

GSR 2019 Discussion Paper

GSR-19 Discussion Paper on managing the communications process between consumers and regulators and consumers and providers of products and services in the digital economy

Building confidence in a data driven economy by assuring consumer redress

Work in progress, for discussion purposes

Comments are welcome!

Please send your comments on this paper at: gsm@itu.int



The views expressed in this paper are those of the author and do not necessarily reflect the opinions of ITU or its Membership.

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BUILDING CONFIDENCE IN A DATA DRIVEN ECONOMY BY ASSURING CONSUMER REDRESS

Author: G Alan Horne

1 Introduction

We are all Stakeholders – for better or for worse

The Internet enables people to choose to live their lives, not in isolation or within a closed local community, but connected to fellow humans throughout the entire globe independent of location. The Internet provides humanity with a tool, shrinking distance, increasing scope and speed of connectivity and allowing access to information everywhere at any time. It is a tool for good, enabling a “digital economy” as well as social interaction. However, it is also a tool that can be misused by criminals and people who wish us harm - such as hate speech, bullying, abusive images, targeted misinformation shaping decisions not in the interest of many, fraud and mis-selling. Some even say it is actually a threat to democracy through inappropriate and criminal use of social media and other online platforms.

Regulation is about far more than market moderation

Policy makers and regulators (referred to in this paper as National Regulatory Authorities¹ (NRAs)), responsible for the information and communication technologies (ICT), have played a significant role in getting people online, by creating the environment assisting the investment and growth of high-speed connectivity, content, services, and applications and other building blocks of the Internet. This has resulted in the growth of competing Internet service providers (ISPs) and platforms and growth of the digital economy. NRAs are now, in some nations, responsible for regulating media as well as post and telecommunications – multi-media or converged regulators. Under review now is the need to add responsibility for online safety, data protection, privacy and other related issues. NRAs are under pressure to coordinate efforts, through effective communications with consumers, other regulators and providers, to ensure increasingly stronger consumer online protection and when things go wrong, an effective redress process.

National roles need to be shaped and informed by global contexts

This discussion paper will examine consumer rights to protection, in particular complaint handling and redress, in a global digital economy and aims to assist NRAs in furthering their plans to improve the consumer’s overall experience. Although it will mention some of the new technology developments, such as block chain, the paper focuses on general procedures for consumer protection and redress which are technology neutral.

The paper will provide country case studies of existing initiatives and policies, laws and regulations. It will include examples of best practice and make recommendations to improve effectiveness covering such areas as:

- i. collaborative development of consumer protection policies, regulation and mechanisms:
 - a. across the sector: media, ICT, competition, as well as products and services;
 - b. between different policy making ministries such as those responsible for utilities, finance & business, education, health, agriculture and tourism;
 - c. between policy makers and regulators; different regulators; regulators and industry; regulators and consumer associations;
- ii. consumer complaint handling and empowerment initiatives and mechanisms in policies, laws and regulations to foster more effective consumer complaint handling mechanisms with industry;
- iii. Impact of cross border activities.

¹ Unless stated otherwise in this paper NRA is used to mean the regulatory authority responsible for ICT

Reference is made to the ITU Global ICT Regulatory Outlook 2018² and in particular the relevant sections on developments in the field of consumer protection and regulatory collaboration. The report is based on regulatory experience from 190 countries and benchmarks regulatory progress worldwide. Regulatory topics are analysed using graphic analysis and complemented by country experiences. The strength and credibility of the report is based on the fact that data has been collected directly from operational staff within ICT regulators worldwide.

In this discussion paper the author uses the UK, UAE, New Zealand, Singapore and Estonia as a first group of countries to be examined.³ Reference is made to past ITU studies and discussion papers such as Consumer Protection in the Online World, GSR discussion paper 2014⁴ and best practice guidelines,⁵ ITU Question 6/1⁶ concerning consumer information, protection and rights: Laws, regulation, economic bases and consumer networks. Reference will also be made to such sources as Organisation for Economic Cooperation and Development (OECD) recommendations,⁷ and United Nations (UN) Guideline for Consumer Protection.⁸

The paper aims to answer such questions as: 1) How can people be protected and allow the benefits to prevail within the digital economy? 2) Is there a need to rethink consumer protection in the digital age and if so, what changes to structures and processes are needed to take account of the digital economy? 3) Who is in charge, the ICT regulator or the consumer protection agency, when it comes to consumer complaints with regard to digital services? 4) What can national regulators do to improve collaborative working with cross sector regulators on consumer protection? 5) How should regulators work with the industry and which other stakeholders they should work with? 6) When products and services are faulty, bought over the Internet from on shore or off shore, how does the consumer seek redress?

The paper is structured:

- Section 1 – Introduction
- Section 2 – Consumer Protection
- Section 3 – NRA collaborative working
- Section 4 – Looking forward
- Section 5 – Conclusions

The paper will be presented at the Global Symposium for Regulators 2019 (GSR-19) to regulators drawn from the 190 plus Member States of the International Telecommunication Union (ITU).

² https://www.itu.int/pub/D-PREF-BB.REG_OUT01-2018

³ These countries have been identified, in the Digital Planet 2017³ study conducted by the Fletcher School of Law and Diplomacy as “Stand Out” countries. The study covered 60 countries and looked at global digital integration and evolution producing a Digital Evolution Index (DEI) using more than 100 indicators. The UK particularly is used as a reference as it is one of the oldest and most developed regulatory environments. Policies, principles, legal instruments and processes are largely the same independent of the size of the country. The UK is taking a lead in proposals to regulate harm over the internet and has new proposals to strengthen consumer advocacy which are also seen as relevant to small and less developed countries.

⁴ https://www.itu.int/en/ITU-D/Conferences/GSR/Documents/GSR2014/GSR14_consumer%20protection.pdf

⁵ https://www.itu.int/en/ITU-D/Conferences/GSR/Documents/GSR14_BPG_final_en.pdf

⁶ <https://www.itu.int/pub/D-STG-SG01.06.3-2017>

⁷ OECD (2016), Recommendation of the Council on Consumer Protection in E-commerce, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264255258-en>

⁸ https://unctad.org/en/PublicationsLibrary/ditccplpmisc2016d1_en.pdf

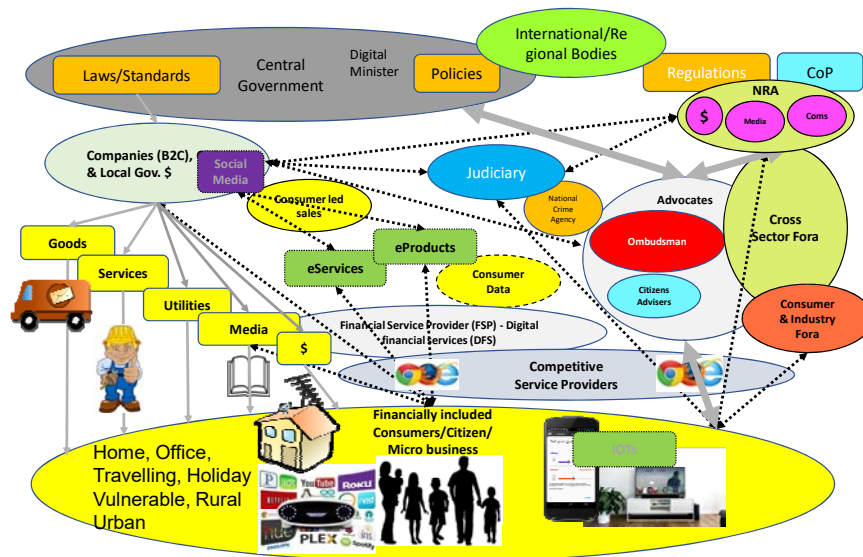
2 Consumer Protection

2.1 The digital economy

The digital economy is global and as Figure 1 indicates, is complex with many different elements and stakeholders. It can only function through national governments adopting international standards to enable interoperability and international consumer protection principles and policies, recommendations and standards.

The growth in the digital economy is essential to achieving the 17 sustainable development goals set out in the United Nations (UN) General Assembly (GA) resolution 70/1 Transforming our world: the 2030 agenda for sustainable development.⁹ The ITU's discussion paper on fifth generation regulation¹⁰ section 2.1 provides examples of how tel-coms/ICT supports the 17 goals. At a local level the digital economy is creating a revolution in the high street – the physical stores' role is changing to a service/entertainment experience. Retailers must create and deliver value to entice people to their premises. Anyone who cannot connect to the Internet and the digital economy, is at a disadvantage. The authoritative reports and studies are clear, the digital economy, based upon telecom/ICT services, is now crucial to how our global society works. However there are also significant harms from being a part of the digital economy. These harms can relate to a single person, many people, businesses(s), corporations and governments. Excluding spending too much time, or too much money, Table 1 indicates the broad categories of harm which can be experience by being connected to the Internet, responsible agency, prevention tools, penalties, incentives and redress. The NRA in charge of dealing with consumer protection depends upon the type of harm and scope of duties given by Law.

Figure 1: The Digital Economy



Source: G A Horne

Consumer protection against harm falls into two main categories:

⁹ https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf

¹⁰ https://www.itu.int/en/ITU-D/Conferences/GSR/Documents/ITU_BuildingBlocksReg_GSR16.pdf

- i. **preventative actions** including education and awareness, security by design, legal requirements on the service provider, penalties for causing harm, product reliability, requirements for fair trade, ethics in business, payment protection and privacy;
- ii. **redress** – consumer rights such as supplier complaint handling process, compensation, right to cancel, and alternative dispute resolution (ADR).

Table 1: Type of Harm – Protection and redress

Type of harm example	Responsible Agency	Prevention	Penalty or incentives	Redress
Connectivity failing	ICT Regulator	Quality standards Alternative provision	Automatic compensation and fines	In house Ombudsman Judiciary
Faulty Product/Service	Consumer Protection	Quality standards e.g. Consumer Rights Act	Replacement Compensation Fines	In house Ombudsman Judiciary
Courier delivery	Consumer Protection	Quality standards e.g. Consumer Rights Act	Compensation Fines	In house Ombudsman Judiciary
Financial mistakes	Financial Regulator	Quality standards Laws	Fines Compensation	In house Ombudsman Judiciary
Inappropriate content	Media Regulator	Laws Age verification Algorithms	Fines Imprisonment	Un subscribe Ombudsman Judiciary
SPAM	Information Commission for privacy	Laws Un subscribe Algorithms	Fines	Un subscribe Ombudsman Judiciary
Data/Identity theft or breach	Information Commission for privacy	Laws Security protection Encryption	Fines Imprisonment	Ombudsman Judiciary
Fraud	National Crime Agency	Laws Algorithms	Fines Imprisonment	Judiciary

3

Source: Alan Horne

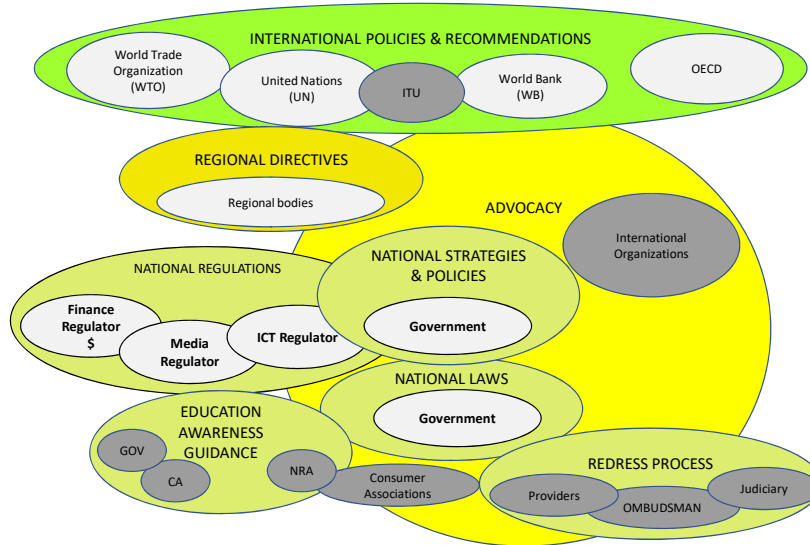
People can only be effectively protected and gain the benefits of the digital economy through a combination of actions. These include collaboration of the many stakeholders, producing policies, strategies, laws, regulations, guidelines, redress process and enforcement. Providers need to comply with laws and be socially responsible. Consumers must be be digitally educated and aware.

Figure 2 provides a top down overview of the stakeholder involved in the hierarchy of instruments required for effective consumer protection. The following subsections set out details of stakeholders and their responsibilities, the policies and principles, Laws, regulations and guidelines, empowering consumers and redress process implementation.

2.2 Stakeholders

International stakeholders: The following international stakeholders are all involved with Consumer Protection: OECD¹¹, UN¹², ITU,¹³ New Economics Foundation,¹⁴ World Bank¹⁵ (WB), Consumers International¹⁶ (CI), Regional Regulators Associations (RRA) and the International Ombudsman Association¹⁷ (IOA). International Competition Network¹⁸ (ICN) aims to facilitate effective international cooperation to the benefit of member agencies, consumers and economies worldwide.

Figure 2: Consumer Protection – Stakeholders involved in the hierarchy of instruments



Source: G A Horne

Regional Stakeholders: By way of example regional bodies with detailed consumer protection recommendations or directives include:

- i. The Association of Southeast Asian Nations (ASEAN),
- ii. The Organization of American States (OAS)
- iii. The European Union (EU) & European Commission (EC),
- iv. Bureau Européen des Unions de Consommateurs¹⁹ (BEUC)

11 OECD (2016), OECD Recommendation of the Council on Consumer Protection in E-Commerce, OECD Publishing, Paris, <https://doi.org/10.1787/9789264255258-en>

12 https://unctad.org/en/PublicationsLibrary/ditccplpmisc2016d1_en.pdf

13 https://www.itu.int/ITU-D/finance/Studies/consumer_protection.pdf

14 https://neweconomics.org/uploads/files/NEF_PRINCIPLES-FOR-DATA-ECONOMY.pdf

15 <http://www.worldbank.org/en/about/what-we-do>

16 <https://www.consumersinternational.org/who-we-are/>

17 <https://www.ombudsassociation.org>

18 <https://www.internationalcompetitionnetwork.org>

19 <https://www.beuc.eu/about-beuc/who-we-are>

- v. European Union Agency for network information security²⁰ (ENISA)
- vi. Iberoamerican Forum of Consumer Protection Agencies²¹ (FIAGC)
- vii. Asian coordination committee on consumer protection²² (ACCCP)
- viii. Competition Commission for Eastern and South Africa²³ (COMESA)
- ix. The Pacific Islands Forum²⁴ (PIF)

National Stakeholders: All consumers and providers of products and services are stakeholders in consumer protection. Organisations which have a responsibility for oversight or advice on consumer protection include:

- i. Government
- ii. NRAs for regulated sectors and their advisory groups
- iii. Ombudsmen for different sectors
- iv. Competition Authority
- v. Consumer Authority
- vi. National Association of Citizen Advice and local consumer champions
- vii. Consumer, Industry & Cross Sector fora
- viii. Courts providing judicial address

Examples of national consumer stakeholders include:

- i. **South Africa's** independent Communications Authority of South Africa²⁵ (ICASA) is the regulator and ombudsman for communications services. Other organisations who assist consumers in telecommunications/ICT/Internet related issues include:
 - a. The National Communications Council (The NCC)
 - b. Dikeletsong Citizens' Advice Bureau²⁶ (DCAB) of Pretoria is an organisation of volunteers
 - c. South Africa Consumer Union²⁷ an independent NGO with a mission to unite all consumers in South Africa and to further their interests.
- ii. **New Zealand's** Commerce Commission includes the oversight and regulation of the telecommunications/ICT sector. Other organisations who assist consumers in telecommunications/ICT/Internet related issues include:
 - a. Telecommunications Dispute Resolution (TDR)²⁸ to assist consumers resolve complaints about landline, mobile and Internet issues. TDR was established by the Telecommunications Forum (TCF) and is consumer led.
 - b. Citizens Advice Bureau (CAB)²⁹ assists consumers on how to resolve complaints with a provider. If a complaint is not resolved then it is referred to TDR.
 - c. Ministry of Business, Innovation & Employment - Consumer Protection³⁰ web site provides guidance to consumers on such matters as how to complain about a faulty product or service and identifying, avoiding and reporting online scams.

²⁰ <https://www.enisa.europa.eu/about-enisa>

²¹ <http://fiagc.org>

²² <https://aseanconsumer.org>

²³ <https://www.comesacompetition.org>

²⁴ <https://www.forumsec.org/who-we-arepacific-islands-forum/>

²⁵ [https://www.icasa.org.za/pages/consumer-complaints-procedure?TSPD_101_R0=cd7e02b798b99b41498a2621ae1a6323i9Z0000000000000000086d3643bffff000000000000000000000000000005d184395004f2350ed](https://www.icasa.org.za/pages/consumer-complaints-procedure?TSPD_101_R0=cd7e02b798b99b41498a2621ae1a6323i9Z000000000000000086d3643bffff00000000000000000000005d184395004f2350ed)

²⁶ <http://www.cab.org.za>

²⁷ <http://home.mweb.co.za/sa/sancu/more.html>

²⁸ <https://www.tdr.org.nz>

²⁹ <https://www.cab.org.nz>

³⁰ <https://www.consumerprotection.govt.nz/general-help/how-to-complain/take-your-complaint-further/>

- iii. **Singapore** examples include:
- a. Infocomm Media Development Authority (IMDA) is the NRA and the statutory board in the Singapore government responsible for regulating the converged infocomm media sector, safeguarding the interests of consumers, fostering pro-enterprise regulations and data protection through its Personal Data Protection Commission.
 - b. Consumer Association of Singapore,³¹ (CASE) a non-profit, non-governmental organisation for protecting consumers interest through information, education and promoting an environment of fair and ethical trade practices.
 - c. Competition & Consumer Commission³² (CCCS) administering and enforcing the Competition Act, administering the Consumer Protection Act, investigating and enforcing against practices that have an adverse effect on competition, representing Singapore in respect of competition matters in the international arena, and having a statutory duty to advise the government or other public authority on national needs and policies in respect of competition matters generally
- iv. **UK** examples include:
- a. Ofcom, responsible for media, telecom, post and ICT. Ofcom has authorised the:
 - i. Ombudsman³³ services to deal with communication and media disputes. They work with trade bodies in the communications sector including UK Wireless Internet Service Providers Association (WiSPA), Internet Service Providers Association (ISPA) and Internet Telephony Service Providers Association (ITSPA). The services are free to consumers as required by the Communications Act 2003. In the case of The Ombudsman services, funding is covered by the fee paid by the companies signed up to the ADR scheme. Ofcom sets out guidance for consumers as to how to make a complaint to their CP.³⁴
 - ii. Centre for Effective Dispute Resolution (CEDR) who manage a communications and Internet service adjudication scheme (CISAS) managed independently by an Alternative Dispute Resolution (ADR) Provider.
 - b. Citizens Advice³⁵ (CA) is a charity, which assists consumers and small businesses with issues and find a way forward. Their “one service strategy³⁶” state that “research shows clearly people increasingly want and expect to get advice in person, on the phone, and through a range of digital devices - and to have a seamless experience. They want a friendly, simple, intuitive services.” They provide independent consumer advocacy lobbying government policy makers and regulators of essential services. They are lobbying to be the independent advocate for telecommunications.

Recommendation 1: Converged services, converged consumer protection regulation

Governments need to ensure there is a regulatory oversight, by one or more NRA, with common consumer protection and redress regulations covering the converged services. Converged services in the digital economy covers but not limited to communications, Internet, OTT services, media, content, DFS and e-Commerce.

Recommendation 2: Trusted Institutions

Government should ensure there is one or more independent trusted authorities, who collectively, have responsibility for providing advice, advocacy, online assistance services, redress and dispute resolution. The

31 <https://case.org.sg>

32 <https://www.cccs.gov.sg/about-cccs>

33 <https://www.ombudsman-services.org>

34 <https://www.ofcom.org.uk/phones-telecoms-and-internet/how-to-report-a-complaint>

35 <https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/>

36 <https://www.citizensadvice.org.uk/Global/Public/Corporate%20content/Publications/One%20service%20strategy.pdf>

number of separate authorities depends to a certain extent upon the size of the country and legacy. As long as each has well defined responsibilities and collaboratively work together, the structure is of secondary importance. The Authority(s) must:

- a. be free to all national and international consumers on a non-discriminatory basis;
- b. be well funded, independent, authorised, properly resourced and readily available;
- c. provide advice and guidance in working within the digital economy;
- d. provide or appoint the appropriate entity to undertake consumer redress, mediation or dispute resolution;
- e. have formal links with international counterparts to manage consumer redress;
- f. have regular formal meetings with consumer and trade associations with the view to ensuring close working relationship enabling quality consumer and competitive focused decisions;
- g. have a widely publicised online support and consumer Help Line number, preferably one which is agreed internationally;
- h. measure and publish QoS and performance statistics of complaints against providers.

The role of NRAs in consumer protection varies according to the scope of the responsibility given to them under national laws. Increasingly NRAs are becoming multimedia communication regulators covering fixed and mobile communications, post and radio & TV. For an update of the scope of mandate for different NRAs refer to ITU's ICT-Eye.³⁷

Recommendation 3: Cybercrime

A specialist cybercrime unit is required, which may be positioned, for example, within the national police service, in each nation with strong international links to such organisation as eConsumer.gov and Interpol. The unit has the responsibility to:

- a. inform consumers of on line scams;
- b. work with NRAs and government to ensure consumers are educated in the safe use of the Internet;
- c. ensure reporting fraud and other illegal activities are effectively reported and managed;
- d. publicise statistics.

2.3 Policies & Principles

2.3.1 International

The digital economy is borderless and enables international transactions requiring consumer protection and redress to be coordinated internationally. Internationally agreed principles and recommendations for consumer protection applying to the digital economy, have predominantly been developed by UN member states, the OECD and ITU. Key international principles, to support consumer protection, are set out in UN 2016 Guideline for Consumer Protection³⁸ for online and offline commercial activities and Dispute resolution and redress.³⁹ These principles are generally technology neutral. However, the need to rethink consumer protection in the digital age is recognised internationally. Some specific areas requiring attention include ordering of online goods and services, data protection, spam and fraud.

The UK Centre for Consumer and Essential Services (CCES) report - consumer vulnerability⁴⁰ concludes "For real and lasting change to happen, policies to tackle consumer vulnerability need to become integrated into all aspects of companies' operations and viewed as part of their mainstream business activities – not as a marginal side issue. Strategies and approaches towards consumer vulnerability should be embedded in

³⁷ <https://www.itu.int/net4/itu-d/icteye/Default.aspx>

³⁸ https://unctad.org/en/PublicationsLibrary/ditccplpmisc2016d1_en.pdf

³⁹ https://unctad.org/en/PublicationsLibrary/ditccplpmisc2016d1_en.pdf

⁴⁰ https://www2.le.ac.uk/departments/law/research/cces/copy_of_consumervulnerability2016.pdf

all aspects of regulatory policies and decision-making. A critical challenges for the regulators and companies to address, is how to achieve meaningful organisational commitment, openness and accountability, and lasting organisational learning.” The UN has resolved that nations shall take appropriate measures to ensure persons with disabilities have access, on an equal basis with others, to ICT systems and other facilities and services open or provided to the public, both in urban and in rural areas. These measures shall include the identification and elimination of obstacles and barriers to accessibility of information, communications and other services, including electronic services and emergency services. The objective is to ensure that people with disability are not discriminated against in terms of access to the digital world and changing technologies.

The OECD consumer protection in e-commerce principles for redress was adopted, in March 2016⁴¹ and high-level principles on financial consumer protection.⁴² Appropriate mechanisms should be developed to address new delivery channels for financial services, including through mobile, electronic and branchless distribution of financial services, while preserving their potential benefits for consumers. The May 2018 OECD toolkit⁴³ provides a set of principles and practices for protecting digital consumers and enhancing trust in e-commerce. OECD protecting consumers in peer to peer platform markets⁴⁴ and OECD Financial Consumer Protection in the digital age,⁴⁵ are also relevant references.

EU instruments such as Payment services (PSD2) Directive⁴⁶ and General Data Protection Regulation (GDPR),⁴⁷ are important areas for NRAs to monitor carefully. ITU final report on Question 6/1, “Consumer information, protection and rights: Laws, regulation, economic bases, consumer networks⁴⁸” also has set out the most important principles for consumer protection.

2.3.2 National

Nations benefit from taking a strong position in creating a national policy and implementation strategy, drawing on international policies and principles, in supporting a digital economy. Examples of strong policies include the **New Zealand** Digital Transformation,⁴⁹ **UAE’s** Digital-UAE,⁵⁰ **Estonia’s** e-Estonia⁵¹ and Digital 2020 Agenda⁵² and **UK’s** Digital Strategy⁵³ and modernising consumer markets,⁵⁴ Picking up the importance of consumer trust in public service providers, in May 2019 a UK All-Party Parliamentary Group on Data issued a report titled “Trust, Transparency & Tech⁵⁵.” In this report nine key recommendations for principles are made.

Box 1 sets out five which are directly appropriate to licensed public services.

41 <https://www.oecd.org/sti/consumer/ECommerce-Recommendation-2016.pdf>

42 <https://www.oecd.org/daf/fin/financial-markets/48892010.pdf>

43 <https://www.oecd.org/internet/consumer/toolkit-for-protecting-digital-consumers.pdf>

44 https://unctad.org/meetings/en/Contribution/dtl-eWeek2017c05-oecd_en.pdf

45 <http://www.oecd.org/g20/G20-OECD-Policy-Guidance-Financial-Consumer-Protection-Approaches-digital-age.pdf>

46 https://ec.europa.eu/info/law/payment-services-psd-2-directive-eu-2015-2366_en

47 <https://gdpr-info.eu>

48 https://www.itu.int/dms_pub/itu-d/opb/stg/D-STG-SG01.06.3-2017-PDF-E.pdf

49 <https://www.digital.govt.nz/digital-government/digital-transformation/nz-digital-transformation/>

50 <https://government.ae/en/about-the-uae/digital-uae>

51 <https://e-estonia.com>

52 https://www.mkm.ee/sites/default/files/digitalagenda2020_final.pdf

53 <https://www.gov.uk/government/publications/uk-digital-strategy>

54 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/699937/modernising-consumer-markets-green-paper.pdf

55 https://www.policyconnect.org.uk/sites/site_pc/files/report/1214/fieldreportdownload/raa35577ipcldatechethicsreportlsinglepag-esl0519.pdf

Box 1: Public Services ‘Licence to Operate’

Principle 1: To build public confidence and acceptability, providers of public services should address ethics as part of their ‘licence to operate’.

Principle 2: The citizen should be given access to simple and meaningful information, akin to the transparency principles underpinning Freedom of Information.

Principle 3: The citizen should have a ‘right to explanation’, via a duty on all those delivering public services to provide easy to understand information on the factors taken into account in algorithm-based ‘black-box’ decisions as they affect the individual.

Principle 4: There should be clear lines of accountability on data and algorithm use to the top of every organisation providing public services, including accessible complaints and redress processes. This could be achieved by extending the Data Protection Officer role and updating company director responsibilities.

Principle 5: To ensure a consistent experience for the citizen, all Departments’ existing governance arrangements should be assessed to ensure they are providing a coherent ethics framework for devolved public service delivery enforceable through respective regulators. Where necessary independent Data Ethics Advisory Boards should be established, which could link to the UK Artificial Intelligence Council and to the Centre for Data Ethics and Innovation.

Source: UK Government

In support of this discussion paper, a survey and brief report has been prepared on types of digital consumer redress mechanisms in a number of members of PIF including: Cook Islands, Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tahiti, Tonga and Vanuatu. The majority of the island states have established competitive National ICT policies promoting competitive mobile services. Penetration of Internet services via mobile has increased as a result. Most selected countries have established awareness and educational programs and complaint handling processes, generally overseen by a competition and consumer units within Government. PNG has established an independent Consumer and Competition Commission.⁵⁶ Each of these Island States has a significant opportunity to significantly benefit from the global digital economy. The time is right to update their national strategies.

Drawing on international principles and recommendations, common consumer protection themes in national strategies could include:

- i. Building consumer trust;
- ii. Ethical practices by providers of services and products with fair and equitable treatment, protection of privacy, disclosure and transparency;
- iii. Development of fair, effective, transparent and impartial mechanisms to address consumer complaints through administrative, judicial and alternative dispute resolution (ADR), including for cross-border cases.
- iv. Maintaining legal and/or administrative measures to enable consumers and organizations to obtain redress for the harm that they suffer as a consequence of goods or services which, for example, are defective, damage their devices, do not meet advertised quality criteria or where there have been delivery problems and inappropriate circumstances involving non-monetary transactions
- v. The formal or informal redress procedures to be expeditious, fair, transparent, inexpensive, accessible, not impose a cost, delay or undue burden on the economic value at stake and at the same time not impose excessive or undue burdens on society and businesses. Such procedures should take particular account of the needs of vulnerable and disadvantaged consumers.
- vi. Government bodies, market industries and consumer organisations have co-regulation mechanisms to ensure that consumer protection enforcement authorities that handle consumer complaints, have the ability to take action and obtain or facilitate redress for consumers, including monetary redress.
- vii. Encouraging competition and removal of barriers to competition where they arise;

⁵⁶ <https://www.iccc.gov.pg>

- viii. Independent well-funded consumer advocacy forums to discuss overarching priorities for consumer protection;
- ix. Consumers, in particular disadvantaged consumers, to benefit from new technology and new business models, with competition and regulation working together in the consumer interest;
- x. Education, awareness and digital skills programmes to be developed involving stakeholders from private, public and charity sectors coordinating efforts to assist people safely benefit from the digital economy;
- xi. Use of public buildings such as libraries and local government buildings, to provide a trusted network of accessible locations with trained staff and volunteers, free Wi-Fi, computers, and other technology as well as Assisted Digital access;
- xii. Performance scorecards for suppliers and digital comparison tools in regulated markets to hold them to account for the outcomes they deliver;
- xiii. Providing the environment to ensure local priorities can be accommodated within a national framework.

Recommendation 4: National principle based digital policy

Government should, after public consultation, develop a strong consumer centric, principle based, national digital strategy and implementation plan. The objective of the digital plan is to enable all consumers, including people with disabilities, businesses and government safely to take part in the digital economy. The implementation plan should contain incentives to ensure every person has available skills to use high speed Internet connectivity and take advantage of the digital economy whilst minimising risk of harm.

2.4 Laws, Regulations and Guidelines

Most nations have multiple laws concerning consumer protection. Some are general consumer rights independent of sector or technology. The transformation of how we live our lives and conduct financial transactions, using the digital economy, requires nations to undertake a review of their laws. The “Stand Out” countries have all undertaken such reviews. In 2011 New Zealand undertook a Consumer Law Reform⁵⁷ 2011. Drawing upon the Consumer Policy Toolkit, OECD, 2010, the Objectives of Consumer Law Reform was to review the 7 consumer related laws. Box 2 sets out the objectives of the reform. Their general objective is the “development of a **mature and secure environment** for the widespread use and development of smart ICT solutions. The overarching aim is to use ICT to support economic competitiveness and to achieve a rise in people’s well-being and effectiveness of public governance.”

⁵⁷ [https://www.mbie.govt.nz/search/SearchForm?Search=consumer%20redress&topic\[47\]=47](https://www.mbie.govt.nz/search/SearchForm?Search=consumer%20redress&topic[47]=47)

Box 2: New Zealand objectives concerning consumer law reform - Feb 2011

- i. improve consumer welfare by having well-functioning markets in which consumers participate confidently knowing their reasonable expectations should be met when they transact and they should have access to redress if reasonable expectations are not met;
- ii. have in place principles-based consumer law that:
 - a. enables consumers to transact with confidence;
 - b. protects reputable suppliers and consumers from inappropriate market conduct;
 - c. is up to date and relevant now and into the future;
 - d. is easily accessible to those who are affected by it;
 - e. is in line with international best practice, as appropriate.
- iii. facilitate competition between businesses, for the long-term benefit of consumers, by having market rules that protect against inappropriate trader behaviour;
- iv. achieve good market conduct by businesses, and by consumers and businesses having access to justice and the regulator undertaking effective enforcement of the law;
- v. facilitate mutually beneficial trade on equitable terms through trading partners trusting that our laws deliver products that are safe and consistent with any measure, quality or other claims made.

Source: New Zealand Ministry of Consumer Affairs (MCA)

In 2016-17 the European Commission undertook a review of EU consumer law (REFIT) to make sure it was still fit for purpose and to see what might need changing. Overall the review indicated that “EU consumer law is fit for purpose and capable of handling problems in today’s markets. However, adjustments need to be made in a number of areas to better protect consumers. The main problem is a lack of enforcement & redress. “

BEUC was not entirely convinced and made a number of recommendations to the EU in their 2018 report on “Plugging the gap in consumer rights”.⁵⁸ Most recommendations apply to consumers using the digital economy. Of particular interest are:

- i. Throughout the business-to-consumer commercial transaction it is the consumer who is in a weaker position and even more so in the digital world. An update of consumer law is needed to give better rights to consumers, safeguarded by enforcement and redress mechanisms.
- ii. REFIT confirmed that it is not a burden on businesses to respect EU consumer law. The problem, instead, is the low level of compliance with consumer rules. We advocate for remedies for consumers and better enforcement and redress options.
- iii. More education and greater awareness-raising efforts is required.
- iv. Consumers must enjoy individual and collective rights if traders do not comply with EU law. Non-compliant traders should face truly dissuasive sanctions amounting to a significant percentage of their yearly turnover.

The EU has drawn on international principles and recommendations and issued a [Digital single market strategy](#), covering the digital economy. It has issued such Directives as: [e-Commerce Directive](#), General Data Protection Regulations (GDPR⁵⁹) which determines how data is handled across every sector including the digital economy. It has also proposed a directive on representative actions for the protection of the collective interests of consumers. Collective redress is one of the most powerful tools for consumer protection as it can achieve a full array of consumer rights and can give large numbers of consumers a solution to breaches of law and regulations. Collective redress needs to be well designed and available in all countries. At the very least there should be legal options for consumer groups to represent consumers in court, or for consumers to represent themselves. On the 20th May 2019 the EU published

⁵⁸ https://www.beuc.eu/publications/beuc-x-2018-023_what_a_new_deal_for_consumers_should_look_like_in_2018.pdf

⁵⁹ <https://eugdpr.org>

Directive 2019/771, covering consumer rights and redress in relation to “goods with digital elements”⁶⁰ such as connected devices. The Directive aims to balance achieving a high level of consumer protection and promoting the competitiveness of enterprises, while ensuring respect for the principle of subsidiarity. It aims to improve legal certainty, as regards the rules applicable to contracts for the sale of products, minimising exposure to costs and risks associated with cross-border trade.

Many banks and credit card companies operate globally. Through national legislation in some countries, FSPs have a responsibility to protect from and compensate their customers for fraud. This consumer protection requirement for eCommerce is a critical element in protecting consumers in the digital economy. For example, the EU has updated their Payment Services Directive (PSD2)⁶¹ with the objective to make payments safer, increase the consumers’ protection, fosters innovation and competition while ensuring a level playing field for all players, including new ones. Legally all member states of the EU must implement this revised Directive and ensure Strong Customer Authentication and secure and common communications enter into force, by September 2019.

An Australian Commerce Commission (ACC) report on online purchases, revealed that the consumer protection legislation governing online purchase is seriously lagging behind the European Union (EU), UK, China and Taiwan. When online shopping has become the norm in lifestyle, consumer protection should also be in keeping with the times. The Government should regularly monitor the development of online purchase and devise suitable measures to strengthen the protection

The UK Digital Economy Act 2017⁶² was the result of a review and covers such topics as access to digital services, digital infrastructure, online adult material, Intellectual property, digital government, Civil registration, Fraud, sharing of data and data protection. The UK more recently, issued an Online Harms White Paper⁶³ with 18 consultation questions. These questions provide an insight to the issues being faced. It is expected that DCMS will issue legislation in Q3/4 2019. The Online Harm White paper proposes that the new regulatory framework should apply to companies that allow users to share or discover user-generated content or interact with each other online. These services are offered by a very wide range of companies of all sizes, including social media platforms, file hosting sites, public discussion forums, messaging services and search engines. The regulator will take a risk-based and proportionate approach across this broad range of business types. This will mean that the regulator’s initial focus will be on those companies that pose the biggest and clearest risk of harm to users, either because of the scale of the platforms or because of known issues with serious harms. Box 3 sets out the vision of DCMS for the Internet.

Box 3: Online harms white paper – vision for the Internet

- i. A free, open and secure Internet.
- ii. Freedom of expression online.
- iii. An online environment where companies take effective steps to keep their users safe, and where criminal, terrorist and hostile foreign state activity is not left to contaminate the online space.
- iv. Rules and norms for the Internet that discourage harmful behaviour.
- v. The UK as a thriving digital economy, with a prosperous ecosystem of companies.
- vi. Developing innovation in online safety.
- vii. Citizens who understand the risks of online activity, challenge unacceptable behaviours and know how to access help if they experience harm online, with children receiving extra protection.
- viii. A global coalition of countries all taking coordinated steps to keep their citizens safe online.
- ix. Renewed public confidence and trust in online companies and services.

Source: UK DCMS April 2019

60 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0771&from=EN>

61 https://www.europeanpaymentscouncil.eu/sites/default/files/infographic/2018-04/EPC_Infographic_PSD2_April%202018.pdf

62 http://www.legislation.gov.uk/ukpga/2017/30/pdfs/ukpgaen_20170030_en.pdf

63 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/793360/Online_Harms_White_Paper.pdf

In the ongoing review of legislation for the digital economy UK Ofcom report on addressing harmful online content⁶⁴ in Sept 2018, draws a number of lessons including:

- i. audience expectations and context differ between broadcasting and online;
- ii. existing frameworks for regulation of content standards cannot be transferred wholesale to the online world;
- iii. some key challenges involved in transposing experiences from broadcasting regulation into online include scale, variety of content types, voices and opinions, role in content creation, service variety and innovation and multinational nature of online platform operators.
- iv. certain principles from broadcasting regulation could be relevant as policymakers consider issues around online protection, such as: protection and assurance against harmful content and conduct; upholding freedom of expression; adaptability over time; transparency; enforcement against bad behaviour and independence of decision-making that builds credibility and public trust.

The UK Government has also issued plans for new laws for IoT devices.⁶⁵ Options Government will be consulting on include a mandatory new labelling scheme. The label would tell consumers how secure their products such as 'smart' TVs, toys and appliances are. The move means that retailers will only be able to sell products with an Internet of Things (IoT) security label.

Recommendation 5: Review National Consumer Protection Laws

Government should, in order to facilitate the national principle based digital strategy, undertake a wholesale review of its consumer related laws such as Consumer Rights, Fair Trading and Consumer Protection. These should be updated where necessary, to ensure they are fit for purpose for people conducting national or international transactions, face to face or remotely, over any medium. The review and modifications should ensure laws:

- i. are technology neutral;
- ii. implement international recommendations to allow for data to be shared which is required to manage complaints and redress as well as track down and bring to justice criminal activity;
- iii. make it illegal to cause harm to others who are online irrespective of location;
- iv. ensure that providers design in consumer protection measures to their ICT products and services including filters and algorithms that result in rapid response to stop or minimise the impact of harm to the consumer;
- v. make it an obligation for providers to have special measures to enable access by disadvantaged customers and protect vulnerable consumers;
- vi. provide for collective redress;
- vii. provide for automatic compensation to consumers who experience delayed installation or repair times on broadband services;
- viii. require Financial Service Providers to compensate consumers when subject to online fraud when it is not as a result of incorrect actions of the consumer;
- ix. strengthened consumer rights such as being able to exit a contract free if their broadband speed drops below the minimum guaranteed level;
- x. strengthened rules to ensure effective provider complaint handling for national or international consumers;
- xi. encourage providers build in quality, award loyal customers and effectively manage mistakes.

2.5 Empowering consumers

The most powerful way of empowering and protecting consumers is through ensuring people are digitally literate, complemented by regulatory and legislative protection which has been influenced by strong consumer advocacy. Digital

64 https://www.ofcom.org.uk/__data/assets/pdf_file/0022/120991/Addressing-harmful-online-content.pdf

65 <https://www.gov.uk/government/news/plans-announced-to-introduce-new-laws-for-internet-connected-devices>

literacy means having the skills needed to live, learn, and work in a society where communication and access to information is through digital technologies like Internet platforms, social media, and mobile devices. The programme of education and awareness has to be led from the top and involve all stakeholders. E.g. the Estonia⁶⁶ country report recognises the importance of digital skills for competitiveness and economic growth. Digital skills are a policy priority in both the Digital Agenda 2020 for Estonia and the Estonian Lifelong Learning Strategy 2020. Overall good availability of online services has been complemented by efforts to improve the digital skills of the population.

2.5.1 Advocacy

Providers of products and services are well funded and motivated to lobby international, regional and national authorities to influence policy, recommendations, standards and regulations in their favour. Government and NRAs are funding consumer advocates to ensure the consumer's voice is heard and not drowned out by vested interests of providers. For example, to strengthen the consumer voice in telecoms the UK Government agreed, in May 2019, additional funding for an independent Advocate for mobile and broadband consumers.⁶⁷ This partially came about due to the UK Citizens Advice (CA) request to government⁶⁸ to complement the work of Ofcom's Consumer Communications Panel⁶⁹ (CCP). They have proposed that funding for a telecom advocate is comparable with that provided for the energy sector.

2.5.2 Education and awareness

Digital education and awareness should support consumers develop the skills and confidence required to manage risks and opportunities, make informed choices, get assistance and advice and take action to protect and improve their well-being and identity online. In preparation for the 2019 G20 meeting of Ministers the host country, Japan issued a paper on Digital Financial Literacy⁷⁰. The paper states that Digital financial literacy (DFL) is increasingly important aspect of education for the Digital Age. Education and awareness activities include:

- i. **Child & adult education programmes** are generally prepared by a ministry of education and run in schools and community locations.
- ii. **Local community heroes** have proven to be effective in assisting older people get on line. For example, the Wales Digital Heroes⁷¹ project brings older and younger people together to use and enjoy technology. The volunteers are drawn from schools, colleges and universities, scouts, guides and Police cadets. They are trained to assist others use the Internet safely. Heroes are linked up with a community organisation and support people from that organisation to get online. Similarly, the UAE ambassadors for electronic security⁷² initiative from TRA, aims to train top UAE students to serve as ambassadors in promoting and spreading cyber security awareness across the UAE.
- iii. **Media Literacy** – The Council of Europe Study “Regulatory Authorities for Electronic Media and Media (REM) Literacy - Comparative analysis of the best European practices⁷³” study found that one of the media regulator's most important roles in working on media literacy is funding, encouraging and including stakeholders, e.g. educational institutions, academia, media, libraries, state institutions and civil society, in projects for media education and media literacy. Good results and self-sustainable projects can only be produced by including more partners, acquiring a common understanding of both issues and goals, and sharing and exchanging knowledge and resources. The study strongly recommends that the regulator creates a platform for gathering a wide variety of

66 http://ec.europa.eu/information_society/newsroom/image/document/2018-20/ee-desi_2018-country-profile_eng_B43FFF58-F3FD-633C-F5833D8295BB9EB0_52221.pdf

67 <https://www.gov.uk/government/news/a-new-champion-for-mobile-and-broadband-customers>

68 <https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/press-releases/citizens-advice-calls-on-government-to-strengthen-voice-of-telecoms-consumers-as-new-poll-shows-majority-face-service-issues/>

69 <https://www.communicationsconsumerpanel.org.uk>

70 <https://t20japan.org/wp-content/uploads/2019/03/t20-japan-tf7-3-need-promote-digital-financial-literacy.pdf>

71 <https://www.digitalcommunities.gov.wales/digital-heroes/>

72 <https://government.ae/en/information-and-services/justice-safety-and-the-law/cyber-safety-and-digital-security>

73 <https://rm.coe.int/regulatory-authorities-for-electronic-media/1680903a2a>

- social stakeholders and encourage establishing diverse partnerships, as well as coming up with and supporting various projects e.g. launching a web portal and publishing brochures to conducting research and organizing workshops and lectures, and being more active in arranging both regional and international cooperation as well as exchange of experiences and best practices.
- iv. **Awareness programmes** run nationally or internationally are also seen as important tools. For example, ITU run a series of International days to support education and awareness such as Safer Internet Day, Girls in ICT and World Telecom and Information Society Day (WTISD). The Singapore IMDA spearheads consumer education efforts across a spectrum of topics including digital literacy, infocomm know-how and accessibility, as well as personal data protection⁷⁴ in conjunction with the Media Literacy Council⁷⁵ (MLC). MLC is a group of members from the people, private, and public sectors.
 - v. **Scam Alerts** have become a part of our everyday lives. Such alerts are sent out to consumers via social media by the police and trading standards organisations e.g. UK National Trading Standards eCrime Team⁷⁶ publish latest scams, the Singapore National Crime Prevention Council⁷⁷ run a scam alert service and the New Zealand Ministry of Business innovation and employment Consumer Protection run a scam watch⁷⁸.
 - vi. **Product review sites** are also a useful source of information for consumers although they can be open to abuse by providers posting favourable reviews (or competitors posting unfavourable ones). Consumer Association and member funded review sites assist to reduce such abuse but consumers have to look at multiple reviews in order to obtain an overall opinion. Examples include New Zealand consumer Broadband compare,⁷⁹ Australian Choice, Denmark's Trustpilot and UK based Which⁸⁰.
 - vii. **Provider performance** publication in the national press and on the web site of NRAs and product review sites are also an important tool. For example, on behalf of Ofcom the UK Ombudsman services publish data⁸¹ on the types of complaint received by a CP and complaint outcomes e.g. whether complaints were upheld or not. NRAs have an important role to incentivise CPs to properly handle complaints and quickly resolve any issues. Publishing league tables of performance is an important incentive to improving performance but can encourage CPs to under-report complaints.
 - viii. **Comparative web sites** also play an important role in assisting consumers to choose their CP and SP as well as products. The UK CMA undertook a review of the digital comparison tools. The report extends to over 200 pages. Although it highlighted that almost all consumers are aware of comparison sites, consumers shopping for broadband were less likely to use a comparison site compared with those shopping for other products. Most consumers thought that comparison sites were checked and approved before they can operate, though few were sure this was the case. The majority of those who visited comparison sites did not recall seeing any evidence of accreditation or regulation. One of the UK's biggest price comparison sites has been investigated by the competition watchdog for allegedly pushing up the price of home insurance policies. Partially as a result of such concerns Ofcom introduced an accreditation scheme. Ofcom currently has nine accredited members of its price comparison scheme.

74 <https://www.imda.gov.sg/community/consumer-education>

75 <https://www.betterinternet.sg/About-us>

76 <https://www.tradingstandardscrime.org.uk/alerts/>

77 <https://www.scamalert.sg>

78 <https://www.consumerprotection.govt.nz/general-help/scamwatch/>

79 <https://consumer.broadbandcompare.co.nz>

80 <https://www.which.co.uk/>

81 https://assets.ctfassets.net/46t2drav2f3e/5CzzPpbboWwO2o8yOO2KIc/bee982863d249a3b2b5e3303576b4530/1118-comms-report-2017__1_.pdf

Recommendation 6: Holistic approach to education and awareness

A national funded holistic approach to education and awareness, is required, in the use of the Internet and digital economy. The awareness and educational programme must be inclusive from the youngest to the most senior citizens, and particular to the disadvantaged. It needs to cover how to benefit from being connected to the Internet and take advantage of the digital economy, to respecting others, reducing the threat of harm and maximise opportunities.

Recommendation 7: Local digital heroes

At a local level appoint digital heroes - young people working in the community with older and disadvantaged to assist in their digital literacy and accessibility to the digital economy. This is a two-way process and helps to build knowledge and mutual respect. Government to fund support tools, such as text to voice and voice to text, which assist people with disabilities easily operate within the digital economy.

2.6 Redress process implementation

2.6.1 Citizen redress

Any nation or NRA developing regulations for complaint handing must make it as simple as possible for the consumer. The redress process should address the issues found in an EU study concerning problems consumers face in the collaborative digital economy⁸² that:

- v. over half the people who experienced poor quality of goods and services did not seek redress as they felt it was not worth their time or because of the amount of money involved was too small;
- vi. many purchasers took higher risks when purchasing from other private individuals using peer to peer sites such as Shopify.⁸³

The redress process includes:

- i. **In-house complaints procedures:** conducted by the provider of the services or product.
- ii. **Mediation:** conducted confidentially by an independent third party working towards a negotiated agreement of a dispute.
- iii. **Conciliation:** a third party takes a more active role in putting forward terms of settlement or an opinion on the case.
- iv. **Arbitration:** a third party considers both sides in a dispute and makes a decision that resolves the dispute. In most cases the arbitrator's decision is legally binding on both sides.
- v. **Adjudication:** a third-party considering claims of both sides and making a decision binding on the company but not on the consumer.
- vi. **Ombudsman schemes:** ombudsmen are independent, impartial intermediaries who consider complaints.
- vii. **Legal mechanisms:** formal legal action is usually the last resort employed by consumers to obtain redress. The court's decision is then binding on both parties. Consumers can take legal action without going through other mechanisms if they wish.

Depending on the type of complaint the redress process involves:

- i. **Authority responsible for consumer protection** for different elements of the digital economy e.g. telecoms, media, finance and products, oversee the redress process for consumer issues falling within their scope of responsibility. It is the ICT NRA which issues regulations and guidelines requiring CPs to implement, publish, notify and report on their in-house complaint handling process e.g. Malaysia Communications and Multimedia Commission (MCMC)⁸⁴ has a clear set of consumer guidelines for its ADUAN complaint management

82 https://ec.europa.eu/info/sites/info/files/key_findings_about_problems_consumers_face_in_the_collaborative_economy.pdf

83 <https://www.shopify.co.uk/>

84 https://aduan.skmm.gov.my/Manual/MCMC_User_Guide.pdf

system, which provides a centralized platform for their users to lodge their complaints. New Zealand TDR provides a clear guide for consumers when wishing to make a complaint about their service.⁸⁵ UK Ofcom has two alternative dispute resolution (ADR) schemes that handle broadband, landline and mobile complaints - Ombudsman Services (OS) and Communication and Internet Services Adjudication Scheme (CISAS).²⁵ NRAs must have formal ties with their counterparts throughout the world in order to assist in resolving cross-border disputes.

- ii. **In house complaints procedure** should be the first step for any customer to try to resolve a problem with the provider. For example, a CP, may provide a reference number for complaints. After a fixed period e.g. 6 weeks, if the complaint has not been resolved, the customer uses the reference when escalating the complaint for ADR with the Ombudsman. A product supplier may simply send a replacement product and/or the customer can stop the payment via his FSP. If a customer believes their provider has not dealt with a complaint properly, they can escalate it to ADR. Of all the information searched for in developing this discussion paper, finding the consumer complaint procedure of Communications Providers has been the most challenging. However, UK BT (British Telecom) has an easily accessible Customer Complaint Code⁸⁶ which is clear and concise.
- iii. **Trade Associations** may assist their members in any complaint & ADR process together with Citizens Advice Associations or representatives. Organisations such as Which also provide guides on how to complain to the ombudsman.⁸⁷ Unless it is a criminal action the consumer must always start by following the in-house complaints procedure of their provider.
- iv. **The Citizens Advice (CA)** office, in countries where they exist, is often the first point of contact for a consumer. Generally, CA representatives are volunteers trained to manage consumer complaints and advise as to how a consumer should proceed. They advise consumers to first follow the in-house complaints process of the provider before going for ADR or the courts. With convergence of services in the digital economy the role of CA has become even more important to assist consumers negotiate the complexity of identifying who is responsible for any issue that they may have. Further the CA is in a powerful position to provide strong advocacy on behalf of the consumer when lobbying for changes such as in government policy or NRAs regulations.
- v. **The Ombudsman** investigates complaints. If the problem concerns media, ICT, telecom then the Ombudsman will normally be authorised by the ICT Regulator(s). If it concerns financial services then oversight will be the financial regulator. If the problem concerns a criminal activity then the consumer will be guided to the National Crime Agency. An example of the complaint process is set out on the UK Ombudsman's web site.⁸⁸
- vi. **The Authority in charge of cybercrime** in any country handles complaints which are criminal activities e.g. fraud, online bullying and data theft.
- vii. **Judiciary:** Judicial redress is enshrined in law making it a right that any citizen may use the courts of law to deal with a complaint. Judicial redress system, however, are designed to act as a strong incentive for parties to use ADR system and agree out-of-court settlements.

Recommendation 8: Single point of contact for citizen advice

Ensure consumers have freely available, independent Citizens Advice. With convergence of services and the complexity of supply chain consumers require a single point of contact to advise and assist consumers when they have an issue with any essential service including communications and the Internet.

⁸⁵ <https://www.tdr.org.nz/making-a-complaint/how-the-complaint-process-works>

⁸⁶ https://www.btplc.com/Thegroup/Policyandregulation/Governance/Codesofpractice/CustomerComplaintsCode/Complaints_code_of_practice.pdf

⁸⁷ <https://www.which.co.uk/consumer-rights/advice/how-to-complain-to-an-ombudsman>

⁸⁸ <https://www.ombudsman-services.org/sectors/communications>

Online Dispute Resolution (ODR) is seen by many as the way forward to assist consumers navigate through the complexities of obtaining redress having purchased products or services over the Internet. ODR can not only assist in dealing with providers within the customer's own country but also internationally. The international journal of online dispute resolution issue 2, 2017⁸⁹ states: "ODR is essential to e-commerce because large online marketplaces and merchants (companies like eBay, Amazon and Alibaba) must provide their users with fast and fair redress processes so as to bolster user trust. Consumers may be particularly concerned about getting redress in cross-border transactions, because the redress processes they depend upon for domestic face-to-face purchases are not effective if the transaction partner is in another country or even on another continent. ODR is particularly well-suited for low-value, high-volume, cross-border transactions, because ODR is jurisdiction independent, meaning it can provide redress across borders without having to reconcile conflicting legal regimes."

The article "There's an "App" for that: developing online dispute resolution to empower economic development⁹⁰" concludes that ODR is particularly efficient and effective in global e-commerce disputes. It offers means to a remedy where none exist in the face-to-face world. It therefore offers protection for cross-border deals and helps garner trust from buyers who may fear purchasing overseas. Bypassing the traditional legal system through ODR also allows parties to reduce or eradicate jurisdictional problems and helps to expedite participation of emerging economies in the global e-market.

The EU has developed an Online Dispute Resolution web-based initiation⁹¹ and Online Dispute Resolution (ODR) user guide.⁹² The UK Government have made it a legal requirement for traders to provide a link to the EC Online ODR Platform. This platform is not an ADR body but a tool to help the trader and consumer identify and access an appropriate body to deal with their dispute. Once both parties have agreed to ADR and chosen an appropriate ADR body, the platform can assist in the supplying of documents and in communicating between all the parties involved. In accepting to use an approved ADR body, through the ODR platform, the trader and the ADR body are agreeing to limit formality, to complete case handling in reasonable time frames and to do so at relatively low cost. Many of the approved ADR schemes are free to use to the consumer.

There is a place for Artificial Intelligence (AI) and virtual reality in Online Dispute Resolution. The US National Centre for Technology & Dispute Resolution⁹³ in April 2019 issued a useful document including artificial intelligence (AI) for determining cases, and algorithmic analysis for all types of legal issues. They state that technology has become the "fourth party" in dispute resolution through the growing field of online dispute resolution (ODR), which includes the use of a broad spectrum of technologies in negotiation, mediation, arbitration, and other dispute resolution processes.

2.6.2 *Collective redress*

Complaints may also involve many consumers for example the UK CA took advantage of the EU led legislation on collective redress (Introduced in Section 3.3) and made a super complaint in October 2017 concerning overcharging of loyal mobile phone customers.⁹⁴ As a result Ofcom responded⁹⁵ and made changes to how mobile operators behaved. In May 2019 Ofcom issued a statement on end-of-contract notifications and annual best tariff information "Helping consumers get the best deal."⁹⁶ The regulation will mean broadband, mobile, home phone and pay TV companies must notify their residential and business customers when their minimum contract period is coming to an end.

89 https://www.elevenjournals.com/tijdschrift/ijodr/2017/2/IJODR_2352-5002_2017_004_002_017

90 <https://www.odrmelbourne.com.au/wp-content/uploads/2018/08/App-for-that.pdf>

91 <https://ec.europa.eu/consumers/odr/main/index.cfm?event=main.home2.show&lng=EN>

92 <https://ec.europa.eu/consumers/odr/userguide/pdf/MA/userguide-en.pdf>

93 <http://odr.info>

94 <https://wearecitizensadvice.org.uk/3-of-the-largest-mobile-phone-providers-are-overcharging-loyal-customers-866940e1fb40>

95 <https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2018/ofcom-response-cmas-super-complaint-report>

96 https://www.ofcom.org.uk/_data/assets/pdf_file/0018/148140/statement-helping-consumers-get-better-deals.pdf

These notifications will tell residential customers about the best tariffs available from their providers. Business customers will be given best tariff information in a form that is suitable for them. Customers who remain out-of-contract will also be given best tariff information by their provider at least annually.

Recommendation 9: Code of practice for Redress

NRAs must pay particular attention to ensuring providers have a clear code of practice and clear performance targets to manage consumer complaints. The code of practice should be clear about the redress process a consumer can follow if they fail to satisfy the complaint. Particular measures should be made to include the disadvantaged for example to provide voice to text and text to voice facilities for the deaf and partially sighted and blind enabling them to understand and follow the process. NRAs should monitor and publish performance and penalise failures. The trusted institution with the responsibility for ADR, should ensure there is an ODR system in place which works on an international basis.

3 NRA consultation and collaboration

NRAs need to work closely with all stakeholders involved in the digital economy, in order to achieve the overall consumer protection goals and overcome the barriers of working internationally. NRAs have a number of ways in which they collaborate with all stakeholders consisting of formal and informal:

- i. **consultation** is fundamental to NRA producing quality regulations and decisions. Particular action is required to ensure effective consumer responses to relevant consultations;
- ii. **alerts:** NRAs use email and social media generally with people who registered on their web site. This communication is broadcast to draw peoples' attention to consultation documents or decision;
- iii. **surveys:** In seeking an understanding of the market in preparing a consultation or market report NRAs often formally request responses from stakeholders. Face to face interviews are also conducted. Web based surveys are a useful online survey tool;
- iv. **public meetings** with consumers and consumer groups on an ad hoc basis generally to present and encourage feedback to a consultation document;
- v. **select meetings** on a regular basis with stakeholder groups.

This too was recognized in the Final Report of ITU-D Study Group 1 Question 6/1, Consumer information, protection and rights: Laws, regulation, economic bases, consumer networks⁹⁷ that in its Guidelines for regulators and other relevant organizations provided that all kinds of cooperation could be enhanced by:

- i. strengthening partnerships between stakeholders to create knowledge exchange platforms and dialogue at national, regional and international level for consumer protection and rights;
- ii. improving cooperation with international bodies in the field of ICTs, in particular ITU, to: exchange knowledge and information; define and raise awareness of best practices, including the ITU-D Global Symposium for Regulators 2014 Best Practice Guidelines (GSR14), and of ITU Resolutions, including ITU-D Resolution 64 (Rev. Dubai, 2014) and ITU-T Resolution 84 (Hammamet, 2016) on consumer protection at national and regional level; and, integrate the protection of consumers and information on consumer rights into ITU-D activities;
- iii. promoting the establishment of consumer associations at national and regional level, strengthen their professionalism, and assist in building their capacity building at national, sub-regional and regional levels;

⁹⁷ 6th Study Period 2014-2017

- iv. improving collaborative management mechanism between national telecom regulators and digital content management authorities. Deepen international cooperation among regulators to prevent Trojan virus, network attack and fraud to shape a safe, reliable network environment for consumers;
- v. exchanging best practices and encourage public-private partnership initiatives with a view to managing electronic waste and preserving the ecosystem, as required by standard 14001.2015 (certification of sector operators), which expresses the notion of quality.

3.1 NRA and other authorities

Regulatory collaboration: ‘power coupling’ was the subject of Section 5 of the ITU Global ICT Regulatory Outlook 2018. This section analysed the collaboration between the ICT regulator and the: competition authority; consumer protection authority data protection authority; financial regulator; energy regulator; broadcasting authority; spectrum regulator; agency responsible for Internet-related issues. The report concluded that there is a long-standing record of shared challenges and regulatory thinking between regulators responsible for consumer protection, competition and broadcasting. However greater collaboration is required with other regulators in particular the financial regulator. Collaboration will be particularly important with the agency(ies) assigned responsibility for overseeing the Internet, content and privacy.

The report defined collaborative regulation as 5th generation regulation (G5) using organic consultation, collaboration and conciliation to focus on and deliver consumer benefits and protection. The depth and breadth of regulation being executed by leveraging the resources of the stakeholders it brings together, through formal and informal agreements and working practices. Stakeholders include policy makers, single-sector and multi-sector regulators to market players of any size. ITU believe collaborative regulation is required, driven by leadership, incentive and reward, to tackle the issues related to digital transformation and the data economy.

Recommendation 10: NRA to undertake a review of priorities

NRAs and government have successfully created the environment, incentivising investment by CPs and SPs in new technology infrastructure and competitive services. The resulting convergence in services and creative uses of the digital economy requires NRAs to priorities work to coordinate, with many different stakeholders nationally and internationally and increase their consumer protection against harms. If an NRA has not already conducted a review of its priorities then now is the time to move toward collaborative regulation (G5).

As entities regulated by NRAs expand their scope of converged activities, over the regulated services, then, where there are not legal obligations, NRAs should consider the need for MOUs with other national regulatory bodies. This is to ensure consistent consumer protection mechanisms. For example, if a mobile provider offers Mobile Financial Services there may need to be an MOU with the Financial Service Regulator. NRAs must liaise with the authority responsible for consumer protection relating to general products and services to ensure alignment of consumer rights in relation to ICT consumer related services. For example, The UK Regulators Network⁹⁸ (UKRN) bring together regulators from the UK’s utility, financial and transport sectors for the benefit of consumers and the economy. The 11 members have developed strong relationships and a culture of collaboration and learning working together to share knowledge, explore cross-cutting issues and build better ways of working. Their stated strategic objective for 2017/20 is to: “facilitate cooperation and communication between our members to promote better outcomes in economic regulation for consumers and the economy.”

Collaborative regulation was the theme for the Global Symposium for Regulators (GSR-16).⁹⁹ Collaborative regulation was defined as including effective and regular coordination and interactions; sharing of knowledge,

⁹⁸ <https://www.ukrn.org.uk/resilience/>

⁹⁹ https://www.itu.int/en/itu/news/Documents/2016-03/2016_ITUNews03-en.pdf

experience, and resources; exploration of synergies; identification of possible regulatory overlaps; and development of means of collaborative approaches to policy and regulations. Section 4.1.4 of GSR 16 Discussion paper on Digital financial services: Regulating for financial inclusion, an ICT perspective¹⁰⁰ states “Consumer protection in mobile financial services primarily arises as a financial regulatory matter. However, it also involves various issues relating to the underlying telecommunications service, including how fees are charged to consumers. Transparency about charges and the features of services is not only important to protect consumers but is also crucial to effective competition because of its importance in enabling customers to compare offers. Many competition authorities also have responsibilities for consumer protection.”

The Digital Single Market Strategy, adopted by the Commission on 6 May 2015, identified as one of the priorities, the need to enhance consumer trust through more rapid, agile and consistent enforcement of consumer rules. It reiterated that enforcing Union consumer protection legislation should be further strengthened by the Regulation on Consumer Protection Cooperation. The revised 2016/0148 (COD) REGULATION on cooperation between national authorities responsible for the enforcement of consumer protection laws¹⁰¹ provides for additional powers to competent authorities such as to:

- i. set binding time periods for competent authorities to reply to information and enforcement requests by another competent authorities;
- ii. clarify procedural and other aspects of handling information and enforcement requests;
- iii. coordinate investigation and enforcement measures and action in order to effectively tackle infringements.

An examples of regional cooperation is the European Platform of regulatory Authorities¹⁰² (EPRA) set up in 1995 in response to the need for increased co-operation between European regulatory authorities. One example of the the EPRA Work Programme, was the plenary sessions held on the 30 May 2019, which focused on challenges that audiovisual regulators will face to define and assess the level of harm for children on online media. This programme is seeking to agree actions to:

- i. raising awareness of existing rights and regulations;
- ii. addressing new regulatory challenges;
- iii. protecting constitutional values;
- iv. empowering citizens to manage their media use as a parallel to the regulatory mechanisms in place to help manage media use.

100 https://www.itu.int/en/ITU-D/Conferences/GSR/Documents/GSR2016/Digital_financial_inclusion_GDDFI.pdf

101 <https://www.eumonitor.nl/9353000/1/j9vvik7m1c3gyxp/vk9pbnqjryrs>

102 <https://www.epra.org/articles/general-information-on-epra>

Recommendation 11: NRA convergence or cooperation

With convergence of services, involved in the digital economy and the concerns over consumer protection, governments should take the opportunity to review the oversight of regulation of the different services. Advantages to establishing multi-sector regulators include:

- i. Improved harmonization of consumer protection measures;
- ii. economies of scope in regulating sectors;
- iii. better use of scarce human/financial resources shared across sectors;
- iv. effective management of firms operating in more than one sector;
- v. greater facility in addressing linkages between sectors.;
- vi. broader constituencies give the institution a greater independence from sector.

The downside can be the disruption and costs associated with restructuring. The most appropriate structure is shaped by such factors as the state of market development within a nation, its size and current priorities. As long as there is clear boundaries of responsibilities and close collaborative working the structure is of secondary importance.

3.2 NRA and Consumers

NRAs must pay particular attention to the needs of consumers, especially those who are vulnerable or disadvantaged. NRAs are constantly being pressurised from the well-resourced providers and so do not have any problem with obtaining input from their sector. Obtaining consumer input is very much more difficult. Consumer associations are mostly under resourced and often use a significant number of volunteers. Examples of consumer focus groups with which NRAs work closely include:

- i. **Australia: ACMA** has an established Consumer Consultative Forum (CCF) which is the ACMA's key telco consumer advisory group. It brings together key stakeholders, including consumer organisations, the telco industry and government, to raise and discuss important issues affecting users of telecommunications services, mobiles, Internet and fixed-line telephones. ACMA also works with the independent Australian Communications Consumer Action Network¹⁰³ (ACCAN) a communications consumer organisation representing individuals, small businesses and not-for-profit groups as consumers of communications products and services. ACCAN focuses on goods and services encompassed by the converged areas of telecommunications, broadcasting, the Internet and online services, including both current and emerging technologies.
- ii. **South African** The Independent Communications Authority of South Africa (ICASA) regulator ICASA has a Consumer Advisory Panel¹⁰⁴ (CAP) comprising 11 members, nominated through a public process, including representatives of persons with disabilities, women, youth, senior citizens and people living in under-served areas with regards to ICTs.
- iii. **Ireland's** ComReg has an established Consumer Advisory Panel¹⁰⁵. The Main Functions of the Consumer Advisory Panel are to:
 - a. help ComReg's decision making by raising specific issues of consumer concern;
 - b. provide open and independent advice to ComReg on a diverse range of issues that arise in the communications industry;
 - c. give advice on how ComReg's activities are affecting consumers;
 - d. highlight the importance of engaging with residential consumers and Small to Medium Enterprises (SMEs);
 - e. make collective recommendations and suggestions to ComReg on current consumer concerns;
 - f. advise ComReg on consumer interests in the markets regulated by ComReg.

103 <http://accan.org.au>

104 <https://www.icasa.org.za/pages/consumer-advisory-panel>

105 <https://www.comreg.ie/engagement/consumer-advisory-panel/>

- iv. **UK** Ofcom works closely with:
- a. Communications Consumer Panel¹⁰⁶ (CCP) and a more informal Consumer Forum for Communications¹⁰⁷ (CFC). Consideration is being given to the future of CFC and whether it would be better absorbed under the CA umbrella. The benefit of CFC is that it brings together representatives from all consumer associations. Typically, at its quarterly meetings there are 15 to 20 representatives.
 - b. CA and the Ombudsman Services who are working with different Regulators covering media, ICT, Utilities, products and services, and collaboratively working with different Ministries (including Finance & Business, Education, Health, Agriculture and Tourism).
 - c. Essential Services Access Network¹⁰⁸ (ESAN). ESAN brings together voluntary organisations and regulators to improve services and products for consumers. ESAN wants to ensure that services which are essential to life, health and well-being (currently energy, water, financial services and communications) meet the needs of consumers, particularly those in vulnerable circumstances. Their aim is to achieve **inclusive service** – in other words to ensure that all consumers have affordable access to services which meet their needs.

Recommendation 12: Consultation

NRAs must continue to review and refine the method of ensuring sound understanding of issues being faced by consumers in operating in the digital economy. Regulators can benefit in the quality of their decisions by using every communication tool available, to obtain consumer input on regulatory plans and impact of regulatory decisions. The Public consultation mechanism should taking full advantage of social media, to ensure the consumer's voice is heard and not drowned out by vested interests of providers. In particular if not already established NRAs can benefit from having a permanent consumer advisory group made up of representatives from different consumer groups e.g. representing the blind, hard of hearing, physically disabled and small businesses.

3.3 NRAs and international fora

NRAs regularly participate in international consumer fora with the objective of better understanding consumer issues when operating internationally or to align views with other similar authorities. For example, CI Summit 2019, "Putting Consumers at the Heart of Digital Innovation", brought together over 450 business, consumer, regulator, government and civil society leaders from over 90 countries. The aim was to share best practice in consumer protection and involve consumers in the design of new systems. The NRA panel confirmed the need to engage with a much broader range of stakeholders in a more open process to understand how to use or adapt existing regulation and work much harder to bring in groups that are underrepresented in regulatory dialogues. As markets and companies become more international, NRAs see the need to invest more time in international cooperation to understand developments and encourage consistency.

Well known to all GSR 19 delegates is the fact that the ITU provides the most significant agency for international collaboration on all ICT regulatory matters. This is reflected in the many references throughout this document.

An example of bilateral international cooperation is the MOU signed between Singapore MCMC Personal Data Protection Commission (PDPC) and the UK's Information Commissioner's Office to establish closer collaboration. The

¹⁰⁶ <https://www.communicationsconsumerpanel.org.uk/about-us-introduction/about-us>

¹⁰⁷ <http://ofcomconsumerforum.groupsite.com/main/summary>

¹⁰⁸ <https://www.esan.org.uk>

MOU form the basis of the working relationship between the two entities going forward in matters of mutual regulatory interest. It will foster closer partnerships in areas such as AI governance and ethics, cross-jurisdiction regulatory sandboxes, and best practices in data innovation and data protection.

The 2018 OECD Consumer Protection Enforcement in a Global Digital Marketplace¹⁰⁹ report has indicated that there are still significant challenges to international co-operation in solving issues being faced by consumers in the digital economy. One issue being faced is that a number of countries limit information sharing involving personal data and business information, court filings and information obtained pursuant to judicial or other compulsory processes with foreign authorities. A number of factors hinder efforts to increase international co-operation in consumer protection. Even when enabling legislation exists, there are still barriers to cross-border co-operation. The most important factor is a lack of adequate resources in consumer protection enforcement authorities.

Associations such as eConsumer,¹¹⁰ a partnership of more than 35 consumer protection agencies around the world, have established an online portal to report online scams covering such areas as: Online shopping, Credit and debit card, Jobs and making money, Travel and vacation, Imposter scams and Phone devices and services.

Recommendation 13: International cooperation for enforcement

A review of work plans is required by international bodies, to ensure appropriate structures, polices, standards and recommendation are being developed, to ensure legal certainty for international consumer redress and effectively tackle harms experienced in the digital economy.

4 Looking forward

The number of people connected to the Internet, according to the ITU Global ICT Regulatory Outlook 2018 is predicted to be 4.16 billion in 2020, over half of the world population. As growth in the number of people connected to the Internet and using the digital economy continues, it is crucial to ensure policies, laws and processes are in place, that make the world fair, safe and sustainable for them. Today consumers do not feel entirely safe in working within the digital economy and would like to see a strengthening of legislation, compliance and enforcement. For example, the CI and Internet Society, in May 2019, jointly carried out research exploring consumer perceptions and attitudes towards trust, security and privacy of consumers' Internet of Things (IoT) devices.¹¹¹ The survey concluded that a high number think that privacy and security standards should be assured by regulators (88%), followed by manufacturers (81%) and championed by retailers (80%). The CI meeting on 6th May 2019¹¹² addressing perspectives on how trade and the WTO can contribute to improving consumer welfare concluded that in addition to reducing prices and enhancing choice, consumer groups would also like future WTO e-commerce negotiations to address:

- i. avenues for improved redress and remedies for consumer grievances;
- ii. steps to strengthen consumer protection and standards;
- iii. provision of information on consumer rights so buyers can make informed choices;
- iv. competitive rules for the market to benefit consumers if telecommunication is included in the scope of the negotiations;
- v. the negative impact of geo-blocking on consumers, and other geographically-based restrictions which undermine online shopping and cross-border sales.

109 [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/CP\(2017\)10/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/CP(2017)10/FINAL&docLanguage=En)

110 <https://www.econsumer.gov/#crmt>

111 <https://www.consumersinternational.org/media/261950/thetrustopportunities-jointresearch.pdf>

112 https://www.wto.org/english/news_e/news19_e/summary_of_points_raised_trdia_06may19_e.pdf

Picking up these points in relation to:

- i. **competition rules**, the EU Competition Policy for the digital era¹¹³ 2019, address how competition policy should evolve to continue to promote pro-consumer innovation in the digital age. The report focuses on three key characteristics of the digital economy:
 - a. Extreme returns to scale. The cost of production of digital services is not proportional to the number of customers served.
 - b. Network externalities. The convenience of using a technology or a service increases with the number of users that adopt it.
 - c. The role of data. The evolution of technology has made it possible for companies to collect, store, and use large amounts of data. Data is not only one of the key ingredients of Artificial Intelligence but also a crucial input to many online services, production processes, and logistics.
- ii. **strengthening consumer protection**, BEUC report “Consumers in global markets”¹¹⁴ sets out priorities for 2019 EU Presidency covering a significant number of sectors including e-Health and e-Commerce. In particular they wish to ensure that any international agreement on e-commerce will protect and benefit consumers. Sensitive issues for consumers, such as cybersecurity and artificial intelligence, need to be addressed in EU law to avoid the risk of locking in weak levels of protection in trade agreements. BEUC is currently running a project – Consumer Law Ready - together with business federations, which helps and teaches SMEs to understand and comply with EU consumer law with a strengthening in enforcement.¹¹⁵ The global markets report recommends there should be specific transparency requirements for online platforms, which should provide transparent listings and clearly indicate whether the supplier has paid for a better place in the ranking. The legislator should establish explicit consequences for failing to comply with these transparency requirements. The online platform operator should be liable:
 - a. for misleading information, guarantees, or statements;
 - b. for the performance of the contract where he has failed to inform the consumer about who the actual supplier of the goods or service is and whether consumer rights are available and be regarded as the supplier of the goods or service where the platform has a predominant influence over suppliers.
- iii. **consumers rights**, data portability is a new right as a result of EU GDPR, that gives consumers the ability to request the movement of their personal data between services and suppliers. This increased control offers consumers easier switching between services. It is an opportunity for the creation of innovative data-driven products and should ultimately lead to a more dynamic digital economy. Examples of new services facilitated by data portability could include:
 - a. easily transferring your playlists and listening history between streaming services;
 - b. exporting activity-tracking data from your smartphone to help your doctor review your exercise levels and suggest personalised fitness plans;
 - c. moving your listings for things like home rentals between sites to make sure they reach the biggest audience possible;
 - d. making joining new social networks easier by quickly moving your personal data from existing services.

Regulators at the 2018 ITU Global Symposium for Regulators adopted Best Practice Guidelines on New Regulatory Frontiers, recognizing that “digitization is increasingly and fundamentally changing societies and economies and disrupting many sectors in what has been termed the 4th Industrial Revolution. Meanwhile, ICT regulation has evolved globally over the past ten years and has experienced steady transformation. Regulators need to keep pace with advances in technology, address the new regulatory frontiers and create the foundation upon which digital transformation can achieve its full potential. Being prepared for digital transformation and emerging technologies

113 <http://ec.europa.eu/competition/publications/reports/kd0419345enn.pdf>

114 https://www.beuc.eu/publications/beuc-x-2017-097_lau_beyond_trade_eu_consumers_in_global_markets.pdf

115 https://www.beuc.eu/publications/beuc-x-2016-087_ama_strengthening_enforcement.pdf

such as Artificial Intelligence (AI), the Internet of Things (IoT), Machine to Machine communications (M2M) and 5G is fundamental.”¹¹⁶

The Digital Economy will evolve to include new technologies such as:

- i. **Crypto currency, block chain** (see TED Talk by Don Tapscott¹¹⁷) e.g. bitcoin and ethereum have the potential to be more secure than use of credit and debit cards but require a significant amount of energy to produce. Secure payment methods such as Abra Block chain should increase security, reduce fraud and reduce cost to transfer funds. New real time payment systems can enable financial transfers to take minutes at a cost of 2% rather than days at a cost of 10%.
- ii. **Biometric identification**, e.g. facial, voice, fingerprint recognition, is already well developed and will grow in use for online verification of individuals, which should restrict access and reduce fraud.
- iii. **Artificial intelligence (AI) & Automated decision systems**: have a place in consumer protection and redress. Correctly designed they can protect consumers against unwanted material, they can be used in age, face or fingerprint verification, and they can assist in online dispute resolution (ODR). But there is a danger they are misused by service providers. Regulation.org¹¹⁸ have published an interesting discussion on this subject, which NRAs will have to deal with in particular the impact of how algorithms impact consumer decisions. New Economic Foundation paper “One year after the Cambridge Analytica scandal, we need to beef up responsibility for algorithms”¹¹⁹, March 2019 called for Regulators to strengthen responsibility for algorithms. Automated decision systems use algorithms that determine everything from what news we see to what friends we are recommended. Beyond filtering information on the Internet, we are moving towards a society where access to both public and private services is increasingly mediated through algorithms using digital profiles.
- iv. **Other technologies**: for example, virtual reality¹²⁰ (VR), augmented virtual reality (AVR), Internet of Things (IOT), drones and driverless vehicles will all result in new opportunities and challenges to consumer safety and redress.

116 https://www.itu.int/net4/ITU-D/CDS/GSR/2018/documents/Guidelines/GSR-18_BPG_Final-E.PDF

117 <http://dontapscott.com>

118 https://www.regulation.org.uk/specifics-artificial_intelligence.html

119 <https://neweconomics.org/2019/03/one-year-after-the-cambridge-analytica-scandal-we-need-to-beef-up-responsibility-for-algorithms>

120 <http://www.nzvrara.nz/wp-content/uploads/2017/10/NZVRARA-Report-One-VIRTUAL-GETS-REAL-Oct2017.pdf>

5 Conclusions

Drawing upon the reports, surveys and examples of a limited number of countries, this discussion paper has set out a number of recommendations for consumer protection in the digital economy and consumer redress. Collectively these recommendations will support effective handling of consumer complaints in a digitally driven economy through coordinated international and national communication between consumers and regulators and consumers and providers. These recommendations are largely independent of country size or state of development.

Globally international institutions and national governments must focus on consumer protection and redress to enable the benefits of the digital economy to be fully realised. We are all stakeholders in the digital economy, for better or worse. The simple fact that the digital economy touches every person, connected to the Internet, requires national governments and NRAs to cooperate and align consumer protection legislation on an international basis. Governments must undertake wholesale reviews of its consumer related laws such as Consumer Rights, Fair Trading and Consumer Protection. These should be updated where necessary, to ensure they are fit for purpose for people conducting national or international transactions, face to face or remotely, over any medium. They need to focus on outcomes and be technology neutral to cope with the continuous technological developments.

Regulation is about far more than regulation of the market. It might be said it is more about market moderation, working to ensure there is a win-win for *all* stakeholders carrying out legitimate activities. To achieve this, NRAs, need to be consumer centric, ensuring consumers of all abilities benefit from the digital economy furthering the economic and social goals of the nation. The ITU define collaborative regulation as 5th generation regulation (G5) using organic consultation, collaboration and conciliation to focus on and deliver consumer benefits and protection. The depth and breadth of regulation being executed by leveraging the resources of the stakeholders it brings together, through formal and informal agreements and working practices. Stakeholders include policy makers, single-sector and multi-sector regulators, to market players of any size. ITU believe collaborative regulation is required, driven by leadership, incentive and reward, to tackle the issues related to digital transformation and the data economy. Get it right and NRAs can assist all stakeholders to use the digital economy as a tool to tackle high priority global goals such as environmental sustainability.

The NRA's role needs to be shaped and informed by global contexts but priorities may also reflect national policy agendas such as tackling rural un-employment, strengthening national and local community cohesion or reducing poverty.

Regulators must not over simplify and ignore stakeholder complexity. Consumers should have a single point of contact, such as a Citizen Adviser, who they can freely access to receive guidance in the need for redress. With the ever-increasing pace of new technology and its creative use by providers, to secure our business in a global competitive market, the consumer connected to the Internet is bombarded with offers, all day every day. Criminals are attacking consumers at a relentless pace and must be tracked down and punished no matter where they or their victims are located. NRAs have an important role to play in education and acting as an interpreter between technology driven providers and consumers. NRAs have a responsibility to work with all legitimate stakeholders to encourage them to behave responsibly, minimise harm from attacks and track down perpetrators. Success in these activities will increase consumer participation and consumer protection in the digital economy.

This GSR-19 Discussion Paper has covered the myriad of aspects required to building confidence in a digital economy. An economy over the Internet enables people to live their lives, not in isolation or within a closed local community, but connected to fellow humans throughout the entire globe. Critical is the communications process between all stakeholders in the digital economy including regulators in adjacent fields. This communications process should focus on supporting advocacy in developing appropriate consumer protection policy, laws, regulations and processes. NRAs are at the centre of this communication web.

End

Appendix 1 – Key harms from being connected to the Internet

Connectivity issues

The most common reason consumers complain about broadband internet, fixed and mobile service is that it is not performing as it should. For example:

- i. **Hong Kong** Consumer Council¹²¹ state “Telecoms services continue to top all complaint categories with 3,231 cases, rising 8% over 2016 and representing some 13% of overall complaints, with the main bulk of complaints concerning mobile phone services (1,283 cases) and internet services (807 cases).”
- ii. **UK** Office of Communications (Ofcom¹²²) report “Comparing service quality research 2018 – Reasons to complain”¹²³ and “Choosing the best broadband internet, mobile and landline provider”¹²⁴ indicated that:
 - a. there were 58 complaints per 100,000 subscribers on average for broadband internet;
 - b. only around half of broadband internet customers who made a complaint were satisfied with the way it was handled by their provider;
 - c. a lower proportion of broadband internet complaints were resolved on first contact than in 2017;

Faulty services and products

Faulty services or products ordered over the Internet can be considered as a harm including issues in their delivery. The five most common problems faced by **Indian** consumers while shopping online as set out on MyAdvo¹²⁵ web site¹²⁶ are: product quality; delivery; payment; hidden costs and ambiguous website policies. According to the Consumer Council¹²⁷ of **Hong Kong** “Complaints against online purchase involving sales practices, suspected spurious products and alteration/termination of contracts have all jumped exponentially by 118%, 168% and 332% respectively, amounting to over \$10.8 million.”

With the growth of e-Commerce has come the growth in courier services. The UK Consumer Rights Act states that the retailer is responsible for the condition of the goods until they are delivered, so any damage or breakage en-route is the responsibility of them, not the courier. E.g. UK consumer watch dog Which provides advice on Consumer Rights – How to complain if you receive damaged goods in the post.¹²⁸

Harmful content

Users are concerned about what they see and experience on the Internet. The most seriously harmful, usually illegal, content and activity can threaten national security or the safety of children. The impact of harmful content and activity can be particularly damaging for children. Online platforms can be used for abuse and bullying and undermine democratic values and debate. There are growing concerns about the potential impact on people’s mental health and wellbeing.

There have been major debates on regulating the Internet and exactly what this means. Publicly available content, independent of how it is seen or delivered, however, has traditionally been regulated. To assist compliance Newspapers and TV companies have had editors. For user generated content over the internet the same content laws should apply but there is a need for a new approach to compliance.

121 https://www.consumer.org.hk/ws_en/news/press/2018/year-ender.html

122 <https://www.ofcom.org.uk/about-ofcom>

123 https://www.ofcom.org.uk/_data/assets/pdf_file/0028/145819/reason-to-complain-research-2018-chart-pack.pdf

124 https://www.ofcom.org.uk/_data/assets/pdf_file/0022/145525/comparing-service-quality-2018.pdf

125 MyAdvo is a platform connecting people with issues to appropriate lawyer

126 <https://www.myadvo.in/blog/5-most-common-problems-faced-by-consumers-while-shopping-online/>

127 https://www.consumer.org.hk/ws_en/news/press/2018/year-ender.html

128 <https://www.which.co.uk/consumer-rights/advice/how-to-complain-if-you-receive-damaged-goods-in-the-post>