

---

**Intergovernmental Group of Experts on Consumer Law and Policy**

4th SESSION

8-9 July 2019

Room XVII, Palais des Nations, Geneva

**Perspectives for Consumer Protection in  
the XXI Century**

**Keynote Speech by Prof. Dr. Claudia Lima Marques  
UFRGS - Federal University of Rio Grande do Sul - Porto Alegre, Brazil**

*This material has been reproduced in the language and form as it was provided. The views expressed are those of the author and do not necessarily reflect the views of UNCTAD.*

---



# Perspectives for consumer protection in the XXI Century

Prof<sup>a</sup>. Dr<sup>a</sup>. Dr. h. c. Claudia Lima Marques – UFRGS - Federal University  
of Rio Grande do Sul - Porto Alegre, Brazil





## 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/risks/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



BRASILCON

# 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?*

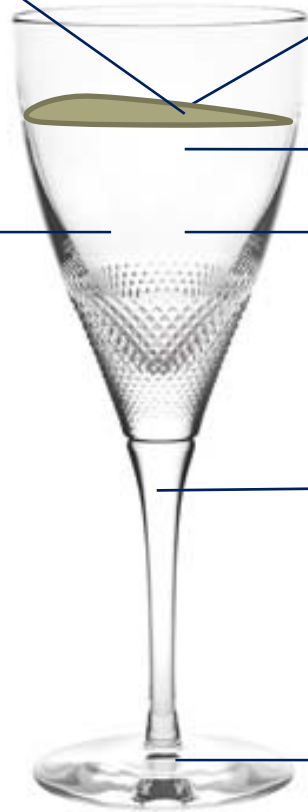
Plurality of suppliers...new intermediaries...they do not provide, they organize/ they control:

- 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



Consumer

'Apparent supplier'



Service, the transaction itself

Trust /  
Commitment

**Good faith / Information /  
Consumer data / Consent**

The other partners/chain (for  
example: to deliver, to pay, to  
assure the payment, the  
insurance, the consumer reviews)

'Gatekeeper', the platform, the  
**controller** is who invents,  
constructs, chooses, design, and  
sustains the whole B2C transaction

BRASILCON



# 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 – Heathy- 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)*

Source: UNCTAD+CSO+Newsletter+16+November, <https://unctad.org/en>

- **Global suppliers**, but Double standards
- Legal framework is not sufficient in **Global South**



BRASILCON

# 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)



# II-Chances

## 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



# 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](mailto:dirinter@ufrgs.br)



BRASILCON