Perspectives for Consumer Protection in the XXI Century

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Perspectives for consumer protection in the XXI Century

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I- CHALLENGES for consumer protection

A. Digital and Service’s Society: the ‘gatekeepers’
B. Sustainability, Data Protection and Consumer Health and Safety: the new ‘quality’
   *A new vulnerability?

II- CHANCES for a ‘second generation’ of consumer law

A. Freedom/Equality: global dominant position, discrimination and the enforcement
B. Cooperation/Enforcement/Harm: tourism, global standards and health
   * Towards a IGE’s Report: ‘Our common future’?
• Starting point: “Our” Consumer Law
  • Freedom - choice/good faith/abuse
  • Fairness - quality/confidence/payment
  • Distributive effect - prices/risk/strict liability
  • Local enforcement - National/Regional-Supran. responses

• XXI Century – “Service’s Society”
  • Changes worldwide/South and North
  • Advances of technologies/digital world
  • New Forms of economy/new ‘intermediaries’
  • Globalization / democratization of international consumption
I – Challenges in the XXI Century

A. Digital and Service’s Society

- Freedom and Fairness?
  More Choice – More ‘framed’ Information - No control
  Fairness – conformity of ‘services’/goods – digital content
  ‘Fair’ contracts - New/old contracts ‘sale’/’locatio conductio’
  Geo-blocking/geo-pricing/ big data’s new discrimination tools

- De-localization and Concentration
  - De-localization/ global chain of ‘producers’
  - Standardization of global suppliers/ Trust
  - Symbiosis/ Payment
  - New Impact/ new Harm - old expectations
A. Digital and Service’s Society

- ‘Gatekeepers’ (Hans-W. Micklitz)
- The Raise of new intermediaries- New ‘fabricants’ of global services?

Plurality of suppliers...new intermediaries...they do not provide, they organize/ they control:
- the transaction itself/choice/information/ ‘Who’
- the ‘meeting’ between the ‘apparent supplier’ and the consumer - freedom insight the ambiance/digital world/App
- the contract/policies - commercial practices- ‘pricing’
- ‘service’/delivering - form/timing – policies/guidance - information
- payment – consumer’s data - private conflict resolutions formulas
- Labels/Trademarks/Names – overconfidence of consumers
Gatekeeper, the platform, the controller is who invents, constructs, chooses, design, and sustains the hole B2C transaction. The other partners/chain (for example: to deliver, to pay, to assure the payment, the insurance, the consumer reviews)

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B – Sustainability, Data Protection and Security

New Quality of performance?

- Sustainable consumption: UNGCP
  - Dialogue between disciplines: our common future
  - Health and security: new Harm
  - Information/Education: symbol

- Data Protection – Dialogue between agencies – Laws: ‘dialogue des sources’ (Jayme)

- Risks – Healthy-Security
  - Legal framework is sufficient? Global South?
Summary of Legislation Worldwide

- **52%** countries with consumer protection laws
  - **Africa** - 19 from 54 countries (Bourgoignie)
  - **58%** countries with privacy laws
  - **72%** countries with cybercrime laws
  - **78%** countries with e-transactions or e-commerce laws (UNCITRAL Model Law)


- **Global suppliers**, but Double standards
- Legal framework is not sufficient in **Global South**
II-Chances for a ‘second generation’ of consumer laws

A) Freedom/Equality:
1. Global dominant position/online dispute resolutions
2. New Discrimination/global standards
3. Long term ‘captive’ contracts/fidelity/time in contract

B) Shaping International Cooperation
1. Healthy and security: new networks/ recall
   1. Share of evidences
   2. Dieselgate scandal (class litigation)
2. Democratization of international consumption
   1. International Tourists - Brazilian Hague Proposal
   2. Creation of a global network on consumer protection (law/forum – PIL – cooperation between South and North)
B) Enforcement/Harm: global standards and health

1. Enforcement:
   - Local or National Enforcement
   - Regional or Supranational Enforcement (ECC-Net)
   - Recall (Sharing information)

2. Role of the State
   - Privatization of individual disputes:
     - Control: no data, no transparency - Suggestion: Non binding
   - Necessary Public Enforcement:
     - Vulnerable consumers, collective redress, int. dimension, fines

II-Chances
Final observations: Impact of a new vulnerability?

- Focus back to providers/professional organization/network
  - ‘Situative’ Vulnerability/new weakness of consumers
  - ‘Digital’ Information/Digital ‘divide’
  - Financial information/ chain of suppliers (paypal, etc.)
  - Personal Data/data as new ‘value’/new business
  - New Harms /Duty to trade fairly (Dieselgate, tobacco…)

- Conformity of services/all professionals involved at the organization/network/ organizer/control
  - Liability of the ‘gatekeeper’?
  - Liability of the data control?
  - Liability for the ‘choice of partners’/Culpa in eligendo?
  - Global standards- share of evidences
The IGE’s Report: “Our common future”

• In emergent economies the role of the State remains necessary to enforce consumer law
• Global challenges/global standards: national law is not enough
• Cooperation between jurisdictions/States
• International Organization-IGE at UNCTAD
  • UNGCP mandate
  • Challenges are greater, than the answers
  • Suggestion: a IGE’s ‘Brundtland’ Report

• Thank you dirinter@ufrgs.br