ONLINECONFIDENCE: A NEW TOOL FOR RESOLVING DISPUTES ONLINE

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I. Introduction

One major reason for the slow take-up of e-commerce in Europe is a lack of trust or confidence on the part of the buyer. How can the buyer be confident that an on-line seller is in fact a bona fide company, and how can the buyer be confident that, in the event of the services/goods being unsatisfactory, he or she will be able to complain and seek redress?

Currently, the buyer can go to court, can go to arbitration (business to business mainly), or can seek redress through mediation services (but which are predominantly used for disputes within a country, not cross border disputes). These off-line options do not match the new Internet trading environment, where buyer and seller may be separated by language, laws and geographical distance.

On-line dispute resolution offers an exciting option. Apart from very complex disputes, a great number of simpler disputes, which do not even reach the courts, may be resolved easily. Moreover, quick on-line resolution of disputes, compared to lengthy court or tribunal proceedings, will lead to considerable cost and time savings.

European Chambers of Commerce have a keen interest in on-line dispute resolution for a number of reasons. First the provision of on-line dispute mechanisms will encourage more confidence on the part of consumers and SMEs, thereby stimulating e-commerce activities. Secondly, many European Chambers already offer arbitration, mediation or conciliation services. This large expertise can be put to good effect in a new Internet-based environment.

Eurochambres, with Chamber partners in Germany, Italy, Spain, Sweden and Belgium, has initiated a project - OnlineConfidence - that seeks to address this issue directly. OnlineConfidence (OC) is developed with the support of the European Commission under its TEN-Telecom.

The service of OnlineConfidence fits well in the wider strategy that European Chambers have adopted in the field of creating trust and confidence in e-commerce. Examples refer to the seal programmes set up by Chambers, which certify the

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1 Advisor at Eurochambres and coordinator of the OnlineConfidence project.
2 Eurochambres, established in 1958, is the Association of European Chambers of Commerce and Industry. It represents thirty-seven national Chambers of Commerce and Industry and indirectly over 1500 local and regional Chambers. The indirect representative of over 15,000,000 companies, Eurochambres is currently the biggest association of businesses in Europe.
3 http://www.onlineconfidence.org/.
credentials of on-line companies\textsuperscript{4}, the creation of a digital certificate infrastructure in many of the EU countries and the creation of the ChamberSign system\textsuperscript{5}.

OnlineConfidence aims to give buyers (both businesses and consumers) access to an out of court process which is effective, transparent, independent, fair at low cost and which respects the legal rights of all concerned. This applies to B2B and B2C disputes deriving from on-line activities mainly, such as purchases made via Websites.

\section*{II. Eurochambres' integrated approach to improving online confidence}

Eurochambres is pursuing an integrated regulation policy for the Internet. The Association of European Chambers of Commerce and Industry is completing European regulation with flexible tools that provide specific added value to the new information technologies sector. This approach is aimed at preventing disputes by introducing a European code of conduct and a quality label. It comprises an out-of-court dispute settlement mechanism when disputes do arise.

The \textbf{European code of conduct} is the result of cooperation from Eurochambres with FEDMA\textsuperscript{6} and other representative organisations in the sector. It includes, among other things, relevant European regulations on electronic commerce, distance selling, privacy, child protection, etc. In so doing, it also complies with the international requirements proposed by the OECD\textsuperscript{7} and the GBDe\textsuperscript{8}.

Eurochambres is planning to offer a \textbf{European label} based on its code of conduct and dispute settlement methods. The European label, intended to promote electronic commerce in a crossborder environment, will be offered by the network of Chambers of Commerce in Europe. The label policy will indicate among others that an on-line seller adheres to a set of rules concerning the resolution of disputes. In other words, when an on-line visitor sees the logo displayed, he/she can have confidence that any future dispute will be handled in a fair, effective, transparent manner. The label holder commits to participate in the OC out-of-court settlement procedure and to respect its issue (either a settlement or an advice) if any.

The label is the most visible part of the trilogy of the Eurochambres code of conduct, label and ADR. It is also the only part that is actually marketable. The label must contribute to the financing of the dispute settlement mechanism.

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\textsuperscript{4} See among others the ChamberSeal initiative set up by Chambers of Commerce of Ireland (http://www.chamberseal.com/); TrustInfo initiative set up by Chambers of Commerce and Industry of Paris (http://www.trustinfo.org/); Chamber-Trust initiative set up by the Belgian Federation of Chambers of Commerce and Industry (http://www.chamber-trust.be).
\textsuperscript{5} Chambersign is a consortium of Chambers from 10 countries establishing mutual recognition of digital certificates (http://www.chambersign.com).
\textsuperscript{6} FEDMA is the European Federation of Direct Marketing Associations.
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The label will benefit from the Global Trustmark Alliance standard, which comprises the leading non-profit-making organisations worldwide in the area of development of Internet confidence. Founded by the BBBOnLine, Eurochambres and FEDMA, the Global Trustmark Alliance is poised to become a world alliance for the certification of web sites. Several Asian labelling initiatives are about to join the Alliance.

OnlineConfidence is the European Online Dispute Resolution System that completes the process by seeking a solution when disputes arise. The first step of the procedure is the Direct Negotiation process. Should the negotiation not lead to a settlement and should the buyer still wish to continue to settle the dispute, the second step offered by the OnlineConfidence system is the Evaluation.

III. OnlineConfidence - an Online Dispute Resolution System

1. Origin of the project

OnlineConfidence is a dispute resolution project that was launched in January 2001 by Eurochambres and a set of European Chambers of Commerce and co-financed by the European Commission. At first, the project focused on research and development. It covered legal, technical and organisational issues. Subsequently, the project model underwent a market validation test. A business plan has been drawn with the objective to set up a self-sustaining system.

The end of the pilot phase of the project is October 2002.

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9 BBBOnLine is providing labels to more than 10,000 web sites in the United States of America.
10 OnlineConfidence comprises the Association of German Chambers of Industry and Commerce; the Belgian Federation of Chambers of Commerce and Industry; the Spanish Association of Chambers of Commerce, Industry and Navigation; the Italian Union of the Chambers of Commerce, Industry, Artisan and Agriculture and the Stockholm Chamber of Commerce as well as Eurochambres.
2. Procedure

OnlineConfidence provides dispute resolution services for B2B and B2C disputes deriving from on-line activities. OC is designed primarily to help parties reach a negotiated settlement through discussions online (Direct Negotiation). The normal timeframe for the negotiation is 10 days. If the parties are successful in the Direct Negotiation and reach an agreement, the case will be settled and thereafter terminated by the system.

Should the negotiation not lead to a settlement and should the claimant still wish to continue to settle the dispute, then the OnlineConfidence system offers a second step: the Evaluation. During the Evaluation, a neutral third party, the OC Evaluator, will review the facts of the case, as presented by the buyer and the seller, and within 15 days submit a specific solution for the dispute in form of an Advice.

The Advice marks the end of the OnlineConfidence dispute resolution procedure. It is binding for the seller if he/she committed previously to be bound by the result and up to a maximum of 5000 Euro. This commitment is included in the code of conduct promoted by Eurochambres but also in a model clause proposed to sellers.

The Advice does not prevent either party from submitting the dispute to public court or any other form of dispute resolution, as agreed between the parties. Rules governing any statute of limitations depend exclusively on national laws and parties are advised that filing a claim with OnlineConfidence does not replace any such rules or laws.

3. OnlineConfidence system

The technical support of OnlineConfidence is being developed by Infocamere and Consorzio Pisa Ricerche.

The OnlineConfidence (OC) dispute resolution system is taking advantage of the interactivity skills of Internet. To start the dispute resolution procedure, the buyer fills in the online Claim Form. In the form, the buyer is asked to identify the problem encountered as a result of the purchase, and to propose a solution. The OnlineConfidence system contacts then the other party and invites it to access the website to read the proposal for solution. Buyer and seller receive at main steps an e-mail message, and at any time both can view the claim status on the website.

The users of the dispute settlement system are offered a digital certificate that identifies them during the process. It enhances the security and the privacy of the data exchanged. A minimum of information is sent to the parties by email in order to avoid security holes and privacy breaches.
4. Evaluators

Effectiveness and quality of any evaluation depend on the quality and the independence of the Evaluator. OnlineConfidence has therefore set up National Listing Boards. Listing Boards have the task to list highly qualified Evaluators with multilingual skills. The membership of these Boards will be drawn from consumer and business associations.

In the mean time, OnlineConfidence is planning to set up training for Evaluators.

5. Organisational model

OnlineConfidence is establishing a structure that has a number of central elements, but is mostly decentralised throughout the EU. The common set of rules to be applied throughout Europe and to which e-traders are invited to subscribe is set up centrally. The document management software and the co-ordination of the dispute resolution process itself are both centralised.

However, the new service is promoted and delivered through a decentralised network. The service is promoted through the 1,500 Chambers of Commerce, which are members of Eurochambres. And, when disputes arise, OC uses evaluators drawn from arbitration/mediation centres set up by Chambers of Commerce, as well as from other sources.

IV. Regulatory requirements

1. Existing pre-regulatory framework

There are at international and European scale, some rules relating to out-of-court dispute settlement. In Europe, Recommendation 98/257/CE and Recommendation 2001/310/EC set up general principles applicable to third party bodies responsible for out-of-court consumer dispute resolution procedures.

The scope of Recommendation 98/257/CE is limited to procedures which, no matter what they are called, lead to the settlement of a dispute through the active intervention of a third party, who proposes or imposes a solution. This Recommendation promotes

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the principles of independence, transparency, adversarial, effectiveness, legality, liberty and representation.

Recommendation 2001/310/EC lays down principles for any third party body offering procedures that attempt to resolve a dispute by bringing the parties together to convince them to find a solution by common consent. However, the Recommendation is not intended to cover customer complaint mechanisms operated by a business and conducted directly with the consumer or to such mechanisms carrying out such services operated by or on behalf of the business. This Recommendation promotes the principles of impartiality, transparency, effectiveness and fairness.

Despite the existence of a number of rules, the regulatory framework is far from being achieved. Most of the rules are non mandatory or have a relatively weak impact.

More recently, the European Commission has issued a Green Paper on alternative dispute resolution in Civil and Commercial Law and envisages setting up an accreditation framework for alternative dispute resolution in business to consumer relations.

Besides several business and consumer associations have drafted complementary principles applicable to out-of-court dispute settlement.

2. Paradoxes and risks

Paradoxically, European public authorities, while encouraging self-regulation over Internet, are gradually designing a regulatory framework. The European Commission recommendations related to online dispute resolution have not brought about only positive changes. While these high level principles are not questionable at first sight, some perverse effects may also generated.

First promoting the high level principles could compromise the creation of independent self-regulatory bodies. E.g. the principle of effectiveness promotes the ideas of timeliness, qualified neutrals, multilingual procedure and low fees. ODR services complying with these requirements will be of high quality, but important costs will be involved. The market is not ready to bear such costs and consequently

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16 See e-commerce directive articles 16 and 17.
17 Recommendation 98/257/EC and 2001/310/EC.
ODR bodies will not be self-sustainable. Part of the solution is long term public financial support to ODR services in consumer conflict resolution as it is done in many European countries at national levels.

Secondly, some of these principles are contradictory. Heavy procedural guarantees, for example, are promoted under the principles of due process and independence\textsuperscript{18}. These principles have direct consequences on the effectiveness promoted by the same recommendation. The solution is to be found in the balance between those principles.

V. Conclusion

Global e-commerce has been clearly identified as a potential new source of disputes. The direct consequence of this fact is the appearance of lack of trust of the buyer, which has significant implications on the worldwide market in general and on Europe in particular.

Therefore European Chambers of Commerce set up OnlineConfidence, a new tool for resolving disputes online. The dispute resolution system offers a customer friendly interface in a secure environment. It is particularly designed to tackle cross-border conflicts.

The OnlineConfidence project takes into account the high level principles issued by the European Commission. However, Eurochambres urges caution concerning the creation of an accreditation process. Firstly, the market is too weak to bear the costs of an accreditation structure. Secondly, it is not immediately apparent what benefits would flow to those offering services in the marketplace from such an accreditation process. The cost benefit ratio is unproven.

While initially concentrating on establishing the system in Europe, Eurochambres also seeks to ensure the OnlineConfidence service is applicable in the US and elsewhere, through the negotiation of reciprocal arrangements with similar system providers in those regions. The creation of the Global Trustmark Alliance is an excellent opportunity to look for a globally interoperable system.

\textsuperscript{18} Recommendation 98/257.