



25 May 2002

Guy Russell  
Department of Trade and Industry  
151 Buckingham Palace Road  
London SW1W 9SS

Dear Mr Russell

### **The Electronic Commerce (EC Directive) Regulations 2002**

Thank you for the opportunity to comment on the draft Regulations. The following is O2 (UK) Ltd's response.

Generally, we support the way in which the Government proposes to implement the Directive. However, we do have concerns about specific regulations:

1. We were surprised about the proposed definition of "cartel law". Unless the intention is to exclude certain arrangements that are capable of being governed by Article 81 and similar provisions in member states, in our view, it would be necessary to make reference to agreements subject to that legislation. In addition, it is not clear whether the intention is that the Regulations ought to apply to arrangements that benefit from exclusions or exemptions from Article 81 and similar provisions.

2. We welcome the Government's recognition, set out in Paragraph 5.5 of the Interim Guidance, that there may be constraints which mean that the information may not be accessible by the same means by which that the service provider transacts with recipients. However, the Government simply envisages that the requirement to provide information should be met if the information is available by other means. The Government's expectation does not afford a great deal of comfort. It would be preferable to state within the Regulations themselves that it is acceptable to provide the information by a means other than the one by which the service provider transacts with recipients.

3. We agree with the way in which it is proposed that Articles 12, 13 and 14 will be transposed by Regulations 17 (Mere conduit), 18 (Caching) and 19 (Hosting). Nevertheless, we would welcome guidance on the criteria that will be used to determine what is meant by:

"...widely recognised and used by industry" (Regulation 18(b)(iii) and (iv))

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At present, the Interim Guidance does not cover these areas and this raises uncertainty.

4. Similarly, some guidance on “notice and takedown” procedures would be helpful. We note the point made in the Interim Guidance about the need for sector specific approaches. However, the absence of guidance or underlying principles either set out in the Regulations or even in the Interim Guidance again introduces uncertainty.

Finally, we note the consultation paper about the proposed extension of the Stop Now Orders (EC Directive) Regulations 2001. We shall consider the issues raised in the paper and may respond in due course.

Yours sincerely

**Lawrence Wardle**  
**Regulatory Manager**