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HM Treasury
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13 February 2002

Dear Mr Ridewood

Implementation of the E-commerce Directive in Financial Services

We welcome the opportunity to comment on this consultation. We are concerned that the Treasury seems to be promoting the idea that improvement in the capacity for competition can be pursued without at the same time developing the rules that will protect consumers. In particular we think that implementing the e commerce directive before the changes to the Investment Services Directive are even agreed will leave consumers vulnerable to approaches from Member States where investment advice is not a regulated activity.

We have been shown no evidence that producers are inhibited by restrictions imposed by host state regulators. The consultation paper itself notes that widespread use of e commerce depends on consumers being confident. Consumers might be more confident if they thought that regulators were thinking about their needs at the same time as removing restrictions.

From the UK consumer perspective the effect of the directive will be to give the kind of protection that UK consumers have at home to the potential consumers of services marketed abroad from the UK by electronic means (paragraph 37) while allowing those with different and/ or lower standards to sell into the UK. At the very least, a serious education campaign to alert UK consumers to this fact is needed, before the implementing legislation comes into effect.

We note that the Treasury views the 'contractual obligations concerning consumer contracts' derogation as relating solely to pre contractual information. It is not at all clear why this should be. The explanation in recital 56 makes it plain that it includes information, but it does not only include pre contract information; it may also include the contents of the contract and information during the life of the contract. We reject the view that the 'contractual obligations' derogation is co-terminous with the information requirements of the Distance Marketing Directive (DMD). The Treasury has identified three information requirements included in the draft DMD which are

not in the E commerce Directive; it is possible that there are or will be other information requirements not covered by the DMD and other rights or prohibitions which relate to the contract itself and not to pre contractual information. The Treasury should not shut its eyes to these possibilities at this stage.

We note that the Treasury takes the view that the market abuse provisions of FSMA do not fall within the ambit of the directive on the grounds that they 'set general standards for conduct irrespective of the provision of services in the sense contemplated in the directive'. This is despite the fact that Article 2h says that the co-ordinated field is made up of legal requirements that apply to Information Society Services (ISS) or the providers of ISS, regardless of whether these requirements are of a general nature or are specifically designed for such services or providers. We have no problem with this interpretation, but we assert that if the Treasury can interpret the requirements of the E commerce Directive flexibly in relation to market abuse, it should be at least as open to interpreting the consumer protection provisions of the Directive flexibly for the benefit of consumers.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Colin Brown', written in a cursive style.

Colin Brown
Chairman

cc. John Tiner
Michale Folger
Christine Farnish
Sarah Wilson
Jane Lowe
Peter Parker