Online Dispute Resolution and Consumer Claims: Challenges in System, Process and Governance Design

Submitted by: University of Melbourne
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Public-Private Dialogue (PPD) on Promoting Consumer Protection in the Dispute Resolution and Redress Mechanisms in e-Commerce
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Virtual Public-Private Dialogue
Context – ODR and consumer redress system

Lack of access to dispute resolution mechanisms and redress for consumers

Can ODR present a solution?

• Augment and improve existing consumer ADR and or tribunal or judicial mechanisms
• Facilitate fair, early, informal and efficient resolution of disputes
• No longer unique to private e-commerce providers
• Many formal legal systems have integrated some form of ODR/considering its suitability (BC - Civil Resolution Tribunal, EU - ADR/ODR Platform, US - Utah District Court, UK - Civil Courts Structure Review)
• Local pilots in NSW, VIC and SA (Australia) – limited or in other contexts
Challenges?

1) Whether and to what extent an ODR system is contextually suitable for resolution of consumer claims by courts and tribunals?
   • Considering the core objectives of consumer dispute resolution and the characteristics of consumer transactions and disputes
   • Cross-border – varies between economies

2) Whether a consumer ODR system and its process architecture can be designed to be consistent with the principles and values that are fundamental in a publicly-sanctioned dispute resolution system and crucial to the due administration of civil justice?

3) Whether a consumer ODR system can be designed to produce appropriate substantive outcomes?
System Design: Consumer dispute resolution objectives

1. Safe goods and services
2. Interests based vs. rights based
3. Collective vs. private interests
4. Fairness in the market
5. Correcting market failures
6. Efficient, cheap resolution
7. Deterrence and behavioural change
8. Formal justice, personal & community justice

How will these affect system and process design choices for a consumer ODR?

What values should be promoted in a consumer ODR?

What kind of justice should the consumer ODR platform produce?
Process and Governance Design: Overarching values and justice

- Equal access
- User experience
- Support and alternative services
- Cognisant of characteristics of consumers & consumer transactions

- Resolution objectives (contingent on nature of disputes) → system design choices + process design choices
  - What kind of justice?
  - Control over DSD and process?

- Due process
- Algorithmic expertise
- Biases, power, control, trust
- Appeals & enforcement
- Evaluation

Equal access

Neutrality of substantive outcomes & legal validity

Transparency and accountability
Conclusion

• A comprehensive ODR system should be integrated within existing judicial or tribunal mechanisms

• Some consumer claims will require formal adjudication

• Resolution of other types of consumer claims, including small consumer claims or claims with lower factual and legal complexity, a mechanism such as ODR can be highly useful

• Even when integrated in a lesser extent (e.g. an online evaluation or exploration tool), ODR can already potentially address some of the real tensions that exist between the need for consumers to obtain redress and the availability of appropriate dispute resolution mechanisms
Thank you

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