepared a report "Progress achieved by OECD Member countries in furtherance of the Ottawa Declaration on Authentication for Electronic Commerce" (forthcoming), which examines how national policy and

laws are currently implemented. The aims are to facilitate legal recognition, party autonomy, technology neutrality, global authentication mechanisms and user confidence, and to ensure that there is no legal discrimination in relation to different types of authentication technology.

The OECD also started reviewing the 1992 OECD Guidelines on Security of Information Systems and the 1997 OECD Guidelines on Cryptography Policy and is discussing areas where international policy measures might be appropriate in addressing emerging ICT threats, such as viruses or cracking. On September 12-13 2001, the OECD held a workshop in Japan, Tokyo on "Information Security in a Networked World". The objectives of the Workshop were to assess developments affecting information security in the Internet era and explore the roles of the stakeholders, both national and global, in creating a secure cyberspace environment for all users of information and communication technologies, and to share the common understanding in initiating a review of the Guidelines.

3 How to establish ground rules for the digital marketplace?

Existing legal and commercial frameworks that govern how businesses transact with each other, with consumers and with governments were designed in a non-digital age. Consumers and businesses are looking to governments to ensure that the rules of the game are equivalent to those of the physical world to the extent possible, and – where it is absolutely necessary to introduce new or changed rules – to ensure that these are transparent and predictable.

Taxation

Revenue authorities have an important role to play in realising the full potential of e-commerce. Their twin objectives are to provide a fiscal environment within which e-commerce can flourish while also ensuring that e-commerce does not undermine the ability of government to raise the revenues required to finance public services for their citizens.

The Ottawa Taxation Framework Conditions are increasingly accepted worldwide as providing a sound basis for ongoing work.

They set out the taxation principles which should apply to electronic commerce – neutrality, efficiency, certainty, simplicity, effectiveness, fairness and flexibility – and outline agreed conditions for taxpayer service, tax administration, consumption tax and international taxation norms. Since they were agreed in 1998 five business-government Technical Advisory Groups (TAGs) provided input into the development of these principles, covering Business Profits, Consumption Tax, Income Characterisation, Professional Data Assessment and Technology. In February 2001, the OECD published a progress report on these issues (OECD 2001g):

- For consumption taxation the report makes a number of recommendations on how to apply the place of taxation rules. In particular, rules for the consumption taxation of cross-border trade should result in taxation in the jurisdiction where consumption takes place and an international consensus should be sought on the circumstances under which supplies are held to be consumed in a jurisdiction. For the purpose of consumption taxes, the supply of digitised products should not be treated as a supply of goods. The report also considers mechanisms for achieving this with minimum burdens on business. The place of consumption for cross-border supplies of services and intangible property that are capable of delivery from a remote location made to a non-resident business recipient should be the jurisdiction in which the recipient has located its business presence (B2B transactions), in principle the establishment (i.e. headquarters, registered office, or branch of the business), or the jurisdiction in which the recipient has his/her usual residence (B2C transactions).

- On international direct taxation issues the report clarifies issues around Permanent Establishment and the characterisation of income. For example, whilst a location where automated equipment is operated by an enterprise may constitute a permanent establishment in the country where it is situated, a distinction needs to be made between computer equipment, which may be set up at a location so as to constitute a permanent establishment under certain

circumstances, and the data and software which is used by, or stored on, that equipment. This means that a website does not constitute a permanent establishment, and that a server might or might not. One of the most important characterisation issues is the distinction between business profits and royalties that arise from copyright payments, which is not always clear in the case of digitally-delivered products. This will provide international business with the certainty they are looking for.

- In the field of tax administration it is recognised that revenue authorities will need to improve their international co-ordination and co-operation.

Whilst work remains to be done on some of the policy issues, the focus of much of the ongoing work is on practical tax administration issues such as verification of customer location and status. The future work programme will also consider ways of simplifying tax systems and using technology to assist tax collection.

A major global conference on tax administration was held in Montreal in June 2001 with senior tax administrators from over 100 countries present (http://www.ae-tax.ca/). There was general agreement that the Ottawa Taxation Framework Conditions lay a strong foundation for developing global tax standards and best practices for e-commerce. The conference highlighted the need for tax authorities worldwide to work together to reach international consensus, while respecting the sovereignty of individual countries. The three main principles being that (1) business needs certainty to operate effectively (2) taxation authorities need to avoid double taxation or non-taxation, and (3) tax administrations must ensure a fair and equitable sharing of tax revenues.

Business and non-member governments continue to participate in all this work through the continued TAG process. The TAGs are now streamlined into Consumption Taxes (CT), Compliance, Information and Documentation (CID) and Business Profits (BP). Non-OECD participation has been strengthened through increased participation by non-member countries and business.

Trade policy and market access

The OECD plays a supporting role in international trade policy, providing analysis on a range of trade issues to complement discussions in the WTO (see also Hauser and Wunsch-Vincent in this issue). Work on e-commerce has focused on the trade policy and market access aspects of e-commerce.

The OECD has analysed WTO Members' commitments for services which can be supplied online, as well as the unilateral liberalisation measures aimed to promote e-commerce. It has studied the supply of "products" online, without prejudice to whether such products are goods or services. Finally, it has considered the role of online customisation in the e-commerce activities and, with a view to assisting WTO members in their preparations for the current services negotiations, the possibility of taking a "cluster" approach to input services for e-commerce. The cluster approach involves grouping together sectors that are interdependent in order to reflect commercial linkages between them when preparing for negotiations. There are several reasons for which a cluster approach may be contemplated: to address classification problems, to group commercially related sectors or as in the present case – to encourage an activity involving several services sectors (OECD 2001d).

Competition law and policy

An OECD roundtable on Competition Law and Policy issues in electronic commerce focused principally on transaction matters (OECD 2001b; see also Santos and Perogianni in this issue). It explored the efficiencies of e-commerce marketplaces (such as greater liquidity or reduced procurement costs) as well as the risk that network effects may decrease competition among such marketplaces. It also considered how e-commerce marketplaces might facilitate collusion and the exercise of buyer power, and whether traditional anti-trust tools are sufficient to address competition issues online. A follow-up roundtable on competition issues will take place once competition agencies have acquired greater experience with both the infrastructure and transaction aspects of e-commerce. The Joint Group on Trade and

Competition Policy held a discussion on e-commerce. Attention centred on the need for: enhanced competition in telecommunications to facilitate lower priced access to the Internet; greater competition in international parcel delivery services; and streamlined customs procedures including the harmonisation of procedures with respect to pricing mechanisms and the development of fast-track clearance mechanisms. Some approaches to streamlining procedures especially in regard to low value parcels were suggested, and some past practice elements identified, among which:

- The opportunity for foreign marketers to charge consumers all import duties and domestic sales taxes at the time of initial order – a one step and transparent transaction for the consumer.
- Consolidated reporting of goods to customs authorities in advance of arrival, thus allowing for the swift clearance of goods.
- Periodic (e.g. monthly) and lump sum payment of taxes and duties by carriers and/or brokers, with processes for refunds of duties for returned goods, where appropriate.
- Paperless procedures, for example the extensive or exclusive use of EDI.

Electronic finance

The growth of e-finance led the OECD to begin a study on the effects of electronic commerce on cross-border trade in financial services. The study will deal with current trends as well as potential future developments. The OECD also began work on the implications of e-commerce in financial services for the implementation of the OECD Codes of Liberalisation of Capital Movements and Current Invisible Operations. Work also started on the implications of e-finance on contract law and on the issues raised by cross-border electronic delivery of insurance products.

4 How to enhance the information infra-structure for electronic commerce?

The development of electronic commerce is dependent on the availability and deployment of information infrastructures and universal and affordable access to markets and services appropriate for user-friendly electronic commerce applications. Effective competition in telecommunication markets is crucial, and this in turn depends on appropriate telecommunication policies and regulatory frameworks.

Access to and use of the information infra-structure

A competitive environment, within regulatory frameworks that provide the proper incentives and access to markets, best achieves user access to the right bandwidth at the right price. Emerging market and developing economies are finding, as have the OECD countries, that opening markets to competition increases investments and generates economy-wide benefits for consumers and businesses.

Recent work by the OECD's Working Party on Telecommunication and Information Services Policies (TISP) has covered a broad range of issues aimed at enhancing the information infrastructure, notably:

- policy implications of changing information and network technologies and market demands, including the local loop and network convergence,
- developments in pricing for access to broadband infrastructures,
- Internet developments and governance issues, and
- policy requirements for open international telecommunication markets.

The main reports prepared covered cellular pricing structures and trends, international re-file of mobile traffic (referred to as "tromboning"), spectrum allocation (auctions versus "beauty contests"), institutional structures for telecommunications regulation, local access pricing and e-commerce, local competition and interconnection, access and local competition and retail price regulation for local telecommunication services. In addition to the regular topics (communication policy trends, markets, network developments, pricing and quality of service, trade), the "Communications Outlook 2001" covered Internet infrastructure, broadcasting and the international digital divide (OECD 2001a).

The Internet governance and the Domain Names System

The OECD continues to develop Internet indicators, and new measurement tools in the area of Domain Names System and Internet traffic exchange, to assist self-governance and access issues.

5 How to maximise the benefits of electronic commerce?

The full economic potential of electronic commerce will only be realised through an environment facilitating its widespread use by businesses, consumers and institutions. The information infrastructure has the potential to link citizens to each other and to the world, and to foster social cohesion. A clear understanding of the needs of enterprises and citizens is needed.

Economic and social impact

The OECD has analysed the policy implications of the economic and social impacts of global electronic commerce since the mid-1990s. The OECD aims to improve measurement and analysis of the structure and volume of electronic commerce, deepen understanding of the impact of electronic commerce within and between businesses and determine how electronic commerce changes the level of employment and skill requirements.

The OECD is analysing in the Working Party on the Information Economy (WPIE) the economic impacts of e-commerce, notably in the Electronic Commerce Business Impacts Project (EBIP). The focus of this project is on assessing the dynamics and impacts of business-to-business e-commerce at a sectoral level using a common methodology. This project attempts to shed new light on the ways in which e-commerce is transforming the organisation and operation of value chains as well as the implications of these changes for policy-makers. Overall the study suggests that e-commerce strategies enable firms to present a broader range of products, reduce costs of production and distribution of goods and services, manage their supply chains more effectively, and improve communications and relations

with customers and suppliers. The expansion of e-commerce is seen by firms to rely on the availability of high capacity network infrastructure, regulatory frameworks to increase trust (transaction security, legal structures, authentication mechanisms, and intellectual property protection), improvements in staff training and the skill base. E-commerce strategies and applications are also likely to strengthen trends towards market consolidation. Government policies are not seen as a major barrier to adoption, but are sometimes seen as not sufficiently facilitating e-commerce.

The OECD has developed in the Working Party on Indicators for the Information Society (WPIIS) a set of electronic commerce definitions and a list of priority indicators (based on perceived analytic and user needs) and is now working to apply these to operational surveys, to refine the list of indicators and to provide methodological guidance.

The "Information Technology Outlook 2000" (OECD 2000b) examined the issue of e-commerce "readiness" across OECD countries. Ongoing work includes analysis of ICT skills and employment, the software sector and the "digital divide" as part of the 2002 edition of the "IT Outlook".

A Workshop on "The Digital Divide: Enhancing Access to ICTs" was held in December 2000 and a brochure on "Understanding the Digital Divide" (OECD 2000d) was prepared. A Workshop on "Broadband: Infrastructure, Applications and Use" is scheduled for December 2001.

Small and medium-sized enterprises (SMEs)

ICT offer considerable opportunities for SMEs to grow and to rationalise their business. Although SMEs increasingly use ICT for a variety of commercial and production-related purposes, there is generally a lack of awareness of the full range of their potential.

The OECD prepared a background report for the Conference "Enhancing the Competitiveness of SMEs in the Global Economy: Strategy and Policies" held in Bologna, Italy, in June 2000 (OECD 2000a). This report identified major issues for policy action in view of promoting the use of ICT and electronic commerce among SMEs, such as fostering an envi-

ronment conducive to business-led initiatives promoting the use of ICTs and e-commerce, encouraging more SME-friendly regulatory frameworks and enabling SMEs to operate in a clear, consistent and predictable legal framework without imposing undue costs or burdens. Current work on SMEs focuses on the collection of statistics on the diffusion and use of electronic commerce, the analysis of the impact of e-commerce on the business activities of small firms; and best practice policies to promote the use of e-commerce.

Education and skills

There is enormous potential for the growth of electronic commerce in education and training – both in software, as yet only in its infancy, and in terms of the sector's key role in developing the knowledge, skills and intellectual basis for electronic commerce. There is a lack of good quality educational software and a lack of sound public-private partnerships in developing it. More progress seems to have been made in distance education, lifelong learning, and in corporate training. The report "E-learning – The Partnership Challenge" addresses these questions (OECD 2001c).

A related issue being intensively studied at the OECD is the cross-border demand and supply of post-secondary education through the use of new technologies. The OECD publication "Learning to Bridge the Digital Divide" (OECD 2000c) stressed how important it is to empower people with appropriate educational, cognitive and behavioural skills and tools so that they can access information and knowledge efficiently, effectively and wisely.

ICT and territorial development

The OECD has published a report entitled "Information and Communication Technologies and Rural Development" (OECD 2001e). The principal concern is to establish access to high-bandwidth ICT infrastructure at an affordable cost in areas where telecom operators usually do not provide it because of the small market. Another is to create a sufficient level of awareness and training so that existing businesses make a first step towards e-commerce. Under these conditions, inward investment can help

create activities such as multimedia content, software design or e-commerce. A study is also underway on ICT in urban areas.

Development co-operation

The OECD has issued a set of guidelines that address the needs for and constraints to capacity development for trade faced by developing countries. They include the areas of ICT and electronic commerce and a roadmap for effective donor policies and instruments to overcome those constraints.

In March 2001, the OECD held a Global Forum on Exploiting the Digital Opportunities for Poverty Reduction in collaboration with the UN, United Nations Development Programme (UNDP) and the World Bank. The Forum examined the role of donors and other actors in helping to bridge the international digital divide, develop e-commerce and e-government, and use ICTs to spur progress towards agreed international development goals. The OECD Development Centre began researching e-commerce in developing countries when it prepared a background paper for the pre-Okinawa Conference on ICT and Development Assistance held in June 2000. It has continued its research and held various seminars on the topic in 2001.

Ensuring global participation

The OECD will continue to ensure dissemination of its work on electronic commerce outside Member countries in co-ordination with other international organisations such as the World Bank, the World Trade Organization (WTO), UN agencies and regional bodies such as APEC. Follow-up events will take place in the context of the OECD Global Forum on the Knowledge Based Economy and other programmes with non-Member countries.

6 Conclusions

The OECD has a special role in comparison with other international bodies in the area of e-commerce. It is a consistent leader in policy analysis, research and statistics which improve the information base and which provide a firm foundation to build appropriate and comprehen-

sive international frameworks for e-commerce set up by the OECD. This work began by focusing on OECD countries, but it has increasingly widened its scope to take in non-OECD countries, beginning particularly with the OECD Emerging Market Economy Forum on Electronic Commerce, Dubai January 2001, and continuing in a range of follow-up outreach activities. This special role of the OECD is carefully differentiated from, but co-ordinated with, other more specialised international bodies such as WTO and WIPO (World Intellectual Property Organisation) which have much narrower mandates.

The OECD provides the forum to construct broad policy frameworks for e-commerce. These are devised in conjunction with all of the important actors (government, business, civil society, other international organisations), and are designed to be flexible enough to encompass a range of national approaches and variations which match individual country positions and starting points. Individual OECD Member and non-Member countries implement their own policies within this broader context, as the OECD has no direct powers to oblige countries to take particular policy routes. Instead it works on the basis of consensus, peer review and benchmarking against good policy practice.

All of this work is designed to expand the analytical understanding of the potential and impacts of e-commerce and widen the OECD-led policy debate on, and help to establish, the appropriate policy frameworks for e-commerce.

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Most of these documents can be found at:
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Other related OECD websites:
http://www.oecd.org/ict; http://www.oecd.org/sti/ict

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