



**Asia-Pacific
Economic Cooperation**

2021/CTI/DIA1/005

Session: 2

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

Submitted by: University of Melbourne



**Public-Private Dialogue on Promoting
Consumer Protection in the Dispute
Resolution and Redress Mechanisms in E-
Commerce
27-29 April 2021**



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MELBOURNE

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

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Public-Private Dialogue (PPD) on Promoting Consumer Protection in
the Dispute Resolution and Redress Mechanisms in e-Commerce

27 - 29 April 2021

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



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



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

Neutrality of
substantive
outcomes & legal
validity



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

Transparency and
accountability



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



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



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Thank you

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