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**Report of *Ad Hoc* Expert Group Meeting on Emerging consumer protection trends and challenges:
Implementing the United Nations Guidelines for Consumer Protection**

Heald at the Palais des Nations, Geneva, on 29 November 2018



I. Introduction

Consumer protection is a fundamental policy for the development of healthy global markets. Empowered consumers can make informed decisions according to their needs and means thereby playing an active role in the market. Consumer protection policies are essential to balance asymmetries between consumers and traders, to enforce law against infringers and to provide for dispute resolution and redress for consumers. Furthermore, innovation is happening at a speed never seen before, directly affecting consumers and markets at national, regional and global levels. This requires appropriate policy and regulatory responses. The UNCTAD *Ad Hoc* Expert Group Meeting on *Emerging consumer protection trends and challenges: Implementing the United Nations Guidelines for Consumer Protection* addressed some of the current consumer protection trends and challenges in policy-making and in the digital economy, while discussing the means of better implementing the United Nations Guidelines for Consumer Protection (UNGCP).¹

Considering the revised UNGCP, the question arises: how to make consumers' interest count? The first panel discussed ways in which governmental consumer protection authorities' advance consumers' interest in the wider policy-making process. These include stronger evidenced-based policy-making through public consultations and surveys, behavioural insights and impact assessment.

The second panel elaborated on consumer protection in the digital era, which is high on the agenda of consumer protection agencies and other relevant government institutions. The revised UNGCP include new guidance arising from the digital economy, including on digital platforms, the protection of vulnerable and disadvantaged consumers and consumer data protection, among others. This panel focused on the growing importance of strengthening consumer protection regimes and upholding consumer rights in the digital marketplace, especially in developing countries.

The outcome of this meeting feeds into the preparations for the Eight United Nations Conference to Review All Aspects of the Multilaterally Agreed Principles and Rules for the Control of Restrictive Business Practices to take place in 2020.

II. Opening remarks

Ms. Pamela Coke-Hamilton, Director, Division on International Trade and Commodities (DITC), UNCTAD, opened the meeting. Since the General Assembly entrusted UNCTAD with the mandate to serve as the focal point within the United Nations System on consumer protection in 2015,² UNCTAD oversees the implementation of the UNGCP. The work of this *Ad Hoc* Expert Group Meeting complements the work of the Intergovernmental Group of Experts on Consumer Protection Law and Policy within UNCTAD, which serves as the international institutional machinery for the implementation of the Guidelines, covering all aspects of consumer protection.

Although the 21st Century consumer is a global consumer, thanks to the liberalization of trade and the irruption of the digital economy, there is still great potential to be tapped. As contained in UNCTAD's Information Economy Report of 2017,³ e-commerce sales in 2015 reached \$25.3 trillion, 90 per cent of which were in the form of business-to-business e-commerce and 10 per cent in the form of

¹ [A/RES/70/186](#).

² *Ibidem*.

³ [UNCTAD/IER/2017/Corr.1](#).

business-to-consumer (B2C) sales. UNCTAD estimates that cross-border B2C e-commerce was worth about \$189 billion in 2015, which corresponds to 7 per cent of total B2C e-commerce, some 380 million consumers making purchases on overseas websites. In Denmark, Germany and the United Kingdom more than 80 per cent of Internet users are already buying online. Similar data from some developing countries suggest that the proportion of Internet users that purchase online ranged from below 3 per cent in many least developed countries, to 60 per cent in Singapore in 2015.

UNCTAD's work on consumer protection aims to enhance the achievement of Agenda 2030⁴, identifying consumers as vectors in achieving the Sustainable Development Goals, especially in digital markets. Time has come for developing countries to make a stronger case out of consumer protection, in particular, ways in which governmental consumer protection authorities' advance consumers' interest in the wider policy-making process and at ways to enhance consumer protection in the digital environment.

III. Session 1: Making consumers count: Promoting consumer protection in general policy-making

Ms. Teresa Moreira, Head of Competition and Consumer Policies, UNCTAD moderated the session. The panelists of this session were: Ms. Alia Abbas, Director General of Economy and Trade, Lebanon; Mr. Hugh Stevenson, Deputy Director, Office of International Affairs, Federal Trade Commission, United States of America; Ms. Sara Rafael Almeida, Policy Analyst - Behavioural Insights Joint Research Centre, European Commission; and Mr. Steve McFeely, Head of Statistics and Information, UNCTAD.

The moderator introduced the subject by referring to the United Nations Guidelines on Consumer Protection (UNGCP), indicating that consumer protection is a fundamental policy for enhancing economic development. She stressed the importance of providing guidance to member States in terms of how to formulate policy making in accordance to the social-economic conditions of the country, focusing on key issues such as product safety, dispute resolution and redress, good business practices, sector-specific areas including e-commerce, financial services, water, energy and public utilities, among others. Furthermore, she mentioned that the UNCTAD Manual on Consumer Protection (2017) as well as other tools prepared by international organizations such as the Organisation for Economic Co-operation and Development (OECD) Consumer Policy Toolkit (2010)⁵ and the subsequent Recommendations on Consumer policy making (2014)⁶ provided relevant guidance on the topic. She highlighted the main issues to be considered by the panelists including how to make consumer count in the general policy making, how to encourage strong and sound evidence-based policy making in this process. Finally, she mentioned the role of UNCTAD in providing policy recommendations to member States on the implementation of the UNGCP.

The Director General of Economy and Trade, Lebanon, emphasized the importance of upholding consumer rights, as included in the UNGCP, to enhance the welfare of citizens. This also entails greater responsibilities for policy makers in charge of consumer protection. As such, she presented Lebanon's structure for the implementation of consumer protection policies. Furthermore, she highlighted the importance of the work carried out by the UNCTAD MENA technical cooperation programme, in particular the training workshops for various stakeholders, including government officials, consumer associations, private sector and academia. A multi-stakeholder approach is needed for consumer policy formulation and implementation. She mentioned the examples of ensuring food safety,

⁴ [A/RES/70/1](#).

⁵ OECD, [ISBN 978-92-64-07966-3](#).

⁶ OECD, [Recommendation on Consumer Policy Decision Making, 2014](#).

providing dispute resolution to consumers and fighting counterfeit and forged goods all of which require the participation of a wide and diverse set of stakeholders. Lebanon's Consumer Protection Directorate is responsible for the enforcement of consumer laws, and thus holds a coordination role among public and private sector stakeholders. The digital economy poses new challenges for policy makers and enforcers, and it provides new opportunities. Cross-border business-to-consumer online trade calls for enhanced international cooperation, including on product safety. Lebanon is also upgrading its complaint handling system to allow consumers to file complaints online. One pressing issue in the country is electricity billing: individual meters are often not reliable, while electricity suppliers threaten to withdraw supply for unpaid bills. In this case, the Government must arbitrate between consumers' right to access electricity and suppliers' right to be paid. The Ministry has no magic resolution, but consultation and coordination are paramount to reach a long-lasting solution.

The Deputy Director, Office of International Affairs, Federal Trade Commission, United States, highlighted how the core goal of the UNGCP is to promote consumer welfare. This is not always an easy task, as it requires the participation of various branches of Government and needs the contribution of many policies, which are broader than consumer protection. The speaker, who is currently chairing the OECD Committee on Consumer Policy, presented the relevant work of that organization. The OECD Consumer Policy Toolkit (2010)⁷ contains six steps for policy making: (1) defining the consumer problem and its source; (2) measuring consumer detriment, (3) determining whether the consumer detriment warrants a policy action; (4) setting a policy objective and defining the range of policy options; (5) evaluating options and selecting a policy action to avoid harming other policies such as competition policy; and (6) developing a policy review to evaluate the effectiveness of the policy. Policy makers have a range of policy tools to target the demand and supply side of markets, of which dispute resolution and redress and financial instruments play a role in both. The toolkit six-steps approach was applied to real-life cases, in particular when assessing consumer trust in digital platforms through OECD research. Another example of policy advice are the OECD Recommendation on consumer protection in e-commerce (2016), available in English, French and Spanish.

The speaker then presented the experience of the United States, whose Federal Trade Commission, as an independent agency entrusted with consumer protection responsibilities, uses a set of tools including public hearings and consultations to engage in bottom-up policymaking, gathering consumers and businesses interests and concerns. The United States Congress often asks the Commission to testify about the agency's activities and to provide expertise on topics related to consumer protection. The Commission also organizes public workshops and seminars on a range of issues, including: protecting vulnerable consumers to data security; the internet of things; and fintech. Finally, the Commission focuses on international cooperation, as many of its cases have a cross-border component. There are valuable initiatives such as the International Consumer Protection Enforcement Network (ICPEN) and its Econsumer.gov, where 37 countries share information and intelligence on consumer protection complaints.

The Policy Analyst on Behavioral Insights of the Joint Research Centre, European Commission, shared the experience of the EU Policy Lab in applying evidence, behavioral insights and advice to support the European Commission policymaking. She presented the behavioral insights (BIs) activities. The Centre works upon request from the Commission and also conducts its own research and training on for the Commission's staff and representatives from European Union member states. BIs support policy-makers by understanding how people really behave through empirical methodologies. This

⁷ Op. cit. at 5

complements traditional policy-making such as regulation, incentives and information-provision. She showed through various examples how consumer behavior deviates from the classical economic thinking of *homo economicus* (perfect rationality and utility maximization). Therefore, BIs are very effective in designing policies and interventions that take a more realistic notion of human behavior and information economics, as recognized by Nobel awardees Daniel Kahneman and Amos Tversky (2002) and Richard Thaler (2017.) Several countries have also adopted BIs in policy making. BIs can be used throughout the “policy cycle:” problem definition, testing the effectiveness of different policy options before full-scale implementation, and impact assessment exercises. In the context of consumer protection, the use of defaults in contracts’ terms and conditions is quite effective in inducing a given behavior (the decision-making is biased towards defaults.). The abuse of defaults options, particularly in the context of online purchases, induces consumers to buy products that they do not necessarily want or need (such as insurance when purchasing a flight). Also, BIs can enhance related policies to support consumer protection and boost market competition. For instance, the European Union energy labelling relied on the testing of behaviorally informed interventions in order to arrive at an energy label that is easy to understand and encourages consumers to buy environmentally-friendly products, further enhancing innovation in the market. Finally, she provided other applications of BIs in the funding of projects (better spending), drafting Terms of Reference, training project teams and policy-makers on how to apply behavioral approaches at the national, regional and local level.

The Head of Statistics and Information at UNCTAD shared his views on about how to protect consumers from their own data. He made three important distinctions: i) policy-based evidence, where a biased selection of statistics is used to support a preferred policy action; ii) evidence-based policy, which may pose concerns for democracy and consumer protection because decisions increasingly rely on big data and algorithms; and iii) evidence-informed policy, which is the best option. Official statistics are produced following the United Nations Fundamental Principles of Official Statistics (adopted by the General Assembly in 2014).⁸ Principle 6 prescribes that all individual data collected must be treated as confidential and can only be used for statistical purposes. He pondered whether the age of privacy is dead (as asserted by Mr. Zuckerberg from Facebook, and others) and whether the concept of privacy is diminishing with the digitally native generation. In this regard, he expressed concerns on how consumers are willing to sacrifice their privacy for discounts from a supermarket or online advertising. But he noted efforts made by the European Union in protecting data with the recent General Data Protection Regulation (GDPR). He did contrast this with other regions where analogous legislation doesn’t exist. He argued that these developments posed a privacy dilemma for official statistics, which are: i) technical, anonymization with super computing power; ii) perceptual, is privacy an outdated concept? ; and iii) political, one is to be left uncounted in order to meet the United Nations Sustainable Development Goals. Measuring everybody would be very expensive and, in many cases, could even be counter-productive. He noted that a series of data wars are currently being waged over the ownership of consumers’ data, for which consumer protection is needed. There is also a philosophical battle emerging over the value of data and the value of the labor that supplied it. He also questioned why is the “open data” movement targeting only government or public information but there is no attempt to open consumer data held by the private sector. He warned that the increasing use of algorithms in evidence-based decisions leaves little room for query or challenge. He also expressed concerns over the increasing weaponization of data and the attempts to undermine ‘net neutrality.’ As consumers generate more and more data, their privacy needs should be taken more seriously. He also noted some challenges for official statistics since more data may,

⁸ [A/RES/68/261](#).

counter intuitively, make the work of statisticians more difficult, as not all data is of sufficient quality to be used for official statistics or to inform public policy.

After the presentation, an interactive debate ensued. Participants posed questions related to the ways consumer policymaking is being implemented in developing countries. Reference was made to whether consumer protection should be handled by independent agencies or even entrusted civil society organizations. Participants also touched upon the differences and similarities between consumer issues in developing and developed countries as well as some common challenges that consumer agencies face when dealing with the digital economy. On the issue of digitalization, several participants highlighted how consumers can become more vulnerable particularly as privacy data protection laws and regulations in developing countries are often lacking. Furthermore, the general discussion addressed the issue of culture and trust in government when consumer policies are implemented. Finally, participants shared the view that the participation of the civil society in policymaking is key for consumer awareness and empowerment, for which vibrant consumer associations are needed to integrated consumers' interests in policy design.

IV. Session 2: Upholding consumer rights in digital markets

Session 2 on upholding consumer rights in digital markets was moderated by UNCTAD officials from CCPB Branch of the DITC Division: Ms. Ebru Gokce-Dessemond, Ms. Ana Cipriano and Mr. Arnau Izaguerri. The session was organized around three discussion topics; Consumer protection and digital platforms, Vulnerable and disadvantaged consumers and Consumer data protection, respectively. The lead discussants were as follows; discussion 1, Mr. George Lusty, Senior Director for Consumer Enforcement, Competition and Markets Authority (CMA), United Kingdom of Great Britain and Northern Ireland and Mr. Akira Yoshida, Policy Analyst, OECD; discussion 2, Mr. Fernando Blanco Muiño, National Director, National Directorate for Consumer Defence, Argentina and Mr. Shirish Deshpande, President, MGP-India; discussion 3, Mr. Thomas Blöink, Deputy Director General Consumer Policy, Digital Society, Federal Ministry of Justice and Consumer Protection, Germany.

a. Discussion 1: Consumer protection and digital platforms:

The moderator opened the session by introducing the work UNCTAD carried out in under the working group on consumer protection in electronic commerce,⁹ its mandate and timeframe. The Senior Director for Consumer Enforcement, Competition and Markets Authority, United Kingdom, shared his experience covering a wide array of issues in the field of the digital economy as well as the opportunities for consumers and businesses. He pointed out the risks to consumers in digital platforms who may not be aware that their rights are breached. This is particularly the case in online gambling, car hire, and secondary ticketing platforms. In some instances, consumers do not know whether the provider is a business, or an individual as was the case of the secondary ticketing company Viagogo . In this case, the Authority pursued the company for not providing enough information to consumers, in breach of consumer laws.

The Authority also undertook an investigation on online dating, looking into the interaction between consumer law and data protection issues, in particular the collection and use of personal data, finding that it was being shared with other online dating platforms. The Authority has also worked on

⁹ UNCTAD, [Report of the Working Group on Consumer Protection in E-Commerce to the IGE 2018](#).

cases of online hotel booking sites, finding various breaches to consumer rights such as misuse of data, false claims of accommodation scarcity, and unduly use of algorithms to condition consumers' behavior, amongst other unfair practices. There are several emerging consumer protection concerns in digital platforms: i) behavioral insight "sludge", when harmful nudging online behaviours may infringe consumer law; ii) protecting vulnerable consumers, particularly children engaging in gambling, connected devices, etc.; and iii) online reviews whose main challenges include cross-border enforcement, exploring a new range of remedies, and encourage businesses to adopt compliance by design.

The Policy Analyst at the OECD described the institutional landscape of online platforms, their business model and impact on markets, presenting the OECD recent work on this issue. He provided some examples of online platforms which are well-known since they affect consumers in all areas of their daily lives in the sectors of: entertainment, transportation and social media, among others. Online platforms vary in terms of business models, functionalities, implications and values. The speaker presented the content of the OECD Recommendation on consumer protection in e-commerce (2016)¹⁰ covering recent developments, such as: mobile devices and online payments related to online platforms. The OECD report on Protecting Consumers in Peer Platform Markets (2017)¹¹, shows that consumers trust is higher in online platforms than in regular or conventional businesses. The G20/OECD Toolkit for protecting digital consumers (2018)¹² covers general principles on fair business, disclosures, processes for transaction payments and confirmation, privacy and data protection. Further, the ongoing work includes preparing a good practices guide and recommendation and conducting experiments on personalized pricing. In conclusion, the question re-mains: when and how platforms are to play a role in addressing harmful actions by a third-party seller in a transaction and to what degree should online platforms be responsible for consumer transactions.

Participants took the floor and raised various questions. There was a suggestion to revise the UNGCP to reinforce the fight against counterfeit products. One participant pondered on the feasibility of creating a universal e-commerce forum lead by the Group of 77 and China. Various participants highlighted the need for developing countries to revise their legal frameworks on consumer protection to accommodate the specificities of digital platforms, and the need to build enforcers' technical capacities. At this stage, developing countries can leapfrog development stages if international best practices are considered in policy making, as UNCTAD is playing the role of facilitator and providing technical cooperation upon request.

b. Discussion 2: Vulnerable and Disadvantaged Consumers

The moderator opened the discussion sharing the work of the UNCTAD Working Group on the protection of vulnerable and disadvantaged consumers,¹³ which will be made available at UNCTAD's Virtual catalogue on international best practices for competition and consumer protection.¹⁴ The National Director for Consumer Defence shared the Argentinian experience in protecting vulnerable and disadvantaged digital consumers, especially focusing on gender. Every consumer is in a situation of structural vulnerability in a business-to-consumer relation. Protecting women's rights as consumers is in line with various United Nations and regional conventions on human rights. According to the

¹⁰ OECD, [C\(2016\)13](#).

¹¹ OECD, [DSTI/CP\(2015\)4/FINAL](#).

¹² OECD, [2018](#).

¹³ UNCTAD, [Report of the Working Group on Vulnerable and Disadvantaged Consumers to the IGE 2018](#).

¹⁴ See: <https://ccpcatalog.unctad.org/>.

World Economic Forum, the gender gap in Argentina is 27%. He spoke of a tacit “pink tax” on female-oriented products, leading to higher prices, which is invisible but deepens the gender gaps. The World Bank estimates that women lose 20 to 30% of school days due to lack of access to adequate menstrual hygiene. Among vulnerable consumers, women are hyper-vulnerable consumers. This also applies to gender orientation. Argentina called upon UNCTAD to start working on mainstreaming gender into consumer policies.

The President of MGP-India presented the experience of a leading Indian consumer association regarding the protection of vulnerable and disadvantaged consumers online. E-commerce is prone to abuses, even more than traditional forms of commerce. According to a recent Local Circles study, 45% of consumers could not find maximum retail price in online offers (although it is compulsory according to Indian law), and 57% could not find the best-before-date of products offered online. 19% received faked products. The discussant identified several categories of vulnerable and disadvantaged consumers: children, women in rural places, senior and mentally and physically handicap consumers. Digital literacy, online fraud and dispute resolution and redress are all factors to address when focusing on vulnerable and disadvantaged consumers’ needs. Cross-border trade and jurisdiction are impediments for protecting vulnerable and disadvantaged online: an understanding on how to deal with such cases is needed. He suggested that all stakeholders are to own the implementation of the UNGP, with e-commerce and dispute resolution and redress as a priority, especially catering the needs of vulnerable and disadvantaged consumers.

UNCTAD shared that it addressed gender and consumer protection within its UNCTAD MENA Programme aiming to contribute to regional integration in 7 Middle East and Northern Africa countries through competition and consumer protection. The focus is usually on women access to economic opportunities, but mainstreaming gender in consumer protection policy may require further work. UNCTAD also highlighted the information asymmetry that justifies consumer protection, underlining that it may be difficult to provide higher levels of protection in a cross-cutting way. The digital divide is important not only among but also within countries.

One participant highlighted that the consumer protection agency and sectoral regulators have found that charities that speak for vulnerable consumers enable the consideration not only of the average consumer but also of the needs of vulnerable and disadvantaged consumers. Another participant announced a new report on protecting the elderly, which recognizes that vulnerability depends on context (for example, consumers of funeral services are in a position of vulnerability). Consensus exists on the governance of electronic commerce for consumer protection, such as the OECD Recommendation on protecting consumers from cross-border fraud (2003.)¹⁵ illustrates.

c. Discussion 3: Consumer data protection

The moderator stated that the UNGCP, in Guideline 5(k), refers to “the protection of consumer privacy” among the legitimate needs that the Guidelines intend to meet. He also referred to the European Union GDPR as an instrument that includes common core principles for online consumer data protection.

The Deputy Director General, Consumer Policy, Digital Society, Federal Ministry of Justice and Consumer Protection of Germany, stated that data protection is a key issue for e-commerce in his country. Consumer trust and empowerment are paramount to realize the benefits arising from the

¹⁵ OECD, [2003](#).

digital economy, while data protection promotes trust in e-commerce. Therefore, businesses are increasingly interested in data protection.

The challenges for consumer data protection in the digital era include algorithms and cookies, which are designed to collect data, where “data is the new oil.” As regards the internet of things, algorithms may draw their own conclusions and this has both positive and negative implications for consumers, depending on how these techniques are used. If a consumer is not aware of and cannot control the use of her data, she might suffer from profiling based on gender, race and personalized pricing. The Facebook/Cambridge Analytica case exemplifies these challenges, including serious dangers for democracy and the rule of law, through influencing elections. Regarding consumer data sovereignty, he said that consumers must make decisions on the collection and use of personal data. The two key elements to consumer data protection are: transparency and information about the use of consumers’ data; and informed and voluntary consent of the consumer. The GDPR provides a comprehensive set of rules for data protection. It sets high standards for informed and voluntary consent as a precondition for collection and use of personal data. The UNGCP provide the guiding principles to enhance consumer protection. Germany welcomes UNCTAD’s efforts to keep pace with consumer protection issues and developments and sees the its Intergovernmental group of experts on consumer protection law and policy as the global forum to address challenges and seek solutions, while the G20/OECD Toolkit for protecting digital consumers (2018)¹⁶ sets out principles to serve as practical tools for policy making.

One participant expressed interest in data protection in the field of online dating. ICPEN is currently conducting a project on terms and conditions focusing on privacy. Another participant stressed that cross-border cooperation is needed not only among consumer agencies but also among data protection authorities. There should be information gateways between consumer bodies and data protection authorities both domestically and cross-border. In various countries, the scope of privacy is much broader than that of consumer data protection, the former being a citizenship issue and the latter being closer to consumer protection.

¹⁶ Op. cit. at 12.