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Consumer protection in electronic commerce

Note by the UNCTAD secretariat

Executive summary

This note considers consumer protection challenges in electronic commerce (e-commerce) such as the information provided by businesses, unfair commercial practices, unfair contract terms, online payment security, data protection and privacy, dispute resolution and redress and cross-border online transactions. It provides information on recent developments and international instruments applicable in these areas. It looks into policy measures to build consumer trust in e-commerce, including appropriate laws and enforcement, consumer education, good business practices and international cooperation. The note also refers to the role of UNCTAD in building the capacities of consumer protection authorities and facilitating international discussions.



Introduction

1. Developments in information and communications technology in the last decade have significantly changed lives and provided new opportunities for consumers and businesses. The General Assembly, in its resolution 70/186 of 22 December 2015, considered that e-commerce, “which should be understood to include mobile commerce, has become increasingly relevant to consumers worldwide and that the opportunities it offers should be harnessed to help facilitate economic development and growth based on emerging network technologies, with computers, mobile phones and connected devices that promote consumer welfare”.¹

2. An increasing number of consumers have access to the Internet and engage in e-commerce, which provides easier and faster access to products and services (hereafter referred to as products). It also presents some challenges for consumers that differ from those encountered during offline commercial transactions. Such challenges have given rise to the need to adapt existing legal and regulatory frameworks to the particular requirements of e-commerce. The change in the current environment for both consumers and businesses was the driving force behind the revision of the United Nations guidelines for consumer protection.² Another international instrument in this area, the Organization for Economic Cooperation and Development (OECD) *Recommendation of the Council on Consumer Protection in E-Commerce*, was also revised in 2016.³ Considering these developments and challenges arising from e-commerce and its continuous growth, the Intergovernmental Group of Experts on Consumer Protection Law and Policy, at its first session, held on 17 and 18 October 2016, requested the UNCTAD secretariat to prepare a report on e-commerce for consideration at its second session.⁴

3. An e-commerce transaction can be defined as “the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders” (see <http://stats.oecd.org/glossary/detail.asp?ID=4721>).

4. E-commerce covers a wide range of transactions effected via mobile telephones and other devices such as personal computers and tablets, and purchases are often made by using applications and platforms. E-commerce is normally thought of in consumer protection terms in relation to business-to-consumer transactions, yet is not limited to such transactions. The OECD Recommendation applies to business-to-consumer e-commerce, and also includes commercial practices through which businesses enable and facilitate consumer-to-consumer transactions. A business-to-consumer transaction requires the online presence of a trader to sell online and accept online orders. On the consumer side, the process requires Internet access to review products and acquire them online. A payment method needs to be specified, such as a credit card, electronic money, bank transfer or cash on delivery. Finally, the product must be delivered, either online for digital content products or to the consumer’s home or at a pick-up point for goods.

5. Business-to-consumer e-commerce is forecast to double from \$1.2 trillion in 2013 to \$2.4 trillion in 2018.⁵ In 2015, UNCTAD launched the business-to-consumer e-commerce index, which measures the readiness of countries for e-commerce based on the following four indicators: Internet use penetration; secure servers per million inhabitants; credit card

¹ A/RES/70/186.

² Adopted by the General Assembly in its resolution 70/186.

³ OECD, 2016, *Recommendation of the Council on Consumer Protection in E-commerce* (Paris), available at http://www.oecd-ilibrary.org/industry-and-services/oecd-recommendation-of-the-council-on-consumer-protection-in-e-commerce_9789264255258-en (accessed 18 April 2017).

⁴ This report is based on responses to an UNCTAD questionnaire on consumer protection in e-commerce received from Argentina, Botswana, Brazil, Burkina Faso, Cambodia, Colombia, Ecuador, France, Germany, Hungary, India, Israel, Jamaica, Lebanon, Mexico, Myanmar, Oman, Pakistan, Portugal, Spain, Switzerland, Tunisia, State of Palestine, Consumers International and the European Consumer Centre in Portugal.

⁵ UNCTAD, 2015, *Information Economy Report 2015: Unlocking the Potential of E-commerce for Developing Countries* (United Nations publication, Sales No. E.15.II.D.1, New York and Geneva).

penetration; and postal reliability score (see http://unctad.org/en/PublicationsLibrary/tn_unctad_ict4d07_en.pdf).

6. Purchases over the Internet usually involve businesses and consumers from different jurisdictions, which may have different regulations with respect to the key features of e-commerce, may lack specific frameworks applicable to the sale and acquisition of goods and services online and/or may not be equipped to act against unreliable traders in the context of e-commerce, whether at national or international levels.

7. E-commerce is one of the new areas in the revised guidelines for consumer protection (guidelines 63–65; see box 1). One of the legitimate needs that the guidelines intend to meet is a level of protection for consumers using e-commerce that is not less than that afforded in other forms of commerce (guideline 5 (j)). Guideline 11 lists good business practices applicable to all forms of commerce, including e-commerce. The guidelines call upon Governments to establish national policies for consumer protection that encourage good practices applicable also to e-commerce in areas including information disclosure, contract terms, secure payment mechanisms, consumer privacy and data security and dispute resolution and redress (section V A). Guideline 44 lists the important aspects of consumer protection that should be covered by education programmes, and includes e-commerce (subparagraph (g)).

Box 1

The guidelines for consumer protection, and e-commerce

Guideline 63 encourages member States to enhance consumer confidence through transparent and effective policies, and underlines the principle of ensuring a level of protection not less than that afforded in offline commerce. This is reinforced in guideline 5 (j), among other consumer issues, as a legitimate need that the guidelines intend to meet.

Guideline 64 calls for a review of existing consumer protection policies to accommodate the special features of e-commerce, and stresses the need for awareness among consumers and businesses of their rights and obligations.

Guideline 65 refers to the relevant international guidelines and standards on e-commerce, particularly the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce. Guideline 65 also emphasizes the importance of adapting international standards and guidelines into national contexts, to facilitate collaboration between member States in their implementation across borders.

8. The OECD Recommendation establishes the core characteristics of effective consumer protection online while stimulating innovation and competition in the market. New areas in the revised OECD Recommendation include non-monetary transactions, digital content products, active consumers, mobile devices, privacy and security risks, payment protection and product safety. The OECD Recommendation includes two new provisions in the area of privacy and security risks and product safety, and updates several other provisions related to the essential role of consumer protection authorities and the need to enhance their ability to protect consumers in e-commerce and to exchange information and cooperate in cross-border matters.

9. As early as 2000, some developing countries started to explore issues surrounding e-commerce and consumer protection. For example, a paper on e-commerce in South Africa provided a framework for dialogue aimed at streamlining e-commerce issues into government policies, and addressed the following key issues and areas of concern that required consideration in e-commerce policy formulation: the need for confidence in the security and privacy of electronic transactions; the need to enhance the information infrastructure for e-commerce; the need to establish rules to govern e-commerce; and the need to bring the opportunities of e-commerce to the entire population.⁶

⁶ South Africa Department of Communications, 2000, A green paper on electronic commerce for South Africa, available at: <http://www.gov.za/documents/electronic-commerce-green-paper> (accessed 18 April 2017).

10. The Internet has facilitated the emergence of a collaborative economy where transactions now occur between consumers on online platforms. For example, one of the main difficulties in the collaborative economy is the identification of the business and/or peer provider operating in platforms.⁷

I. Recurrent consumer protection issues in e-commerce

11. There are three stages of the consumer–business relationship in which consumer protection issues in e-commerce can be identified, namely pre-purchase, purchase and post-purchase. This section describes the challenges consumers face in each of these phases (see box 2).

Box 2

Consumer challenges in e-commerce in developing countries

Based on responses to the UNCTAD questionnaire on consumer protection in e-commerce, circulated to consumer protection agencies around the world, some of the most common e-commerce challenges faced by consumers in developing countries are in the following areas:

- Weak Internet infrastructure, including speed and reliability
- Unstable communications network
- Relatively low online connectivity and insufficient electricity supply
- Language barriers
- Deceptive information and marketing practices with respect to both goods and services and prices
- Misleading advertising
- Lack of clear and sufficient information on both the identity and location of traders, as well as goods and services, prices and guarantees
- E-commerce offers made by anonymous traders
- Drip pricing practices, where the final amount due is not known until the whole process is complete
- Uncertainty on merchantability of goods
- Monetary refunds for non-satisfactory products
- Non-fulfilment of return or refund policies announced on trader websites
- Long and tedious refund process
- Expenses for returning goods to be covered by consumers
- Data security and online scams, identity theft and frauds
- Irreversibility of electronic payments
- Security of online and mobile payments and chargeback options
- Unclear information on chargebacks and withdrawals
- Denial by e-commerce websites of responsibility for online payments that are blocked by banks or payment gateways
- Fraudulent and fly-by-night operators who take money from consumers without providing products or services
- Protection of personal data and privacy
- Electronic identification and authentication tools
- Late or non-delivery of products or delivery of defective, wrong or spurious products
- Non-provision of promised services or offered gifts
- Non-compliance with legally established cooling off periods
- Insufficient or non-existent customer care
- Denial of after-sales service
- Lack of consumer awareness of their rights and duties, as well as those of businesses
- Lack of basic information technology skills and financial literacy
- Concerns about dispute resolution procedures

⁷ Contribution from the Government of France.

- Resistance to or delay in providing redress by financial institutions upon receiving consumer complaints, requiring intervention by consumer protection authorities
- Competent jurisdiction and applicable law with regard to cross-border e-commerce disputes.

A. Pre-purchase

12. Information asymmetry is more prominent in e-commerce due to the nature of the Internet and complexity of terms and conditions to which consumers may not always have timely access. Therefore, consumers are more vulnerable online to misleading and deceptive conduct. To make informed purchasing decisions in e-commerce transactions, consumers need relevant and accurate information about goods and services and the traders supplying them.

1. Information requirements

13. Guideline 5 (e) recognizes as a legitimate need “access by consumers to adequate information to enable them to make informed choices according to individual wishes and needs”. Guideline 14 (b) promotes national policies that encourage clear and timely information – including identity of the business, legal name, principal geographic address, website, e-mail address and telephone number – to enable consumers to contact businesses easily and to enable regulatory and law enforcement authorities to identify and locate them. Guideline 14 (c) refers to clear and timely information regarding the goods or services and the terms and conditions of the relevant transaction.

14. One of the common challenges consumers face in developing countries is the difficulty of establishing the identity and location of a provider of products online. Some jurisdictions identify challenges such as misleading information on actual and total prices, effective interest rates and consumer rights under the relevant national law.

15. The OECD Recommendation requires businesses engaged in e-commerce to provide consumers with information about the business that is sufficient to allow for the following: its identification and location; prompt, easy and effective consumer communications with the business; appropriate and effective resolution of any disputes that may arise; and service of legal process in domestic and cross-border disputes (paragraph 28). Paragraphs 29 and 30 detail the types of information that businesses should make available to consumers. Similar to guideline 5 (e), paragraph 31 requires businesses to provide sufficient information describing the goods or services offered to enable consumers to make informed decisions regarding a transaction. Paragraph 32 details the types of information to be disclosed and paragraphs 33–35 refer to information about the transaction.

2. Unfair commercial practices

16. The impersonality of e-commerce weakens the relationship between providers and consumers, thereby increasing consumer vulnerability. The web-based environment is propitious to unfair commercial practices. Therefore, consumer trust in digital markets is one of the main challenges in the development of e-commerce. Unfair commercial practices influence transactional decisions of consumers in relation to products and prevent consumers from making informed choices, and they deceive consumers as to the nature of the product and by providing untruthful information to consumers, using aggressive marketing techniques, creating confusion between the trade names or trademarks of competitors and falsely representing themselves as consumers and posting reviews in their name, for instance on online accommodation booking platforms (see box 3). In seeking to gain a competitive advantage over competitors who offer better goods and services and/or lower prices, traders may mislead consumers by exaggerating the quality or misrepresenting the features of their products or services. For example, France’s recent legal framework in this area (Law No. 2016-1321 of 7 October 2016) regulates the rules for

fair, clear and transparent information, by which platforms must abide, including for reviews, ranking and de-ranking of contests and disclosure.⁸

Box 3

Misleading advertising in accommodation booking

In 2014, the Advertising Code Committee of the Netherlands found that advertisements on a major accommodation booking platform were misleading. The claims were “we have only one room left” and “only one room left” at a specific price. The authority found that it was not clear to the average consumer that these claims referred only to the rooms a hotel had made available through that platform. The platform’s failure to inform consumers that its claims related only to those rooms meant that consumers might be misled into believing that the hotels were fully booked, whereas in fact the same hotels might have rooms available through other booking channels. The Appeals Board upheld the decision.

Source: European Commission, 2016, Guidance on the implementation/application of Directive 2005/29/EC on unfair commercial practices, available at http://ec.europa.eu/consumers/consumer_rights/unfair-trade/unfair-practices/index_en.htm (accessed 18 April 2017).

17. The Federal Trade Commission of the United States of America, in section 5 (a) of the Federal Trade Commission Act, prohibits “unfair or deceptive acts or practices in or affecting commerce” (see <https://www.ftc.gov/enforcement/statutes/federal-trade-commission-act>). According to the Commission, deceptive practices are those in which a representation, omission or practice misleads or is likely to mislead consumers. Most of the time, consumers are deceived by advertisements about products. The Commission has developed a guidance document on how to make clear and conspicuous disclosures in digital advertising (see <https://www.ftc.gov/tips-advice/business-center/guidance/com-disclosures-how-make-effective-disclosures-digital>). The general principle is that advertising must tell the truth and not mislead consumers, all claims must be substantiated and disclaimers must be clear and conspicuous (see <https://www.ftc.gov/tips-advice/business-center/guidance/advertising-marketing-internet-rules-road>; <https://www.ftc.gov/tips-advice/business-center/guidance/com-disclosures-how-make-effective-disclosures-digital>). In the United States, advertising agencies or website designers are responsible for reviewing the information used to substantiate advertisement claims.

18. In India, the Consumer Protection Act of 1986 establishes that the right to information is defined as “the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be so as to protect the consumer against unfair trade practices” (see http://ncdrc.nic.in/bare_acts/Consumer%20Protection%20Act-1986.html). Argentina, Brazil and Uruguay have similar legal frameworks to address misleading advertising, requiring information to be clear, accessible and accurate. In Brazil, Decree No. 7.962 of 15 March 2013 regulates e-commerce contracts, enforcing Consumer Protection Code 1990 with respect to off-premises contracts and establishing minimum detailed information requirements, underlining that information should be clear and accessible, to avoid misleading advertising.

B. Purchase

19. Consumers face a number of challenges during the purchase phase after they have decided to buy a certain product online. The most common challenges at this stage include unfair contract terms, online payment security and data protection and privacy, including in non-monetary transactions.

⁸ Contribution from the Government of France.

1. Unfair contract terms

20. Contract terms define the rights and duties of the parties bound by them. Guideline 14 (d) promotes “clear, concise and easy to understand contract terms that are not unfair”. The guidelines provide further guidance on the disclosure of accurate information in relation to contract terms and conditions for good business practices. Guideline 11 (c) encourages businesses to provide “complete, accurate and not misleading information regarding the goods and services, terms, conditions, applicable fees and final costs to enable consumers to take informed decisions”. It also urges businesses to ensure easy access to such information, especially to the key terms and conditions, regardless of the means of technology used.

21. The OECD Recommendation encourages businesses not to misrepresent or hide terms and conditions that are likely to affect the decisions of consumers regarding a transaction and not to use unfair contract terms (paragraphs 5 and 6).

22. The European Union directive on unfair terms in consumer contracts refers to the notion of good faith in order to prevent significant imbalances in the rights and obligations of consumers and traders (see <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31993L0013>). Terms that are unfair under the directive do not bind consumers. The directive requires contract terms to be drafted in plain and intelligible language, and states that ambiguities will be interpreted in favour of consumers (see http://ec.europa.eu/consumers/consumer_rights/rights-contracts/unfair-contract/index_en.htm#related_documents).

2. Online payment security

23. Online and mobile payments are payments made using the Internet and computers or mobile devices, through an existing personal account, usually a bank account, credit card or debit cards, or a payment service provider. In parallel with technological developments, the use of mobile devices by consumers in e-commerce payment transactions has been expanding. As noted in the UNCTAD manual on consumer protection, mobile payments are expected to make up 3 per cent of e-commerce payments by 2017 (see <http://unctad.org/en/PublicationsLibrary/webditclp2016d1.pdf>). Mobile devices are increasingly being used to make consumer-to-consumer and business-to-consumer payments in some developing countries, particularly those in which a large part of the population does not have access to financial services.

24. However, online and mobile payment systems present challenges for consumers. Consumers incur security risks when providing payments online. Consumer data can be accessible to unauthorized third parties without the knowledge and consent of the consumer. Challenges in some developing countries noted in responses to the UNCTAD questionnaire included delays in receipts of payments by traders; irreversible payments; late confirmations; and payments blocked between the bank, payment gateway or company to which payment was made without the consumer being aware of where the payment has been detained. Some of these challenges may arise from poorly developed Internet networks. For example, in Germany, 13 per cent of consumers have been affected by unjustified invoices for the services of third party providers.⁹

25. In 2014, the International Consumer Protection and Enforcement Network (ICPEN) issued a report on mobile payments, based on, among other sources, the results of a survey circulated to ICPEN member States, which noted that mobile payments related to premium short message services were the major source of problems for consumers, and referred to “stronger authentication and authorization procedures” as a way to address this challenge (see http://www.icpen.org/files/icpenDownloads/ICPEN_Mobile_Pays_Rpt_FINAL.pdf).

26. Guideline 14 (e) promotes national policies that encourage “a transparent process for the confirmation, cancellation, return and refund of transactions”. Guideline 14 (f) promotes national policies to ensure “secure payment mechanisms” (see boxes 4 and 5).

⁹ Contribution from the Government of Germany.

Box 4

Innovative payment methods to address some consumer protection challenges: China

In China, an increasingly widespread practice is the third-party payment method, whereby a consumer deposits the due amount with a third party who keeps it until the consumer receives the goods without complaint, at which time the payment is transferred to the trader. This escrow system also provides for fair, accessible, rapid and low-cost online mediation.

Source: Y Yu, 2016, Escrow in e-commerce, presented at the seventh meeting of the UNCTAD Research Partnership Platform, Geneva, 19 October, available at <http://unctad.org/en/Pages/MeetingDetails.aspx?meetingid=1157> (accessed 18 April 2017).

27. The OECD Recommendation calls upon Governments and stakeholders to develop minimum levels of consumer protection for e-commerce payments, regardless of the payment mechanism used. The OECD consumer policy guidance on mobile and online payments aims to shape consumer protection and industry practices in the area of online and mobile payments, while recognizing the benefits of innovative payment systems for consumers (see http://www.oecd-ilibrary.org/science-and-technology/consumer-policy-guidance-on-mobile-and-online-payments_5jz432c11ns7-en).

28. ICPEN, in its common statement on consumer protection in mobile payments, encourages stakeholders in mobile payment systems to apply the following four principles in order to achieve the same high level of protection for all types of payment services: promotion of sufficient security mechanisms; non-liability of consumers for unauthorized transactions; setting of limits to consumer liability for unauthorized transactions proportionate to the level of consumer negligence; and clear and adequate information to consumers about individual purchases, terms and conditions of transactions and available redress mechanisms. ICPEN encourages stakeholders to give appropriate regard to consumers who may be vulnerable due to their age, experience or digital literacy.¹⁰

Box 5

Measures taken to ensure payment security: Pakistan

Pakistan has witnessed high growth rates in mobile banking services, especially since the Pakistan Telecommunication Authority undertook a nationwide biometric verification of subscribers' identity module cards against their identification data. This led to the cancellation of all non-verified cards by a specified deadline. With cards verified against personal data, it has become easier for consumers to open basic branchless banking accounts from their mobile telephones at most major banks in the country. Pakistan thereby promotes financial inclusion without unnecessary paperwork and verification.

Source: Contribution from the Government of Pakistan.

3. Data protection and privacy

29. Consumers may be more at risk when making purchases online. The use of credit and debit cards during purchases made via the Internet has led to an increase in the frequency with which personal information about consumers is collected and traded by

¹⁰ ICPEN, 2013, Common statement: Consumer protection in mobile payments, available at <https://www.icpen.org/for-consumer-experts/library?downloads=1&keywords=mobile+payments&cat%5B2%5D=0&cat%5B1%5D=0&cat%5B210%5D=0&cat%5B3%5D=0&cat%5B4%5D=0&cat%5B32%5D=0&cat%5B302%5D=0> (accessed 18 April 2017).

providers and intermediaries.¹¹ Personal data is valuable for online businesses because it contributes to their market intelligence and facilitates individual consumer profiling. Challenges related to privacy and data protection include lack of knowledge of how data collected is used online, liability for data breaches, data sharing among third parties and applicable law and jurisdiction. Concerns about privacy are consistent across age, gender, country and personality.¹²

30. Guideline 11 (e) on the protection of privacy encourages businesses to “protect consumers’ privacy through a combination of appropriate control, security, transparency and consent mechanisms relating to the collection and use of their personal data”. Guideline 66 (g) calls on member States to establish or encourage “appropriate controls to protect consumer financial data, including from fraud or abuse”. Guideline 14 (h) promotes national policies to ensure consumer privacy and data security.

31. The OECD Recommendation encourages businesses to protect consumer privacy by ensuring that their practices related to the collection and use of consumer data are lawful, transparent and fair, enable consumer participation and choice, and provide reasonable security safeguards (paragraph 48). Paragraph 49 states that businesses “should manage digital security risk and implement security measures for reducing or mitigating adverse effects relating to consumer participation in e-commerce”. Consumers increasingly acquire free goods and services in exchange for their personal data. The OECD Recommendation covers such non-monetary transactions, and calls upon Governments and stakeholders to consider ways to provide redress for consumers experiencing problems with such transactions.

32. The OECD policy guidance on online identity theft describes how to strengthen and develop effective strategies to combat online identity theft, and explores how the education and awareness of stakeholders may be enhanced to prevent such theft (see <http://www.oecd.org/sti/ieconomy/onlineidentitytheft.htm>). Identity theft occurs when a party acquires, transfers, possesses or uses personal information of a natural or legal person in an unauthorized manner, with the intent to commit, or in connection with, fraud or other crimes. For example, France has recently recognized the right of consumers to recover the information held by online communications services businesses (Law No. 2016-1321).

33. The revised OECD *Recommendation of the Council concerning Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data* contains basic principles, including on collection limitation, data quality, purpose specification, use limitation, security safeguards, openness, individual participation, accountability, implementation and interoperability (see <http://www.oecd.org/internet/ieconomy/privacy-guidelines.htm>).

34. Researchers have noted that the next generation of e-commerce will be conducted by digital agents based on algorithms, which will choose products and perform transactions. One study refers to such digital agents as algorithmic consumers.¹³ Despite their benefits, algorithmic consumers will increase the vulnerability of consumers to risks in areas such as privacy and cybersecurity. Algorithmic consumer systems are capable of collecting, registering and aggregating enormous amounts of personal data, which may be accessed by unauthorized parties without consumer consent.

35. One policy response to data protection concerns is to provide consumers with the opportunity to obtain access to and use their own information, referred to as data

¹¹ Association of Southeast Asian Nations (ASEAN)-Australia Development Cooperation Programme and UNCTAD, 2016, Project on strengthening technical competency on consumer protection in ASEAN: E-commerce module, available at <http://aadcp2.org/six-modules-strengthening-technical-competency-consumer-protection-asean/> (accessed 18 April 2017).

¹² Contribution from Consumers International.

¹³ MS Gal and N Elkin-Koren, 2017, Algorithmic consumers, *Harvard Journal of Law and Technology*, 30(2).

portability.¹⁴ OECD promotes data portability to empower consumers and increase competition between the providers of digital products, by reducing information asymmetries, limiting switching costs for consumers and reducing barriers to entry.

C. Post-purchase

36. Concerns during the post-purchase phase include liability and arrangements for the return of goods and refunds when goods are not delivered, delivered in an unsatisfactory condition or materially differ from the goods ordered. During this phase, consumers may have difficulties reaching providers or finding a means of communicating with businesses. Possible measures to protect online consumers in this phase include providing for a cooling off period for online purchases and limiting consumer liability in the digital marketplace. Other issues encountered at this stage are discussed in this section.

1. Dispute resolution

37. Dispute resolution is a recurrent challenge, especially in cross-border e-commerce. Guideline 11 (f) addresses consumer complaints and disputes, and encourages businesses to “make available complaints-handling mechanisms that provide consumers with expeditious, fair, transparent, inexpensive, accessible, speedy and effective dispute resolution without unnecessary cost or burden”. Guidelines 37–41 address dispute resolution and redress. Guideline 37 promotes “fair, effective, transparent and impartial mechanisms to address consumer complaints through administrative, judicial and alternative dispute resolution, including for cross-border cases”.

38. Conventional dispute resolution systems involve some difficulties in terms of applicable law and jurisdiction, particularly in e-commerce disputes. Such challenges have led to the development of alternative dispute resolution mechanisms, which offer easier, faster and less expensive out-of-court solutions to disputes between consumers and traders. One study notes that these features have led to “conventional dispute resolution via State courts being largely ineffective and, in practice, often wholly inaccessible to the Internet consumer”.¹⁵

39. In alternative dispute resolution systems, consumers can settle legal conflicts and disputes privately, without initiating litigation in public courts. When such procedures are carried out online, they are called online dispute resolution (see box 6). Alternative dispute resolution procedures can take different forms and names, such as mediation, arbitration, conciliation, ombudsmen and complaints boards (see http://ec.europa.eu/consumers/solving_consumer_disputes/non-judicial_redress/adr-odr/index_en.htm). The two most popular types of alternative dispute resolution are mediation and arbitration. In mediation, a neutral third party or mediator helps parties resolve a problem through facilitated dialogue. Arbitration is less formal than a court, but may involve hearings and require the presentation of evidence. Unlike a mediator, an arbitrator makes a decision or award once the case has been presented. The decision may be legally binding (see <http://www.consumer.ftc.gov/articles/0162-alternative-dispute-resolution>). For example, the United States business association Better Business Bureau provides alternative dispute resolution and/or online dispute resolution for consumer complaints in the automotive, telecommunications and moving and storage sectors.

40. The OECD Recommendation states that “consumers should be provided with meaningful access to fair, easy-to-use, transparent and effective mechanisms to resolve domestic and cross-border e-commerce disputes in a timely manner and obtain redress, as appropriate, without incurring unnecessary cost or burden” (paragraph 43). It refers to

¹⁴ OECD, 2017, Key issues for digital transformation in the G20 [Group of 20], available at <https://www.bmw.de/Redaktion/EN/Pressemitteilungen/2017/20170112-bundeswirtschaftsministerium-und-oecd-geben-startschuss.html> (accessed 18 April 2017).

¹⁵ L Edwards and C Wilson, 2007, Redress and alternative dispute resolution in cross-border e-commerce transactions. European Parliament Briefing Note.

out-of-court mechanisms, such as internal complaints handling and alternative dispute resolution.

Box 6

Online dispute resolution platforms: Brazil, Mexico and the European Union

In Brazil, the National Consumer Secretariat created an online conciliation mechanism in 2014 (see <http://www.consumidor.gov.br>). This public service allows direct exchanges between consumers and providers to resolve disputes online. Currently, 80 per cent of complaints are conciliated, satisfying consumer complaints in an average 7 days. This service is provided by the State to promote direct interaction between consumers and suppliers, to reduce consumer conflicts. Participation is only open to companies that voluntarily and formally register in the system.

Mexico launched an online dispute resolution mechanism in 2008, hosted by the Office of the Federal Prosecutor for the Consumer (see <http://concilianet.profeco.gob.mx/Concilianet/comoconciliar.jsp>). The mechanism provides consumers who have purchased goods or services, either online or offline, access to a paperless and bureaucracy-free conciliation system, through which they can initiate and resolve complaints on an Internet-based virtual platform.

The European Commission launched a dispute resolution platform in 2016 to help consumers and traders solve disputes online over purchases made online (see <http://ec.europa.eu/consumers/odr/main/index.cfm>).

2. Redress

41. Challenges with regard to redress include lack of clarity on who is liable in the event of a problem, particularly if multiple providers are involved, and lack of access to easy and effective redress and enforcement. According to a Consumers International survey on global consumer protection, in 2013, 32 per cent of countries had alternative dispute resolution in place for e-commerce, compared to 48 per cent reporting similar tools for telecommunications services.

42. Guideline 37 promotes measures to enable consumers to obtain redress through expeditious, fair, transparent, inexpensive and accessible procedures, and states that “such procedures should take particular account of the needs of vulnerable and disadvantaged consumers”. Guideline 39 states that “information on available redress and other dispute-resolving procedures should be made available to consumers” and encourages enhancing access to dispute resolution and redress mechanisms, particularly in cross-border disputes.

43. The OECD Recommendation encourages businesses to provide redress for consumers for the harm suffered because of goods or services that are defective, damage their devices or do not meet the advertised quality criteria, or where there have been delivery problems.

44. Both the guidelines for consumer protection and the OECD Recommendation urge Governments to ensure that consumer protection enforcement authorities and other relevant bodies have the ability to take action and obtain or facilitate redress for consumers.

45. According to a Consumers International survey, in 2012, of 60 countries that responded to the survey, compensation orders were granted in only 53 per cent.¹⁶ In Chile and the United States, class action is a powerful tool to obtain redress for consumers, while in the European Union, emphasis is given to alternative dispute resolution mechanisms. With regard to e-commerce, payment medium mechanisms seem to be an effective method of consumer redress. Chargeback for payment card holders originated in the United States as a legal right for consumers and is applied in the European Union as a contractual right

¹⁶ Contribution from Consumers International. Also see <http://www.consumersinternational.org/news-and-media/resource-zone/state-of-consumer-protection>.

for consumers, thus functioning as an effective tool for consumer redress both in the United States and the European Union. In China, escrow is widely accepted by e-commerce consumers to guarantee their transactions, but is *lex mercatoria* and not backed by legislation, yet functions better than statutory routes for consumer redress in China.¹⁷

3. Cross-border e-commerce

46. Cross-border e-commerce brings together consumers and businesses from different jurisdictions and therefore presents the following particular challenges for consumers:¹⁸

- (a) Dealing with unfamiliar brands in an unfamiliar language
- (b) Lack of certainty in receiving a product as described or ordered (for example, not a counterfeit or scam)
- (c) Hidden costs, including those related to customs duties and currency conversion, as well as shipping or delivery
- (d) Conformity of products to local standards
- (e) Lack of clarity on protections afforded by a seller's jurisdiction, redress available in the event of a dispute and enforcement of awards due to consumers.

47. Guideline 82 promotes cooperation between member States in combating fraudulent and deceptive cross-border commercial practices. Guideline 88 states that member States should provide their consumer protection enforcement agencies with the authority to investigate, pursue, obtain and, where appropriate, share relevant information and evidence, particularly on matters relating to cross-border fraudulent and deceptive commercial practices. That authority should extend to cooperation with foreign consumer protection enforcement agencies and other appropriate foreign counterparts. Guideline 90 promotes international guidelines and standards on protecting consumers from fraudulent and deceptive cross-border commercial practices.

48. Consumer confidence is essential for cross-border transactions. The OECD Recommendation states that Governments should "consider the role of applicable law and jurisdiction in enhancing consumer trust in e-commerce". In the European Union, consumers are more confident buying online domestically (61 per cent confident) than from other member States (38 per cent confident).¹⁹ In a 2011 survey of cross-border trade in the European Union, 44 per cent of consumers said that they were discouraged from buying from another European Union member State due to uncertainty about their rights.²⁰

4. Protection of children and e-commerce

49. The OECD Recommendation calls upon Governments and stakeholders to determine the changes that may be necessary to address the special circumstances of e-commerce, including for children and vulnerable or disadvantaged consumers.

50. The OECD policy guidance for addressing emerging consumer protection and empowerment issues in mobile commerce provides examples of situations in which problems could arise when children access mobile devices and purchase products without the knowledge or consent of their guardians (see http://www.oecd-ilibrary.org/science-and-technology/oecd-policy-guidance-for-addressing-emerging-consumer-protection-and-empowerment-issues-in-mobile-commerce_230363687074). Children can make such purchases without having to provide appropriate authentication before making payment commitments. To address this issue, the OECD policy guidance provides for certain

¹⁷ UNCTAD, 2017, Research Partnership Platform project on best practices in consumer redress, available at <http://unctad.org/en/Pages/DITC/CompetitionLaw/ResearchPartnership/Consumer-Redress.aspx> (accessed 18 April 2017).

¹⁸ Contribution from Consumers International.

¹⁹ Contribution from Consumers International. Also see European Union, 2015, Consumer conditions scoreboard, available at http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/index_en.htm (accessed 18 April 2017).

²⁰ UNCTAD, 2015.

measures that stakeholders may take, such as providing parents with the ability to set a ceiling that would limit the amount of charges that children could accrue using mobile telephones. The OECD consumer policy guidance on mobile and online payments recommends that Governments, businesses and other stakeholders take measures to enable parents or guardians to monitor and limit children's mobile and online payments for goods and services.

II. Fostering consumer confidence in e-commerce

51. The rapid development of digital technology has provided new opportunities for consumers and enabled access to new services, such as mobile payments that provide access to financial services for those who do not have access to formal banking services. For e-commerce to continue to grow and generate economic benefits, consumers need to trust digital markets.

52. Fostering consumer confidence in e-commerce has thus been an important element since the start of discussions on e-commerce in international forums. Since 2000, the UNCTAD Programme on E-commerce and Law Reform has supported developing countries in Africa, Asia and Latin America in their efforts to establish legal regimes that address issues raised by e-commerce, to ensure trust in online transactions, ease the conduct of domestic and international trade online and offer legal protection for users and providers of e-commerce (see http://unctad.org/en/Pages/DTL/STI_and_ICTs/ICT4D-Legislation.aspx).

53. Based on responses to the UNCTAD questionnaire on consumer protection in e-commerce, the main building blocks in fostering consumer confidence in e-commerce include the following:

- (a) Establish a good Internet infrastructure for e-commerce
- (b) Set up a robust legal and institutional framework governing e-commerce and redress processes
- (c) Adapt existing regulatory systems to the particular requirements of e-commerce
- (d) Ensure effective enforcement of relevant laws
- (e) Provide e-commerce consumers with a level of protection not less than that afforded in other forms of commerce
- (f) Require full disclosure of all necessary information related to businesses, goods and services and transaction
- (g) Ensure the reliability and security of online payments regardless of the payment method, and protect consumer privacy and data
- (h) Prevent misuse of consumer data
- (i) Guarantee authenticity of online reviews and ratings
- (j) Provide consumers with access to effective dispute resolution mechanisms and redress
- (k) Ensure consumer education and empowerment
- (l) Ensure the delivery of goods and after-sale services
- (m) Improve customer support to fully respond to after-sale requests
- (n) Ensure regional and international cooperation to fight unfair commercial practices and to overcome legal limitations impeding consumer protection authorities from taking action in the event of cross-border breaches of consumer protection law.

54. The following sections explain some of these building blocks.

A. Appropriate legal framework and enforcement

55. Appropriate legislation to address consumer protection challenges in e-commerce is essential. Digital technology and e-commerce are evolving, and member States need to revise legislation in order to accommodate emerging issues, in accordance with guideline 64.

56. Many countries have a legal framework for e-commerce transactions and many promote self-regulation by businesses. The type and extent of legislation vary significantly among countries. For example, El Salvador, Mexico and Peru rely on general civil law to address e-commerce issues, while Chile, Colombia, France, the Russian Federation and the United States, among others, have special provisions on e-commerce in consumer protection laws.²¹ Some countries have specific e-commerce legislation.²² E-commerce is also dealt with in various laws, such as those regulating credit card sales, competition, distance sales, telecommunications and unfair competition.

57. UNCTAD research shows that the availability of relevant laws in electronic transactions, consumer protection, privacy and data protection and cybercrime are essential for enhancing consumer confidence in e-commerce. Among these four areas, adoption levels are lowest for laws protecting consumers online. Of 119 countries for which data are available, 93 (of which 58 are developing countries or countries with economies in transition) have adopted consumer protection legislation related to e-commerce.²³

58. Effective law enforcement is a key element in protecting consumers from harmful and abusive practices in the digital marketplace. The handling of consumer issues in e-commerce is more complex due to factors such as the absence of a physical business, the cross-border nature of e-commerce transactions and insufficient levels of Internet awareness in some jurisdictions and among some consumer groups. Actions related to e-commerce taken by consumer protection authorities include law enforcement actions, research studies, educational programmes, opinion polls, workshops and Internet observatories and sweeps.

B. Consumer education

59. Guideline 42 encourages member States to develop general consumer education and information programmes to enable people to make informed choices of goods and services and to raise awareness of their rights and responsibilities. Special attention should be given to the needs of vulnerable and disadvantaged consumers, in both rural and urban areas, including low-income consumers and those with low or non-existent literacy levels. Guideline 43 states that “consumer education should, where appropriate, become an integral part of the basic curriculum of the educational system, preferably as a component of existing subjects”. Guideline 44 lists the important aspects of consumer protection that should be covered by education and information programmes, and includes e-commerce (subparagraph (g)).

60. The OECD Recommendation encourages Governments and stakeholders to work together “to educate consumers, government officials and businesses about e-commerce to foster informed decision-making. They should work towards increasing business and consumer awareness of the consumer protection framework that applies to their online activities, including their respective rights and obligations, at domestic and cross-border levels” (paragraph 50).

61. The policy recommendations on consumer education of the OECD Committee on Consumer Policy indicate that it is important to educate parents and children about their

²¹ TD/B/C.I/CLP/23.

²² For example, Malaysia (Electronic Commerce Act 2006), Peru (Law No. 27269), Poland (Act of 18 July 2002 on Providing Services by Electronic Means) and the Republic of Korea (Act on the Consumer Protection in Electronic-Commerce).

²³ UNCTAD, 2015.

respective responsibilities online, as well as the techniques that are frequently used online to market products (see <http://www.oecd.org/sti/consumer/recommendationsandpolicyguidance>).

62. Consumer education should go beyond raising awareness among consumers of their rights and obligations, to targeting the prevention of damaging practices, such as online frauds and scams. Appropriate strategies need to be developed to educate consumers in these areas. With regard to awareness-raising material that is easy to read or listen to and understand, one example is the “tips for a fine time shopping online” issued by the Australian Competition and Consumer Commission that provides Internet users with hints on how to protect their security and trade safely online (see <http://www.accc.gov.au/publications/tips-for-a-fine-time-shopping-online>).

C. Good business practices

63. To complement the efforts of Governments and civil society to build trust in e-commerce, businesses must also play an important role. There is a need for better business practices to enhance consumer trust, especially in cross-border e-commerce. Businesses may respond to such needs by engaging in self-regulation, trustmarks, codes of conduct and best practices.

64. The Better Business Bureau promotes good business practices and self-regulation in the field of consumer protection and is especially active in e-commerce. Its code of business practices includes eight principles – build trust, advertise honestly, tell the truth, be transparent, honour promises, be responsive, safeguard privacy and embody integrity – and its ratings contribute to consumer trust in the digital market (<http://www.bbb.org/wisconsin/for-businesses/about-accreditation/bbb-code-of-business-practices-bbb-accreditation-standards>).

65. The field in which self-regulation has perhaps yielded the most tangible results is that of advertising. There are multiple initiatives in developed countries, such as the codes adopted by the European Advertising Standards Alliance (see <http://www.easa-alliance.org>) and the Self-Regulatory Principles for Online Behavioural Advertising in the United States (see <https://www.iab.com/news/self-regulatory-principles-for-online-behavioral-advertising/>). In addition, the Network of the Latin American Self-regulation Advertising Organisms was created in 2007 to promote responsible advertising and freedom of speech (see <http://www.ucepcol.com/conared>).

D. International cooperation

66. The General Assembly, in its resolution 70/186, considered that “Member States, businesses, consumers and their representatives should devote special attention to the development of effective consumer protection in e-commerce and that certain consumer protection issues, such as applicable law and jurisdiction, may be addressed most effectively through international consultation and cooperation”. When consumers face a conflict or dispute regarding a cross-border transaction, applicable law and jurisdiction is often an issue. The applicable laws and competent courts in any given consumer situation or dispute are governed by the international private law rules of member States. Therefore, there is a need for international consultations and cooperation to address jurisdictional issues in cross-border e-commerce, as well as to develop a common understanding in implementing the necessary measures to address such issues.

67. The guidelines for consumer protection encourage member States to develop mechanisms to exchange information on policies and measures related to general consumer protection issues, and promote the exchange of consumer information and education programmes and joint training programmes and the elaboration of regulations. Guideline 80 promotes the development of “information links regarding products which have been banned, withdrawn or severely restricted in order to enable other importing countries to protect themselves adequately against the harmful effects of such products”. Guideline 83 encourages consumer protection enforcement agencies to coordinate investigations and enforcement activities and guideline 85 encourages member States and their consumer

protection enforcement agencies to make use of existing international networks and enter into appropriate bilateral and multilateral arrangements and other initiatives to implement the guidelines. Guidelines 88–90 refer to cross-border commercial practices. Although not specifically mentioned, all of these recommendations are applicable in e-commerce.

68. An example of fostering cooperation in consumer protection in e-commerce is the ICPEN e-consumer initiative, a tool developed to enhance consumer protection and confidence in e-commerce that allows consumers in countries of member agencies to lodge complaints online (see <http://econsumer.gov>). See box 7 for an example of regional cooperation.

Box 7

Regional cooperation: European Consumer Centres Network

The European Consumer Centres Network is a network of 30 offices in the 28 European Union member States, Iceland and Norway that aims to provide free-of-charge help and advice to consumers on cross-border purchases, also covering online purchases (see http://ec.europa.eu/consumers/solving_consumer_disputes/non-judicial_redress/ecc-net/index_en.htm). The Network advises consumers of their rights, assists them in resolving complaints against traders based in other countries and redirects consumers to the appropriate body. The centres provide assistance in a variety of consumer issues, including online shopping and the most frequent Internet-based frauds.

III. The role of UNCTAD in consumer protection in e-commerce

69. The General Assembly, in its resolution 70/186, decided to establish the Intergovernmental Group of Experts on Consumer Protection Law and Policy, within the framework of an existing commission of the Trade and Development Board of UNCTAD, to provide the international institutional machinery for the guidelines for consumer protection. The functions of the Intergovernmental Group of Experts are detailed in guideline 97. UNCTAD, through the Intergovernmental Group of Experts, provides an international forum for dialogue, networking and exchanging experiences and best practices in the area of consumer protection. The first session of the Intergovernmental Group of Experts was held in 2016, with more than 300 participants from consumer protection authorities, civil society, academia, legal practices and business associations.

70. Current challenges in consumer protection, particularly in developing countries, include a shortage of human and financial resources, lack of adequate information technology connectivity, lack of networking facilities and insufficient expertise in specific legislation. UNCTAD recognizes these challenges and the pressing need for appropriate legal frameworks and strong institutions to protect consumers in e-commerce.

71. The UNCTAD mandate in the area of consumer protection, including in e-commerce, comprises exploring the interface between competition and consumer protection issues, reviewing and advising member States on consumer protection laws and policies, conducting training and capacity-building activities in consumer protection issues for member States and supporting regional and multilateral initiatives.

72. In 2015, UNCTAD launched a global cyberlaw tracker, the first global mapping of cyberlaws, which tracks the state of e-commerce legislation in the fields of electronic transactions, consumer protection, data protection and privacy and cybercrime adoption in the 194 member States of UNCTAD. The tracker indicates whether or not a given country has adopted legislation or has a draft law pending adoption in the above-mentioned areas of law.

73. UNCTAD has developed soft law tools to provide guidance to member States. In this context, in 2016, UNCTAD revised its manual on consumer protection, including for the first time a chapter on e-commerce, providing guidance on the scope and extent of e-commerce and consumer trust in digital markets and reviewing the OECD frameworks on

applicable law, the identification of providers, the authentication of consumers and privacy issues.

74. UNCTAD implements capacity-building programmes for developing countries in the area of consumer protection and competition policies. In Ethiopia, for example, UNCTAD has reviewed existing consumer protection legislation and drafted a report including issues that may be addressed by the Trade Competition and Consumer Protection Authority. One of the recommendations is to consider incorporating e-commerce provisions into the Trade Competition and Consumer Protection Proclamation.

75. The longstanding UNCTAD programme on consumer protection issues, the regional programme for Competition and Consumer Protection for Latin America (COMPAL), provides technical cooperation and capacity-building in 16 countries in the region. In 2015, COMPAL provided training on e-commerce and consumer protection through the National Institute for the Defense of Competition and Protection of Intellectual Property-COMPAL school. In 2017, COMPAL plans to host a workshop on competition and consumer protection in digital markets in Uruguay.

76. Under its regional capacity-building programme on competition and consumer protection policies in the Middle East and North Africa, UNCTAD has delivered a regional training workshop on e-commerce and complaints handling in Lebanon. The programme aims to draft guidelines on best practices in e-commerce investigations and develop related materials for both online and face-to-face training courses.

IV. The way forward for Intergovernmental Group of Experts work on consumer protection in e-commerce

77. Taking into account the interest of member States in consumer protection in e-commerce, the second session of the Intergovernmental Group of Experts may wish to consider establishing a working group on e-commerce to further expand its work on the issue throughout the year, explore more concrete aspects of consumer protection in e-commerce and report on its work and provide recommendations at the third session of the Intergovernmental Group of Experts.

78. The working group may adopt the same methodology as that used for the revision of the guidelines for consumer protection. It may work under the leadership of one or more member States, with participation by other interested member States and relevant stakeholders on a voluntary basis, with the support of the UNCTAD secretariat.

79. The working group may study issues including, but not limited to, the following:

- (a) Promoting effective cooperation in cross-border e-commerce
- (b) Promoting good business practices, compliance and self-regulation in consumer protection in e-commerce
- (c) The effectiveness of online consumer education campaigns
- (d) Regulatory challenges and responsibility regimes in the collaborative economy.