

# **UNCTAD Working Group on Consumer Protection in E-commerce**

## **Subgroup on Cross-Border Cooperation**

### **Report on Cross Border Cooperation \***

\*The subgroup was coordinated by: Competition and Markets Authority (CMA). United Kingdom

## Contents

Cross-Border Cooperation Report .....	<b>Error! Bookmark not defined.</b>
Acronyms and Abbreviations .....	3
Introduction.....	4
Survey Responses .....	8
Domestic Frameworks .....	8
Domestic Legal Powers .....	12
Undercover Investigations .....	12
Power to Seek Remedies.....	13
Analysis.....	14
Consumer Redress .....	15
ADR/ODR.....	17
Cross-Border B2C E-Commerce Transactions.....	19
Jurisdictional Issues in Addressing e-commerce complaints.....	20
17th March 2022 Conference on Cross-Border Enforcement of Consumer Law – Looking to the Future .....	25
Recommendations and Options for 2022-23 Work .....	28
Bibliography and Relevant Other Work .....	31
Annex A: January 2022 Mapping Survey (Questions) .....	33
Annex B: January 2022 Mapping Survey (Responses) .....	355

## Acronyms and Abbreviations

<b>ADR</b>	Alternative Dispute Resolution
<b>ASEAN</b>	Association of Southeast Asian Nations
<b>B2B</b>	Business-to-Business
<b>B2C</b>	Business-to-Consumer
<b>CEMAC</b>	Economic and Monetary Community of Central Africa
<b>CMA</b>	UK Competition and Markets Authority
<b>CPC (EU)</b>	Consumer Protection Cooperation Network
<b>CSHN</b>	Consumer Safety and Health Network
<b>DNDCYAC</b>	National Directorate on Consumer Protection and Consumer Arbitration (Argentina)
<b>EAEU</b>	Eurasian Economic Union
<b>ECN</b>	European Competition Network
<b>FTC</b>	US Federal Trade Commission
<b>ICN</b>	International Competition Network
<b>ICPEN</b>	International Consumer Protection and Enforcement Network
<b>KCA</b>	Korea Consumer Agency
<b>KFTC</b>	Korean Fair Trade Commission
<b>NCC</b>	National Consumer Commission (South Africa)
<b>ODR</b>	Online Dispute Resolution
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>PROCON</b>	Protection and Consumer Defence Foundation (Brazil)
<b>SENACON</b>	National Consumer Secretariat (Brazil)
<b>SIC</b>	Superintendence of Industry and Commerce (Colombia)
<b>UOKiK</b>	Polish Office of Competition and Consumer Protection
<b>UNCTAD</b>	United Nations Conference on Trade and Development
<b>UNGCP</b>	UN Guidelines for Consumer Protection

## Introduction

1. The second session of the [Intergovernmental group of experts on consumer protection law and policy](#) established the UNCTAD Working Group (WG) on consumer protection in e-commerce in 2017. The WG is coordinated by the Secretariat and UN member States participate and engage on a voluntary basis. The WG established three subgroups in 2020<sup>1</sup> led by member States on (i) misleading and unfair practices: misleading green claims (Colombia); (ii) consumer education and business guidance: dark commercial patterns (Kenya and Argentina; and (iii) International cooperation in cross-border cases: cross-border enforcement cooperation (UK and USA). The mandate of the WG was renewed in the IGE 2021 to continue working on the 3 topics and report to the IGE in 2022. This report covers the work of subgroup iii above.
2. The WG reported on its work to the IGE held in July 2018 (See the Report of the WG to the IGE 2018).<sup>2</sup> The IGE extended the mandate of the WG for another year and requested the WG “to recommend policy options for consumer protection authorities of member States, in light of guidelines 63 to 65, and to report to the fourth session of the Intergovernmental Group of Experts” to be held in July 2019<sup>3</sup> (see para. 10 in the Agreed Conclusions of the IGE 2018).
3. The Eighth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices discussed the work of the WG in ecommerce on international enforcement cooperation among consumer protection highlighted cross-border e-commerce as one main challenge facing international cooperation between enforcement agencies. Other challenges are: diverse legal and information-sharing practices between countries and the need for effective enforcement and human capacity as prerequisites to cooperation, the importance of consumer redress and the need to institute dispute-resolution mechanisms to assist online consumers and the ability to share and receive evidence from foreign jurisdictions.
4. The role of UNCTAD is providing a forum and guidance for member States, through the United Nations Guidelines for Consumer Protection, on harmonization of laws and identification of obstacles to cross-border cooperation as well providing a platform for interaction for the betterment of consumers globally and repository of information and advice to member States on international cooperation in e-commerce.

---

<sup>1</sup> [The Report of the Working Group on Consumer Protection in E-Commerce to the IGE on Consumer Protection Law and Policy June 2021 \(unctad.org\)](#)

<sup>2</sup> [Report of the Working Group on Consumer Protection in E-Commerce to the IGE 2018 \(unctad.org\)](#)

<sup>3</sup> [Report of E-commerce Working Group to IGE 2019.docx \(unctad.org\)](#)

5. In addition, the UN Conference<sup>4</sup> adopted a recommendation on *Preventing Cross-Border Distribution of Known Unsafe Consumer Products*. The recommendation calls on Member States to pursue policies, consistent with World Trade Organization rules, aimed at preventing cross-border distribution of consumer products known in their own jurisdictions to be unsafe; to raise awareness among businesses responsible for bringing goods to the market on the potential harms of cross-border distribution of unsafe consumer products; and inform consumers on the risks to their physical safety posed by unsafe products, especially when engaging in cross online transactions among others.
6. Further, to help protect consumers' physical safety, the United Nations Guidelines for Consumer Protection call on member States to adopt or encourage the adoption of appropriate measures, including legal systems, safety regulations, national or international standards, voluntary standards, and the maintenance of safety records to ensure that products are safe for either intended or normally foreseeable use.
7. Cross - border ecommerce necessitates enforcement measures that go beyond national borders. Given that consumer product safety requirements are set nationally and/or regionally, rules may vary from country to country or regionally. However, consumer product safety authorities regularly exchange information on product recalls at national, regional, and international levels for example through the European Union Rapid Alert system (RAPEX)<sup>5</sup>.
8. Further UNCTAD is implementing a project on delivering digital trading infrastructure and online dispute resolution for consumers to improve international trade and electronic commerce.<sup>6</sup> The project aims to enhance consumer trust and protection in digital markets. The project is also piloting in implementing online dispute resolution systems for consumers in Indonesia and Thailand using blockchain and other new technologies. It targets government officials of beneficiary countries, while businesses and consumers are considered as indirect beneficiaries as the activities unveil tools to implement online dispute resolution for the benefit of consumers, through research and analysis, technical assistance, and capacity building.
9. In 2021, [retail e-commerce sales](#) amounted to approximately \$4.9 trillion worldwide. This figure is forecast to grow by 50 percent over the next four years, reaching about \$7.4 trillion by 2025; by some estimates, 95% of all consumer purchases will be via ecommerce by 2040.<sup>7</sup> Cross-border e-transactions make up an increasingly significant

---

<sup>4</sup> [Report of the Eighth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices.](#)

<sup>5</sup> [Safety Gate for dangerous non-food products \(europa.eu\)](#)

<sup>6</sup> [Delivering digital trading infrastructure and online dispute resolution for consumers as means to improve international trade and electronic commerce | UNCTAD](#)

<sup>7</sup> Alex Chung and Ying Yu (2021). [Consumer trust in the digital economy: The case for online dispute resolution: UNCTAD Research Paper No. 72](#), p.8; see also [UK Online Shopping and E-Commerce Statistics for 2017](#).

proportion of overall e-commerce sales, with cross-border sales growing at double the rate of domestic e-commerce.<sup>8</sup>

10. The COVID-19 pandemic has accelerated these trends, particularly in domestic markets. As UNCTAD's global review of COVID-19 and e-commerce suggests, cross-border e-commerce was initially far more adversely affected by severe supply chain disruptions and lockdowns than domestic e-commerce, before showing a strong recovery.<sup>9</sup> While further data is needed on the specific impact of the pandemic, sustained and rapid growth in cross-border e-commerce is almost certain in the coming years.
11. There have understandably been profound changes in business-to-consumer relationships since the first online transaction in 1994, with the rise of e-commerce interlinked with the broader digitalisation of the global economy.<sup>10</sup> E-commerce has brought with it opportunities to increase the trading reach of developing countries, to foster regional integration, and to expand the range of goods and services available in domestic markets.<sup>11</sup>
12. However, the pandemic has also highlighted some of the numerous issues that consumers face when purchasing online, with a proliferation of fraud and product safety issues related to healthcare products and PPE.<sup>12</sup> As a recent UNCTAD report has concluded, the pandemic 'opened the floodgates of unfair, misleading, and abusive business practices'.<sup>13</sup> As with other forms of e-commerce, consumers entering into cross-border transactions may be vulnerable to harmful practices and dark commercial patterns, but may be unable to pursue, or unaware of, routes to secure redress against an overseas trader.<sup>14</sup> Language barriers and "home-State bias" may also complicate the

---

<sup>8</sup> Cross-border B2C e-commerce amounted to \$440 billion in 2019. Cross-border e-commerce transactions are particularly prevalent in certain national markets – 84% of Irish consumers buy from abroad, as compared to 10% or under for markets such as Japan or China. For more on these figures, see [here](#) and [here](#); see also UNCTAD (2021) [COVID-19 and e-commerce: a global review](#), p.34.

<sup>9</sup> UNCTAD (2021) [COVID-19 and e-commerce: a global review](#), p.38; see also McKinsey (2021). [The 2020 McKinsey Global Payments Report](#), p.7

<sup>10</sup> The size of the digital economy is currently estimated at between 4.5 to 15.5% of world GDP. The proliferation of these developments has not been uniform, however, and major global imbalances in the digital economy remain; in the least developed countries (LDCs), for example, only 20% of people use the Internet. See also: [Country rank and value in the UNCTAD B2C E-commerce Index](#).

<sup>11</sup> See, for example, the work of the UNCTAD-led initiative [eTrade for all](#); see also UNCTAD (2021) [COVID-19 and e-commerce: a global review](#), p.10.

<sup>12</sup> Chung and Yu, 'Consumer Trust', p.12.

<sup>13</sup> Ana Candia Muniz Cipriano and Arnau Izaguerri Vila (2020). 'UNCTAD Research Paper No.54: International cooperation in consumer protection', p5.

<sup>14</sup> See Christine Riefa (2020). "Coronavirus as a Catalyst to Transform Consumer Policy and Enforcement", *Journal of Consumer Policy*, 43:451-461, here p.453, in the context of pursuing redress through ADR systems. For examples of dark commercial patterns, see OECD (2020). [Roundtable on Dark Commercial Patterns Online](#), p.13.

redress process.<sup>15</sup> Moreover, some of these consumer protection issues may be more prevalent in developing countries, exacerbating divides in the global digital economy.<sup>16</sup>

13. Consumer protection authorities have attempted to respond to issues created by the pandemic, such as the UK Competition and Markets Authority's COVID-19 hotline, which was contacted 148,000 times about coronavirus-related issues during 10 March 2020 to 28 February 2021.<sup>17</sup> These authorities have also collaborated on a regional level, as seen in the Iberoamerican Forum of Consumer Protection Agencies' Declaration on COVID-19.
14. However, key barriers remain to improved international cooperation on cross-border e-commerce issues. To address this, UNCTAD and the other key international networks have worked in recent years to issue relevant guidelines and share best practice, notably the UN Guidelines for Consumer Protection (UNGCP, issued in 1985, revised 1999 and 2015).<sup>18</sup> The revised 2015 UNGCP make clear that Member States should consider existing e-commerce guidelines and standards and "collaborate with other Member States in their implementation across borders". The OECD's revised Recommendation on Consumer Protection in E-commerce (2016) likewise contained expanded provisions on international cooperation.<sup>19</sup>
15. Following the first session of the Intergovernmental Group of Experts (IGE) on consumer protection law and policy in 2016, the UNCTAD Secretariat developed a [world consumer protection map](#), which makes clear the scope for increased international cooperation:
  - less than 43% of respondents had experience in cross-border cooperation on enforcement.
  - only 40% of respondents had cross-border out-of-court alternative dispute resolution (ADR) initiatives in place.<sup>20</sup>
16. This report is based on a survey circulated in late 2021 by the Working Group's subgroup on cross-border enforcement cooperation and which aimed to better understand the domestic frameworks and legal powers of consumer protection authorities, as well as mechanisms for consumer redress and international cooperation.

---

<sup>15</sup> See ASEAN (2021). '[The development of the ASEAN ADR Guidelines for Consumer Protection](#)', here pp.15-16.

<sup>16</sup> UNCTAD (2017) [Consumer protection in electronic commerce: Note by the UNCTAD secretariat](#), here pp.4-5.

<sup>17</sup> More information can be found on the CMA's COVID response here [CMA coronavirus \(COVID-19\) response - GOV.UK \(www.gov.uk\)](#)

<sup>18</sup> The UNGCP remain the only internationally agreed global instrument on consumer protection. Also worth considering are the 2003 OECD Cross-Border Fraud Guidelines, the 2007 OECD Recommendation on Consumer Dispute Resolution and Redress, and the 2016 OECD E-Commerce Recommendation.

<sup>19</sup> The 2016 Recommendation states that consumer protection enforcement agencies should be equipped "to take action against foreign businesses engaged in fraudulent and deceptive commercial practices against domestic consumers"

<sup>20</sup> Accessed 16 May 2022.

Following an analysis of survey responses received, this report will conclude with a consideration of policy recommendations and potential options for 2022-23 work for the subgroup.

## Survey Responses

17. The survey covered four areas, which will be discussed in turn:
  - Domestic Frameworks (which body enforces consumer law)
  - Domestic Legal Powers (what enforcement/investigation powers are in place)
  - Consumer Redress (powers for redress, and the challenges and options for cross-border redress)
  - Mechanisms for International Co-operation (the ability to share information and co-operate with other enforcers).<sup>21</sup>

## Domestic Frameworks

18. Survey responses indicated the diversity of institutional arrangements and domestic frameworks for consumer protection authorities. Whilst this is unsurprising, this diversity has implications for cross-border cooperation that will be explored further below. The institutional design of consumer protection authorities has attracted academic attention in recent years.<sup>22</sup> Put broadly, consumer protection enforcement powers may be dispersed across a number of bodies or centralised in a single agency. Authorities can hold either administrative enforcement powers, civil enforcement powers, or a combination of the two.<sup>23</sup>
19. In line with findings from previous research into the institutional design of consumer protection authorities,<sup>24</sup> most agencies held some form of administrative enforcement power. Typical in this regard is the Polish Office of Competition and Consumer Protection (UOKiK), which has the ability to directly impose financial penalties. Similarly, the Turkish Board of Advertisement, operating under the Ministry of Trade,

---

<sup>21</sup> Thirteen authorities responded to the survey; see Annex B for a full list.

<sup>22</sup> Kati Cseres (2020). "[Integrate or Separate: Institutional Design for the Enforcement of Competition Law and Consumer Law](#)".

<sup>23</sup> Criminal powers were not considered as part of the survey, although these are held by some agencies – the CMA, for example, has criminal powers to prosecute traders that engage in most unfair commercial practices under the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) as well as the Business Protection from Misleading Marketing Regulations 2008 (BPRs).

<sup>24</sup> In particular the OECD's [2018 paper](#) on consumer protection enforcement in a global digital marketplace.



is the only authorised authority with regards to commercial advertising and unfair commercial practices and has the power to impose fines and suspension penalties.<sup>25</sup>

Jurisdiction	Civil Powers	Administrative Powers
Argentina	û	ü
Brazil	ü	ü
Colombia	û	ü
Germany	ü	ü
Greece	û	ü
Korea	ü	ü <sup>26</sup>
Peru	û	ü
Poland	û	ü
South Africa	ü	ü
Sweden	ü	ü
Turkey	û	ü
UK	ü	û <sup>27</sup>
US	ü	ü

20. Several of the bodies responsible for consumer protection also have a competition remit, notably the US FTC, UK CMA, and Korean FTC. The benefits and drawbacks of operating a dual-role agency have been considered further in the existing literature.<sup>28</sup>
21. As has been noted elsewhere, the institutional design of consumer protection agencies is reflective of the broader political context of each jurisdiction.<sup>29</sup> This includes the prominence of Ombudsmen and consumer associations in the Scandinavian and German consumer law traditions respectively.<sup>30</sup> In a federal system such as Brazil's, for example, the National Consumer Secretariat (SENACON) coordinates the National Consumer Defence System (SNDC), alongside Consumer Protection and Defence Authorities (PROCONs) which operate at the state and municipal level.<sup>31</sup>
22. Alongside enforcement powers that are distributed between national and local bodies, the majority of responding jurisdictions (69%) indicated that enforcement powers were

<sup>25</sup> It is worth noting that broader market surveillance powers in Turkey are carried out by nine different institutions and organizations, with these coordinated by the General Directorate of Product Safety under the Ministry of Trade. The General Directorate is also responsible for the inspection of consumer products.

<sup>26</sup> While the Korea Consumer Agency does not have administrative powers, the Korean Fair Trade Commission (KFTC) has the ability, for example, to impose penalty surcharges directly.

<sup>27</sup> It should be noted that the UK CMA is set to receive administrative enforcement powers. See: [Reforming competition and consumer policy: government response](#).

<sup>28</sup> See Kati Cseres (2020). "Integrate or Separate: Institutional Design for the Enforcement of Competition Law and Consumer Law", and OECD (2016). 'Summary Record: Key points of the Roundtables on Changes in Institutional Design'

<sup>29</sup> See Christine Riefa (2022). Cross-border enforcement of consumer law: Looking to the future: A report to UNCTAD's Working group on e-commerce, sub-working group 3: cross-border enforcement cooperation

<sup>30</sup> See the overview provided in S. Nessel (2019). "Consumer Policy in 28 EU Member States: An Empirical Assessment in Four Dimensions". *Journal of Consumer Policy* 42, 455–482, here pp.458-459.

<sup>31</sup> SENACON also oversees the work of Public Prosecution Offices, the Public Defenders Offices, specialized Police Offices (DECONs), as well as civil organizations, each of which are authorised to file consumer class actions in court.

managed on a concurrent basis in relation to certain industries or activities. This distribution of enforcement powers on a sectoral and geographic basis is to be expected given the sheer scope of consumer protection law and should not be taken as an indication of agency effectiveness; as a 2020 note by the UNCTAD Secretariat notes: “at present, there is no evidence that...[a] particular model is more effective than the others, as each model responds to the specific legal, economic, social and political circumstances in a country”.<sup>32</sup>

<b>Multiple Authorities at federal/national level</b>			
<b>Yes</b>	<b>Agencies</b>	<b>No</b>	<b>Agency</b>
Korea	Korean Fair Trade Commission (KFTC), Korean Consumer Association (KCA)	Brazil	National Consumer Secretariat of the Ministry of Justice of Brazil (SENACON)
UK	CMA, Local Authority Trading Standards Services (TSS), Civil Aviation Authority; Financial Conduct Authority; Ofcom; Ofwat; Ofgem; Information Commissioner; Office of Rail and Road; Consumers’ Association (Which?); Northern Ireland Authority for Utility Regulation.	Poland	Office of Competition and Consumer Protection (UOKiK)
Germany <sup>33</sup>	Centre for Protection against Unfair Competition (WBZ); Federation of German Consumer Organisations (vzbv); Federal Aviation Authority (LBA); Federal Railway Authority (EBA); the Federal Financial Supervisory Authority (BaFin); Federal Network Agency (BNetzA); Federal Ministry of Justice; Federal Office of Justice.	South Africa	National Consumer Commission (NCC)

<sup>32</sup> UNCTAD (2020). [Strengthening consumer protection and competition in the digital economy: Note by the UNCTAD secretariat](#), here p.8. See also UNCTAD (2018) [Guidelines on Consumer Protection: Agency Structure and Effectiveness for the MENA Region](#).19-21.

<sup>33</sup> Since the responses were submitted, we have heard that responsibility for consumer protection has moved from the Ministry of Justice to the Ministry for the Environment in Germany [Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection | BMUV](#)

US	FTC, DOJ, the Food and Drug Administration, Consumer Financial Protection Bureau, Federal Communications Commission, Consumer Product Safety Commission	Turkey	Board of Advertisement. <sup>34</sup>
Sweden	Swedish Consumer Agency (SCA), Swedish Financial Supervisory Authority, Swedish Medical Products Agency, Swedish Post and Telecom Authority		
Argentina	National Directorate on Consumer Protection and Consumer Arbitration; National Superintendency on Health Services; National Superintendency on Insurance		
Colombia	Superintendence of Industry and Commerce, Superintendence of Transportation and the Civil Aviation, Superintendence of Finance, Superintendence of Domestic Public Utilities, National Institute of Surveillance of Medicines and Food, Ministry of Industry, Commerce and Tourism, National Television Commission.		
Greece	Directorate General for Consumer Protection (DGCP); Ministry of Tourism; Ministry of Finance; National Organization for Medicines; National Council for Radio and Television (NCRTV); Bank of Greece; Hellenic Coast Guard; Civil Aviation Authority.		

<sup>34</sup> The Directorate General for Domestic Trade within the Ministry of Trade and Information Technologies and Communication Institution are the primary organizations responsible for the regulations regarding e-commerce as a whole (rather than solely consumer protection matters).

Peru	National Institute for the Defense of Competition and Protection of Intellectual Property (Indecopi); Supervisory Body for Investment in Transportation Infrastructure for Public Use (Ositran); Supervisory Body of Private Investment in Telecommunications (Osiptel); Supervisory Agency for Investment in Energy and Mining (Osinermin); National Superintendence of Sanitation Services (Sunass); National Superintendence of Health (Susalud).	
------	--	--

### Domestic Legal Powers

23. The second aspect of the survey covered the legal basis for the enforcement powers held by consumer protection authorities, in particular the power to conduct undercover investigations and the ability to seek remedies.

### *Undercover Investigations*

24. Guidelines and toolkit issued by the international networks have recommended that jurisdictions should provide their consumer protection enforcement agencies with the powers to carry out undercover investigations, in particular to gather evidence while acting in the role of a consumer.<sup>35</sup>
25. However, respondent jurisdictions were relatively evenly split on their powers to conduct undercover investigations. Some respondents hold powers to conduct mystery/sham purchases but not more extensive undercover investigations, which are typically reserved for the most serious crimes (such as Germany).
26. These undercover powers may only apply to certain aspects of consumer protection enforcement. In the UK, for example, the powers provided by the *Regulation of Investigatory Powers Act 2000*<sup>36</sup> are of relevance to the criminal offences contained with the *Consumer Protection from Unfair Trading Regulations 2008*.<sup>37</sup>

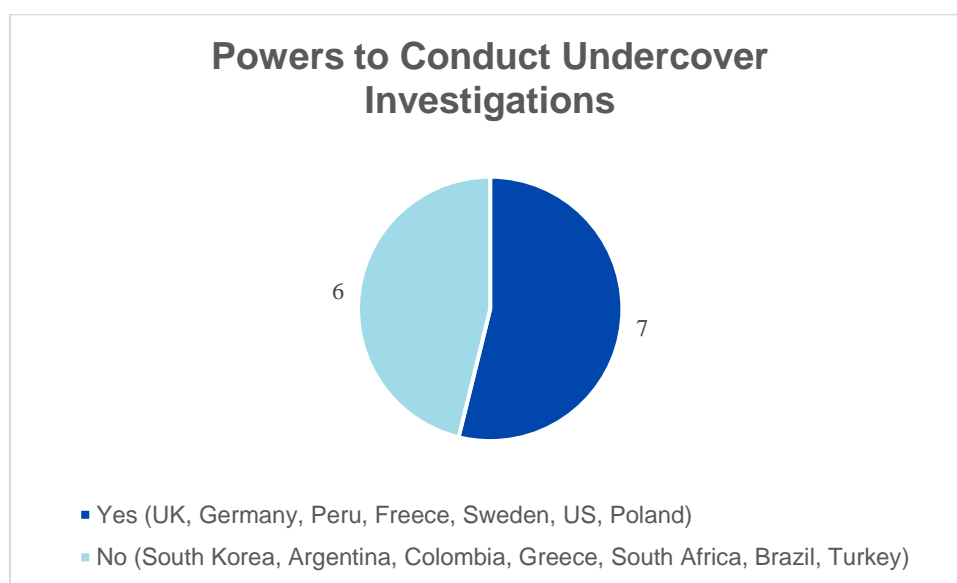
---

<sup>35</sup> See, in particular, OECD (2021). [Implementation toolkit on legislative actions for consumer protection enforcement co-operation](#), p.10

<sup>36</sup> [Regulation of Investigatory Powers Act 2000 \(legislation.gov.uk\)](#)

<sup>37</sup> [The Consumer Protection from Unfair Trading Regulations 2008 \(legislation.gov.uk\)](#)

27. Article 9 (3)(d) of CPC Regulation 2017/2394<sup>38</sup> acts as a point of consistency among EU jurisdictions, giving competent authorities the power to “purchase goods or services as test purchases, where necessary, under a cover identity, in order to detect infringements covered by this Regulation and to obtain evidence, including the power to inspect, observe, study, disassemble or test goods or services”.
28. Powers to conduct undercover investigations are regulated by data protection and human rights legislation, such as the Electronic Communications Privacy Act (ECPA) in the US or the *Human Rights Act 1998*<sup>39</sup> in the UK. Other jurisdictions have in place a requirement for investigations to be conducted publicly and transparently (for example, Article 3 of the Code of Administrative Procedure and Administrative Disputes (Law 1437/2011) in Colombia). Ethics laws and regulations are also a factor.<sup>40</sup>



### ***Power to Seek Remedies***

29. Most respondents are able to seek remedies through a combination of judicial and administrative actions. Some authorities interpreted ‘remedies’ more narrowly, focusing on redress for consumers. For the purposes of coherence, this report uses the broader approach to remedies as set out in Table B. The UNGCP are not prescriptive in outlining the type of remedies that should be offered to consumers, only that these should “not impose a cost, delay or undue burden on the economic value at stake and at the same time do not impose excessive or undue burdens on society and business”.<sup>41</sup>
30. Remedies offered by consumer protection authorities can be relatively flexible and open-ended, such as the wide scope offered to the CMA in the design of enhanced

<sup>38</sup> [Consumer protection cooperation regulation | European Commission \(europa.eu\)](https://ec.europa.eu/consumers/odr/eu-cpc-regulation-2017-2394)

<sup>39</sup> [Human Rights Act 1998 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1998/41)

<sup>40</sup> *Ibid*, p.25.

<sup>41</sup> UNGCP (2015), p.15.

consumer measures under section 219A of the *Enterprise Act 2002*<sup>42</sup> in the UK, or more tightly defined, such as the administrative sanctions set out in Article 13(2) of the Greek Consumer Protection Law.

31. Different avenues are required in some jurisdictions according to the type of conduct – for issues of minor importance, the Swedish Consumer Ombudsman (part of the SCA) will issue order injunctions and orders; in other cases, the SCA will need to seek prohibitions and orders that are issued by the Court. Not all relevant authorities in a jurisdiction may have the power to formally impose remedies: the Korean FTC can impose sanctions and remedies, whereas KCA will need to request corrective action from central government.

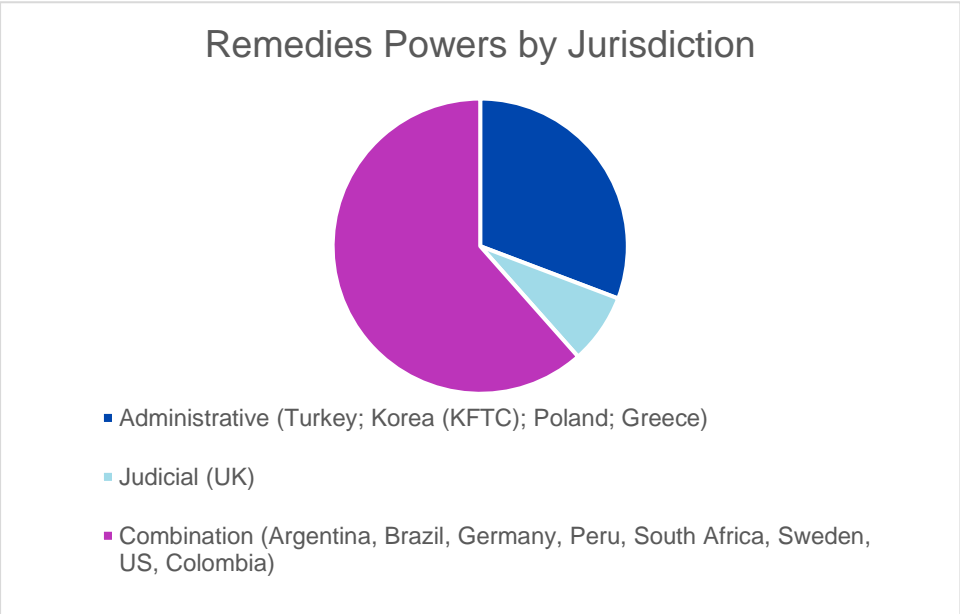
**TABLE B: Examples of Remedies**

Type of Remedy	Examples
Injunctive orders	<ul style="list-style-type: none"> <li>• the Swedish Consumer Authority can order the explicit display of a warning to consumers when they access an online interface; these can be imposed on a trader or internet service provider.</li> <li>• the Colombian SIC can order the temporary closure of a business establishment for up to 180 days</li> </ul>
Statutory penalties and fines	<ul style="list-style-type: none"> <li>• the Greek Directorate General for Consumer Protection (DGCP) can impose fines between €1,500 and €1,000,000 for breaches of the Consumer Protection Law. In the case of more than 3 decisions imposing a fine issued against the same supplier, seller, producer or distributor, the maximum fine is doubled.</li> </ul>
Redress for Consumers <sup>43</sup>	<ul style="list-style-type: none"> <li>• the US FTC can facilitate redress through administrative adjudication; if an initial complaint/charge is contested, the complaint is adjudicated before an administrative law judge (“ALJ”) in a trial-type proceeding conducted under the Commission’s Rules of Practice.</li> </ul>

<sup>42</sup> [Enterprise Act 2002 \(legislation.gov.uk\)](http://legislation.gov.uk)

<sup>43</sup> See section below for a more detailed exploration of redress measures.

Publicity/Consumer Information	<ul style="list-style-type: none"> <li>the UK CMA can request the imposition of enhanced consumer measures (ECMs) which can result in traders being required to provide more information to consumers about the breach of the law.</li> </ul>
--------------------------------	---



*Analysis*

32. As the above evidence suggests, more should be done to ensure authorities have the ability to

conduct undercover investigations, in line with best practice recommendations issued by the major international networks. More data is needed on the effectiveness of the routes by which consumer protection authorities seek remedies (either administrative or judicial). More information on recommended powers can be found in the OECD legislative toolkit.<sup>44</sup>

**Consumer Redress**

33. The section below covers in more detail provisions for consumer redress in responding jurisdictions. The UNGCP outline that:

*Member States should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organizations to obtain redress through formal or informal procedures that are expeditious, fair, transparent, inexpensive and*

<sup>44</sup> [Implementation toolkit on legislative actions for consumer protection enforcement co-operation | en | OECD](#)

*accessible. Such procedures should take particular account of the needs of vulnerable and disadvantaged consumers.*<sup>45</sup>

34. The majority of responding authorities outlined that the courts are the primary route by which they looked to secure redress for consumers. This avenue may only be available in exceptional circumstances – for example, the Swedish Consumer Ombudsman can only represent consumers in court in cases where either a large number of consumers are involved or there is an opportunity to clarify an area of law. Poland’s UOKiK may issue a reasoned opinion in a case concerning consumer protection pending before a court of general jurisdiction; any consumer may file a request for such an opinion.
35. Other jurisdictions are able to secure consumer redress through their administrative enforcement powers. In Peru, Indecopi may issue non-compensatory injunctions that seek to correct the infringing conduct in parallel with concurrent judicial proceedings. The US FTC operates trial-type adjudications by Administrative Law Judges, which can result in a cease-and-desist order and, under Section 19 of the FTC ACT, the FTC can also seek consumer redress in federal district court.<sup>46</sup>
36. Most respondents have some means of facilitating redress through the court system. The exceptions were Greece (where the DGCP does not have the legal powers to do so), and South Korea, where remedies settlements conducted by the Korean Consumer Agency have the same legal standing as a judicial settlement (essentially a form of ADR). The UK’s CMA and South African National Consumer Commission (NCC) were relative outliers in being reliant on court orders to impose redress measures.<sup>47</sup>

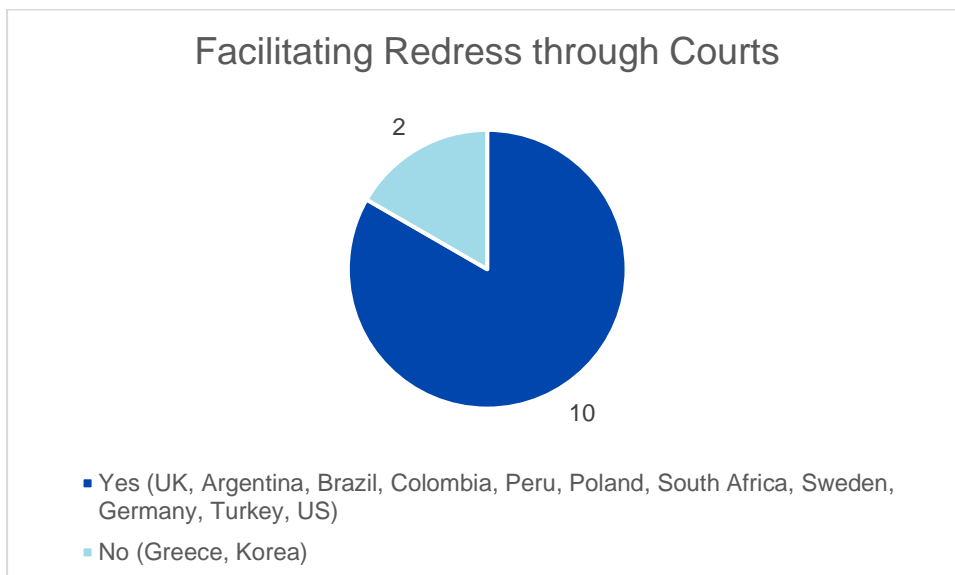
---

<sup>45</sup> UNCTAD (2016), [United Nations Guidelines for Consumer Protection](#), p.15. Other international networks have similarly promoted redress. As part of its e-commerce negotiations, the World Trade Organisation has drafted an article requires members to promote consumer redress or recourse mechanisms. See also OECD (2021). [Implementation toolkit on legislative actions for consumer protection enforcement co-operation](#), p.15.

<sup>46</sup> Section 13(b) of the FTC Act allows the Commission to challenge practices directly in court and seek permanent injunctions. However, in April 2021 the U.S. Supreme Court held that the FTC lacked authority under Section 13(b) of the FTC Act to go directly to Federal district court to obtain monetary relief for harmed consumers. The FTC has requested legislative change to address this issue.

<sup>47</sup> The CMA does not have the authority to impose fines or penalties directly. Fines in South Africa are subject to a judicial process and can only follow an investigation and prosecution.





37. Almost all respondents noted that consumers have a private right of action to seek financial redress through the courts for consumer protection matters. South Africa was an outlier, as consumers have no automatic right to approach the courts directly, apart from where the NCC issues a letter of non-referral, or where the National Consumer Tribunal has already issued a certificate stating that a supplier had engaged in prohibited conduct.
- Germany qualified their response, noting that while there is no private right of action specific to consumer protection matters, consumers can individually bring any consumer protection matter before the general civil courts.
38. Most respondents (69%) noted that this private right of redress via the courts covered both collective and individual action. The bar to apply for collective redress often has certain thresholds or delimitations: consumers in Brazil, for example, can apply on a collective basis only through an existing consumer association; in Greece, class actions can only be filed through consumer organizations that have more than 500 members and have been registered in the consumer organizations public registry, operating under the Ministry of Development and Investments, for over one year. In the US, the Class Action Fairness Act of 2005 allows defendants to remove a class action from state to federal court if the amount in controversy is more than \$5 million.

#### *Alternative Dispute Resolution (“ADR”) and Online Dispute Resolution (“ODR”)*

39. As well as the accelerating trend of increasing global digital trade, the COVID-19 pandemic and its impact on the digital economy has furthered interest in Online Dispute Resolution (ODR) mechanisms as a means to counteract some of the consumer

protection issues presented by e-commerce.<sup>48</sup> ODR is also the focus of an UNCTAD [Technical Cooperation Project](#) centred on Thailand and Indonesia which commenced in 2020.

40. The UNGCP also recommend that Member States encourage the development of “alternative dispute resolution, including for cross-border cases.” There has been some progress on setting regional ADR standards, such as the [ASEAN Alternative Dispute Resolution Guidelines](#) issued in 2021, although the proliferation of ADR/ODR systems even within regional blocs may be extremely uneven: in 2015, there were reportedly no dispute resolution schemes for consumer matters in Bulgaria, at a time when more than 200 were in place in Germany.<sup>49</sup>
41. This said, just over half of responding jurisdictions played either directly managed an ODR/ADR system or acted in some form of coordinating role on a national level. EU agencies may not have a specific national ODR system, but instead act as the ODR Contact Point under the EU ODR Regulations, as is the case with the Polish UOKiK. UOKiK also maintains the overall ADR system (e.g. auditing and admitting ADR entities) but does not intervene or rule on individual cases.
42. Even if they do not maintain a formal role in ODR/ADR systems, agencies may offer certain similar tools: in Peru, Indecopi offers online mediation and conciliation services through its "Reclama Virtual" and "Concilia Fácil" platforms. The US FTC has engaged in several initiatives to foster internal complaint handling. Certain laws and rules enforced by the FTC, such as COPPA and the CAN-SPAM Act,<sup>50</sup> require businesses to provide information for consumers to contact them with questions or concerns.
43. Given that the UNGCP recommend that ADR systems take “should take particular account of the needs of vulnerable and disadvantaged consumers,” worth noting are dedicated initiatives such as the dedicated conciliation service provided in Argentina for those designated as “hyper-vulnerable consumers”.<sup>51</sup> Consumers are provided with dedicated lawyers, who will guide them through each necessary stage of the process, with an emphasis on swift resolution rather than complex procedure.

Jurisdiction	Platform	Type
Colombia	SIC Facilita	ODR
Korea	Consumer Dispute Settlement Commission	ADR
Argentina	Previous Conciliation System for Consumption Relationships (COPREC)	ADR

<sup>48</sup> See, in particular, Alex Chung and Ying Yu (2021). [Consumer trust in the digital economy: The case for online dispute resolution: UNCTAD Research Paper No. 72](#),

<sup>49</sup> Giesela Rühl (2015). “Alternative and Online Dispute Resolution for Cross-Border Consumer Contracts: a Critical Evaluation of the European Legislature’s Recent Efforts to Boost Competitiveness and Growth in the Internal Market”. *Journal of Consumer Policy* 38:431–456, here fn.21

<sup>50</sup> COPPA stands for the Children’s Online Privacy Protection Rule. The CAN-SPAM Act 2003 sets standards for commercial email.

<sup>51</sup> As designated under [Resolution N° 139/2020](#) of the Secretariat of Internal Trade.

Argentina	National Consumer Arbitration System (SNAC)	ODR
Brazil	Consumidor.gov.br	ODR
EU Respondents	European Online Dispute Resolution Platform	ODR

44. The findings here are in line with UNCTAD’s [world consumer protection map](#), which details that only 40% of 92 respondents had cross-border out-of-court alternative dispute resolution (ADR) initiatives in place. More research is needed on the effectiveness of these ODR/ADR systems, and it may be useful for Working Group members to consider further how these systems operate with regards to cross-border trade.<sup>52</sup>

*Cross-Border business to consumer (“B2C”) E-Commerce Transactions*

45. Respondents struggled to provide data on complaints relating to e-commerce transactions involving cross-border B2C transactions. Evidence was mixed on the extent to which B2C transactions were a particular issue, as separate from ecommerce complaints as a whole.

46. Figures provided by responding jurisdictions included:

- Of the 367,144 online shopping complaints in the US Consumer Sentinel Network database from 3/15/2021 to 3/15/2022, 49,924 (13.6%) involved a business that was in a different country location than the consumer<sup>53</sup>
- 10% of complaints filed with Consumidor.gov.br in 2020 were related to ecommerce (including cross-border transactions).
- In Korea, 209,273 ecommerce complaints, including cross-border transactions, were received in 2021 (with an average of 207,903 over the past three years).
- 9% of complaints (1,452) received by the Colombian Directorate of Investigations for Consumer Protection were related to ecommerce.
- The German Wettbewerbszentrale (Centre for Protection against Unfair Competition) estimates that only about 20 of the approximately 6500 (0.003%) total enquiries and complaints made in 2020 related to cross border B2C transactions.
- Polish UOKiK also noted that number of cross-border complaints was small.

---

<sup>52</sup> Worth noting is the International Consumer Protection and Enforcement Network (ICPEN)’s [econsumer.gov](#) initiative, which allows consumers to make cross-border fraud complaints.

<sup>53</sup> The percentage may be higher, as for some of the complaints the location of either the business or the consumer was unknown.

- The South African NCC estimated only 0.01% of complaints were cross-border focused.
47. Given the paucity of data, it is not possible to draw firm conclusions, other than that tools such as the US FTC’s [Consumer Sentinel Network](#) database may be of particular use to consumer protection agencies looking to better understand the scale of cross-border B2C e-commerce issues.

#### *Jurisdictional Issues in Addressing e-commerce complaints*

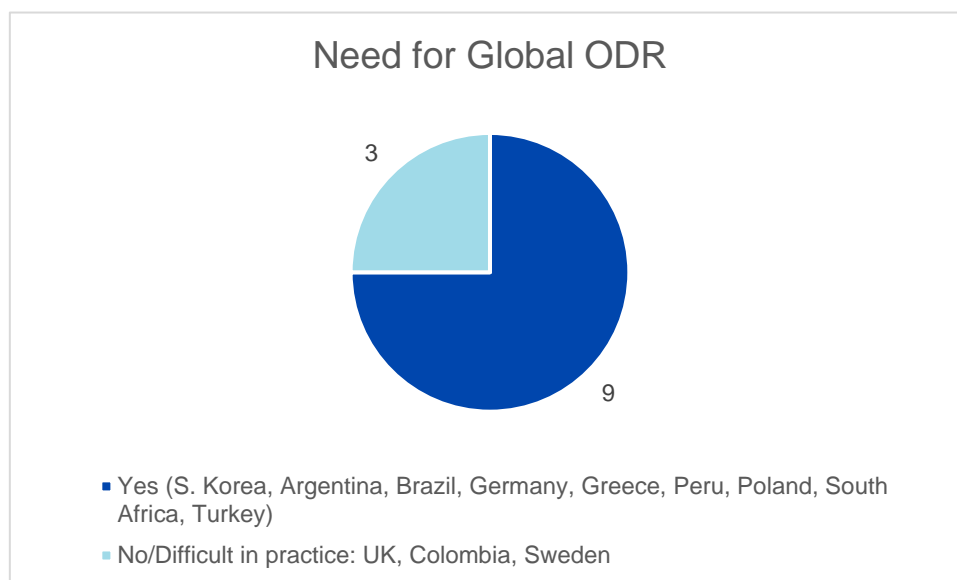
48. As expected, extraterritoriality and jurisdictional issues were highlighted by several respondents – the Colombian SIC and South African NCC, for example, do not have jurisdiction to hear matters in which suppliers and vendors are located outside the national territory; the NCC would only be able to assist in directing consumers towards relevant overseas authorities. By way of contrast, the UK CMA takes the view that the Enterprise Act 2002 permits it to bring civil proceedings against foreign businesses targeting UK consumers.
49. Even if agencies are able in theory to bring action against traders domiciled overseas, they will be likely face an uncertain and complicated process when so doing. In the US, for example, in order to establish jurisdiction over a foreign entity, the FTC needs to show that this entity has made sufficient contacts with the United States in purposefully directing commerce toward U.S. citizens in accordance with common law principles of jurisdiction; the FTC may still then face motions to dismiss for lack of personal jurisdiction in court.
50. Germany was a relative outlier among the responses, noting that at least at an EU level, “there are few substantive legal problems in the area of e-commerce.” Similarly, Sweden noted the ongoing success of cooperation through the CPC Network and lack of legal or jurisdictional issues.
51. Some respondents noted potential limitations in their consumer protection legislation framework, both in terms of cross-border transactions (Brazil) and in relation to responding to developments in digital markets (Peru, South Korea).

#### *Execution and Enforcement Issues*

52. Respondents provided a variety of reasons why executing orders and enforcement action in relation to cross-border B2C ecommerce complaints proved challenging.
53. Issues with contacting overseas traders and trader non-compliance (as well as consumers lacking information on these traders) were the most commonly identified problem, followed by difficulties presented by a lack of bilateral cooperation agreements or domestic legislation on overseas cooperation.

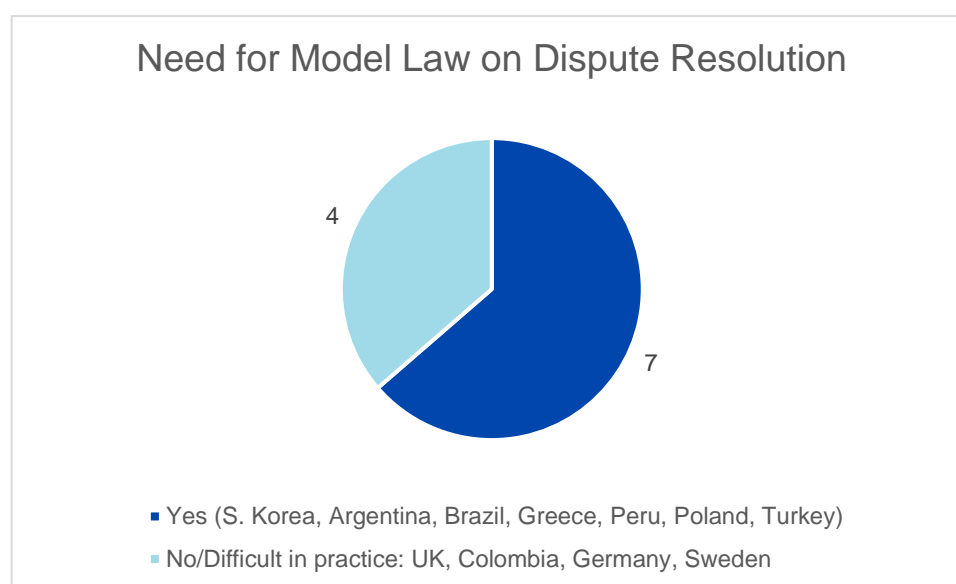


54. Given the COVID-19 pandemic has exposed limitations in current enforcement powers (both domestically and in terms of cross-border cooperation),<sup>54</sup> it is worth considering the potential for wider-scale solutions, such as a Global ODR mechanism or a model law on model law on consumer protection and dispute resolution in B2C e-commerce transactions.



<sup>54</sup> See Christine Riefa (2020). "Coronavirus as a Catalyst to Transform Consumer Policy and Enforcement", *Journal of Consumer Policy*, 43:451-461

55. Survey respondents were generally positive, in theory, of a global ODR mechanism. Reasons given in support included that this would resolve current enforcement limitations,<sup>55</sup> that it was needed following the massive proliferation of ecommerce<sup>56</sup> that this would bring consumer protection into the twenty-first century,<sup>57</sup> and would also build consumer confidence in the digital economy more broadly.<sup>58</sup>
56. The UK, Colombia and Sweden were more hesitant in their responses, suggesting that while desirable in theory, there were serious questions around the technology required to underpin the system, questions of transliteration and translation, and the issue of which government or organisations would provide funding and support.<sup>59</sup> Issues with jurisdiction and enforceability were also raised.<sup>60</sup> While otherwise supportive, Poland questioned whether this would be an entirely new global system, or instead the result of work to make existing systems interoperable. This latter point is a critical one and may be a useful topic of discussion among WG Subgroup members in future work programmes.
57. In terms of a model law on consumer protection and dispute resolution in B2C e-commerce transactions, respondents were again generally supportive.



58. Proponents suggested that such a model law would set standards at a time when many countries are looking to update their ecommerce consumer protection laws;<sup>61</sup> that it

<sup>55</sup> South Korea

<sup>56</sup> Argentina

<sup>57</sup> Brazil

<sup>58</sup> Peru

<sup>59</sup> United Kingdom

<sup>60</sup> United Kingdom; Sweden; Colombia.

<sup>61</sup> South Korea

would empower consumers in developing countries;<sup>62</sup> and would act as a necessary step given the global impact of ecommerce.<sup>63</sup>

59. Less supportive respondents suggested that alignment was more achievable than full harmonisation;<sup>64</sup> that directives and Guidelines were preferable to help guide and educate agencies;<sup>65</sup> and the fact that there is no uniform legal framework in place that would be needed to underpin the formulation of such a model law.<sup>66</sup>
60. In general, WG Subgroup members may wish to consider further the benefits and drawbacks of a push for full harmonisation as compared to encouraging alignment and coherence and – in particular – the practicalities of a Global ODR mechanism and model law on consumer protection and dispute resolution in B2C e-commerce transactions.

### **Mechanisms for International Co-operation, Information Sharing and Investigative Assistance**

61. Section VI of the revised UNGCP includes expanded recommendations on the need for greater international cooperation, with Member States encouraged to coordinate investigations, and that consumer protection agencies should be granted the power “to investigate, pursue, obtain and, where appropriate, share relevant information and evidence, particularly on matters relating to cross-border fraudulent and deceptive commercial practices affecting consumers. That authority should extend to cooperation with foreign consumer protection enforcement agencies and other appropriate foreign counterparts.”
62. Survey respondents highlighted their participation within the key multilateral networks (UNCTAD, ICPEN, OECD). EU respondents highlighted the Consumer Protection Cooperation Regulation (EU) 2017/2394 and the formal requirements for cross-border collaboration set out in Articles 11 and 12.
63. Regional bodies and collaborative programmes were also raised by a number of respondents. South Africa noted the relevant aspects of its participation in the Southern African Customs Union (SACU) and the Southern African Development Community (SADC), but that these agreements carried no legal enforcement mechanisms.
64. Other regional agreements and bodies worth noting included work in Mercosur and the Intergovernmental Agencies for Consumer Protection Forum (FIAGC); the Consumer

---

<sup>62</sup> Argentina

<sup>63</sup> Argentina

<sup>64</sup> UK; on this point see also Christine Riefa (2022). Cross-border enforcement of consumer law: Looking to the future: A report to UNCTAD’s Working group on e-commerce, sub-working group 3: cross-border enforcement cooperation.

<sup>65</sup> Colombia

<sup>66</sup> Germany.

Safety and Health Network (CSHN) of the Organization of American States (OAS); and the Asian Forum on Consumer Policy. Other networks not mentioned by respondents are also worth noting: to take one example, the Competition Commission of the Common Market for Eastern and Southern Africa (COMESA) has the mandate to investigate consumer cases that have an effect in at least two COMESA member States.<sup>67</sup>

65. Other examples of related cross-border collaboration can be seen in the product safety/health and safety rapid alert systems that were highlighted in Turkey and Argentina's responses, namely the Rapid Alert System (RAPEX) in the EEA and the Inter-American Rapid Alerts System (SIAR). Also worth noting is the European Consumer Centres Network (ECC-Net), which has a common online interface through which EU members can share observations on individual companies. Learnings from product recall systems and other novel technological applications such as these could be considered further by WG Subgroup members in future work.<sup>68</sup>
66. As with other recent studies, survey responses highlighted the barriers to international cooperation presented by legal limitations (such as on information sharing) and issues around privacy and data protection.<sup>69</sup> Certain respondents noted certain information sharing 'gateways or provisions that can allow for the sharing of information with overseas authorities (such as Part 9 EA02 in the UK or Article 11 of the CPC Regulation), which are tempered by strict confidentiality requirements (e.g. Recital 41 of the CPC Regulation). Under the US SAFE WEB Act, foreign law enforcement agencies may submit a request for information sharing or investigative assistance under the Act; these agencies are the only entities that can do so.
67. While some respondents are provided a relatively broad scope for entering into international cooperation agreements in their relevant legislation (e.g. Articles 27 and 35 of the Korean Framework Act on Consumers; in South Africa, Consumer Protection Act 68 2008, section 97 (3;4)), other jurisdictions noted that there was no specific legislative framework in place that permitted them to enter into investigative assistance arrangements with consumer protection agencies in other countries.<sup>70</sup> Even without full investigative assistance arrangements, these jurisdictions have still worked to establish 'soft' or non-legally binding MOUs with regional partners or neighbours.<sup>71</sup>

---

<sup>67</sup> Cipriano and Vila, UNCTAD Research Paper No.54, p.16.

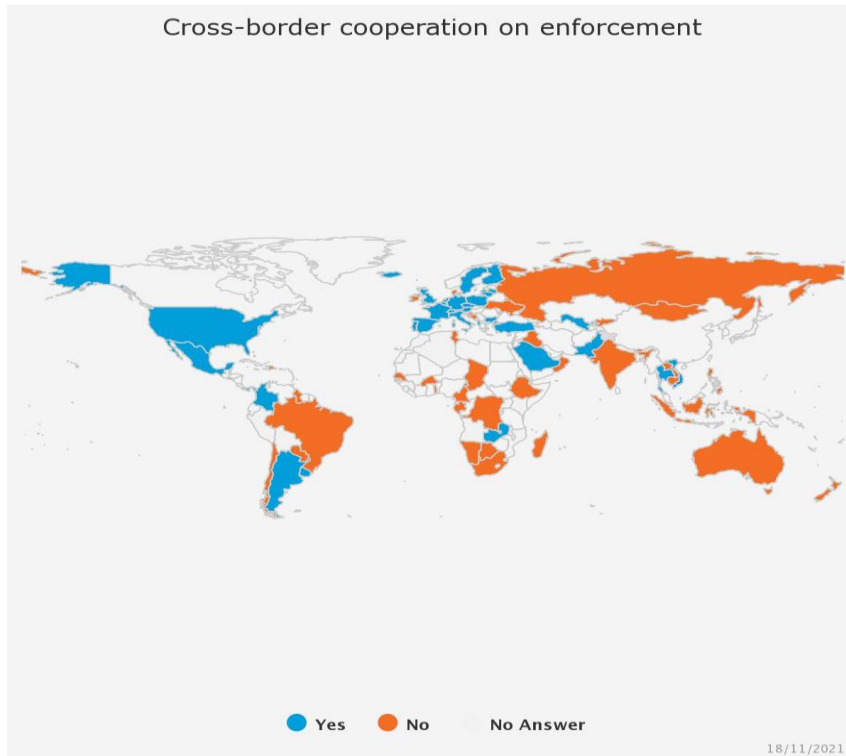
<sup>68</sup> See also UNCTAD (2020). [Strengthening consumer protection and competition in the digital economy: Note by the UNCTAD secretariat](#), here pp.6-7.

<sup>69</sup> See OECD (2021). [Implementation toolkit on legislative actions for consumer protection enforcement co-operation](#), p.34.

<sup>70</sup> Argentina, Brazil, Colombia.

<sup>71</sup> For example, Colombia's Interinstitutional Cooperation Agreements with Peru and Ecuador.





68. WG Subgroup members may find it useful to conduct further information gathering on barriers to cross-border cooperation, and data and reflections on experiences with coordinating investigations and enforcement with foreign counterparts. Data from the world consumer protection map (see chart below) and recent OECD surveys<sup>72</sup> suggests that more work is needed on identifying solutions to the current barriers to cooperation on enforcement, and the role in which international and regional networks can play in facilitating cooperation.

### Cross-Border Enforcement of Consumer Law

69. On 17th March 2022, a conference on Cross-Border Enforcement of Consumer Law was held, having been organised by the University of Reading and supported by the UK CMA and UNCTAD Secretariat. Further details can be found at: [Conference on Cross-Border Enforcement of Consumer Law \(crossborderenforcement.com\)](https://crossborderenforcement.com).

### Brief observations

70. Several delegates made points about a potential focus on online platforms and marketplaces as these provided cross-border shopping opportunities that might be likely to require cross-border enforcement interventions or actions.

---

<sup>72</sup> OECD (2021). [Implementation toolkit on legislative actions for consumer protection enforcement co-operation](#), pp.37-38.

71. Professor Geneviève Saumier emphasised in her talk the need for more and better data in this area,<sup>73</sup> and for better understandings of the different legal and enforcement frameworks in place across different jurisdictions.<sup>74</sup>
72. There are examples of long-term international cooperation that we can look to (as noted by Professor Hans-Wolfgang Micklitz in his overview of the work of BEUC) - there are limitations even within the full harmonised field of EU consumer law to effective co-operation – for example the different views reached by Dutch and Belgian courts on the same (postal scams) issue raised by the UK Office of Fair Trading in the first use of the cross-border elements of the EU’s Injunctions Directive (since replaced and updated by the EU CPC)
73. Boniface Kamiti of the Competition Authority of Kenya noted a number of possible priority sectors where cross-border consumer harm was likely to be higher: product safety recalls; tourism and travel; financial services and fintech; privacy. He also suggested enforcement frameworks, ODR, joint sweeps and co-ordinated surveillance could all be useful areas for further work.
74. Neville Matthew of the Australian ACCC made reference to a number of useful voluntary conventions, especially in the field of chemical regulation, which were useful in identifying specifically problematic products and removing them from the market, a useful precedent for current work on product safety but also possibly useful more widely where members can agree on problematic practices.
75. Jason Freeman of the UK CMA noted that there is unlikely to be fully harmonised law across the whole world – there will always be conflicts of law and jurisdiction, which is why there is a need for cross-border mechanisms that work. Future legal models need to be able to account for these conflicts.
76. We can also note the various enforcement technologies that were outlined in the third session of the event, with particular implications for interoperability and a global ODR platform, as discussed above.
77. Fuller details of the event can be found online or in Professor Riefa’s more detailed report.<sup>75</sup>

## **Analysis**

78. Respondents were, in general, strongly supportive of measures that could lead to increased cross-border cooperation but aware of the extensive enforcement and

---

<sup>73</sup> Also noting the importance of considering the negative externalities of ecommerce more generally – likely to be beyond the scope of this report

<sup>74</sup> This was a theme also raised in South Korea’s response.

<sup>75</sup> [Online Conference 17.03.2022 | Xborder enforcement \(crossborderenforcement.com\)](#);

jurisdictional issues that currently impact their work. As the answers to Q15-18 suggest, agencies are making use of the international networks and entering into agreements with neighbouring countries and regional partners.<sup>76</sup> As Sweden and Germany's responses suggest, the CPC Regulation appears to be current 'best practice' in terms of cross-border cooperation and enforcement, while the US Safe Web Act and work of the FTC offers useful insights into addressing some of the jurisdictional issues.

79. As the existing answers to Q10 suggest, many agencies may lack the tools or data to gauge the scale and scope of these issues specifically in relation to ecommerce, with this perhaps suggestive of one useful element potential future work could incorporate.
80. Despite only 13 responses, the diversity of separate legal and institutional frameworks is readily apparent, and again raises the question of relevant law and enforceability with regards to any global ODR or model law proposals. The Polish response and comment on the choice between creating an interoperable patchwork of ODR systems versus a new global platform is a useful one.

### **The Role of UNCTAD**

81. UNCTAD continues to support member states in different areas. Section VI of the revised UNGCP as mentioned earlier gives a guide on deepening of international cooperation, including sharing of information on cross border cases bordering on deceptive commercial practices affecting consumers. Consumer agencies are encouraged to engage foreign counterparts in this exchange of information and where possible evidence to protect cross border consumers.
82. The UNCTAD Technical Cooperation pilot Project centred on Thailand and Indonesia on ODR is also a testament that this is an important area that needs exploring and more focus going forward. UNCTAD will have some insights to share from the experience from two beneficiary countries. The work of this WG in particular the subgroup on cross-border enforcement has been a useful addition to this this topic.

### **Sub-group on cross-border enforcement**

83. It will be for WG Subgroup members to decide whether the creation of a searchable database or web-based resource on member States' powers and laws (perhaps based on the UNCTAD World Consumer Protection Map) will be prioritised as the next stage of the process. This will be dependent on resource and agreed outputs.

---

<sup>76</sup> Regional alert systems for product safety mentioned in a couple of responses may also be worth studying further.

## **Recommendations and Options for 2022-23 Work**

84. In summing up the event on 17/3, the Chair (Andrew Hadley) made specific recommendations for further work in the area, reflecting on the contributions made by the speakers across the panels. These proposed options would need to be discussed with the UNCTAD Secretariat, the project team at the University of Reading, the US FTC, and the sub-group on cross-border enforcement before formal presentation to the broader working group and wider UNCTAD membership at the summer 2022 Intergovernmental Group of Experts.

### **Recommendations:**

#### **Structure**

85. Consideration of the intersection of public and private law, in order to help overcome private law obstacles to public law enforcement cross-border and vice-versa. In particular, is it possible to assist courts in the mutual recognition of judgments where those are achieved through public law enforcement?
86. Consideration of a more co-ordinated use of different networks and engagement to allocate tasks more efficiently and avoid duplication. For example, are some issues best pursued through bilateral rather than multilateral discussions, and where multilateral discussions are needed how do we make use of the different but overlapping networks of UNCTAD, OECD, ICPEN and others?
87. Discussion and agreement within UNCTAD of what the objectives are when discussing cross-border enforcement and the more systematic identification and removal of obstacles in achieving those agreed objectives.

#### **Public Enforcement**

88. Use of multilateral networks to agree common positions on issues of mutual interest and build capability to take common actions, making use of the EU CPC network as a starting point (but recognising the difficulty of common action without a common legal framework).
89. Adoption by members of effective enforcement powers for consumer enforcement authorities and should actively reduce or remove barriers to their use – for example blocking statutes or restrictions on the use of powers. The 2021 OECD legislative toolkit<sup>77</sup> is a good starting point for further work in this area, and there are good arguments in favour of UNCTAD adopting this toolkit (with such adaptations as necessary) for the wider membership of UNCATD.

---

<sup>77</sup> Implementation toolkit on legislative actions for consumer protection enforcement co-operation | en | OECD

90. Discussion of targeted harmonisation on key matters of common interest and swift action on key priority areas of harm to consumers.

### **Private Enforcement**

91. Identify key steps towards effective ODR, especially the identification and removal of specific obstacles.
92. Collate solutions to challenges (for example applicable law, recognition of judgments, information sharing, limited scope) -although it is important to recognise the significant obstacles in the way of a full set of solutions in this area.
93. Discuss whether a consensual ODR process or one that was not binding might be more swiftly developed.
94. Explore the benefits of regional networks including interactions between them - this could be a potential alternative to a comprehensive global solution, which for example might be able to more easily solve some of the linguistic and judicial obstacles.
95. Detailed legal thinking around cross-border recognition of judgments, which is likely to involve not only consideration of how conflicts of law and jurisdiction can be resolved, but also wider issues such as how the perceived fairness of any given national justice system might influence courts' willingness to enforce foreign court rulings.
96. Consider a collective and streamlined resolution system for simpler and/or lower value but high-volume transactions

### **Final thoughts**

97. Technology is increasingly normalised in e-commerce, it should be normalised in consumer enforcement too. Developing enforcement technology ('EnfTech') should be explored further by public enforcers.

### **Conclusions and next steps for UNCTAD**

98. There is clear support by respondents for further thinking on Global ODR and a potential model law on consumer protection and dispute resolution in B2C e-commerce transactions, and this merits further work. We should also acknowledge the work currently ongoing in OECD and ICPEN, and where best this project can fit alongside this.
99. However, given the challenges acknowledged even by generally supportive respondents, next year's subgroup activity should focus on some immediate next steps which are achievable. These should include considering the applicability of the OECD Toolkit to UNCTAD members, mapping out the current obstacles both to achieving a

model law on consumer protection and securing cross border recognition of judgments,  
and the question of how a Global ODR scheme could be funded.

---

## **Bibliography and Relevant Other Work**

ASEAN (2021). ‘[The development of the ASEAN ADR Guidelines for Consumer Protection.](#)’

Chung, Alex and Ying Yu (2021). [Consumer trust in the digital economy: The case for online dispute resolution: UNCTAD Research Paper No. 72](#)

Cipriano, Ana Candia Muniz and Arnau Izaguerri Vila (2020). ‘[UNCTAD Research Paper No.54: International cooperation in consumer protection](#)’.

Cseres, Kati (2020). “[Integrate or Separate: Institutional Design for the Enforcement of Competition Law and Consumer Law.](#)” Amsterdam Law School Research Paper No. 2013-03.

McKinsey & Company (2020). [The 2020 McKinsey Global Payments Report](#)

Nessel, S. (2019). “[Consumer Policy in 28 EU Member States: An Empirical Assessment in Four Dimensions](#)”. *Journal of Consumer Policy* 42, 455–482.

OECD (2016). ‘[Summary Record: Key points of the Roundtables on Changes in Institutional Design](#)’

OECD (2018). “[Consumer protection enforcement in a global digital marketplace](#)”, *OECD Digital Economy Papers*, No. 266.

OECD (2021). [Implementation toolkit on legislative actions for consumer protection enforcement co-operation.](#)

Riefa, Christine (2020). “[Coronavirus as a Catalyst to Transform Consumer Policy and Enforcement](#),” *Journal of Consumer Policy*, 43:451-461

Riefa, Christine (2022). “[Cross-border enforcement of consumer law: Looking to the future: A report to UNCTAD’s Working group on e-commerce, sub-working group 3: cross-border enforcement cooperation](#)”

Rühl, Giesela. (2015). “[Alternative and Online Dispute Resolution for Cross-Border Consumer Contracts: a Critical Evaluation of the European Legislature’s Recent Efforts to Boost Competitiveness and Growth in the Internal Market.](#)” *Journal of Consumer Policy* 38:431–456

UN Project: [Delivering digital trading infrastructure and online dispute resolution for consumers as means to improve international trade and electronic commerce](#)

UNCTAD (2016). [Guidelines for Consumer Protection.](#)

UNCTAD (2017) [Consumer protection in electronic commerce: Note by the UNCTAD secretariat](#)

UNCTAD (2018a). [Manual on Consumer Protection](#)

UNCTAD (2018b) *Guidelines on Consumer Protection: Agency Structure and Effectiveness for the MENA Region*.

UNCTAD (2020). [Strengthening consumer protection and competition in the digital economy: Note by the UNCTAD secretariat](#)

UNCTAD (2021) [COVID-19 and e-commerce: a global review](#)



## **Annex A: January 2022 Mapping Survey (Questions)**

### **TOPIC A: Domestic Frameworks for Consumer Protection Authorities/Competences**

1. What public enforcement authorities with powers to take legal action against online B2C practices that violate domestic law, if any, exist in your country? What types of powers do they have (eg judicial – needing to go to court for enforcement orders, or administrative?) What other organisations are involved in consumer protection enforcement in e-commerce?
2. Please give the name, provide a website address and a contact email address for each organisation mentioned in Q1. If possible, please set up a generic email address that can be circulated and accessed by different members of staff.
3. Is there a centralized authority or are competences distributed between various regional or sectoral regulatory authorities? Please provide a list, including a very brief description of competencies and weblinks if available. Elsewhere in the survey please indicate which authorities your response refers. Where a large number of authorities exist, a summary covering their powers etc would be useful if full details of each cannot be provided.

### **TOPIC B: Domestic Frameworks for Consumer Protection Authorities/Competences what is the legal basis for this power (please give reference if possible)?**

4. Does the consumer protection authority have the power to conduct undercover investigations? Under what circumstances?
5. Does the consumer protection authority have legal powers to obtain or seek remedies through judicial or administrative action, or a combination? If so, what remedies are available?

### **TOPIC C: Consumer Redress**

6. Does the consumer protection authority have legal powers to obtain or facilitate redress through administrative proceedings? Under what circumstances (please specify the legal basis if possible)? What remedies are available (e.g., injunctions, fines, monetary restitution)? Can the consumer protection authority impose fines or penalties directly (e.g., the ability to impose monetary fines through administrative mechanisms) or only through adjudicative proceedings?
7. Does the consumer protection authority have legal powers to obtain or facilitate redress through court proceedings (e.g., through civil or specialized courts)? Under what circumstances? What remedies are available (e.g., injunctions, fines, monetary restitution)?

8. Do consumers have a private right of action to seek financial redress through the courts for consumer protection matters, either individually or collectively? If possible, please give details of the legal basis.
9. Does the consumer protection authority provide, administer, or otherwise play any role in the ability of individual consumers to seek financial redress through Online Dispute Resolution or Alternative Dispute Resolution mechanisms? For example, does it have a specific power to intervene in cases or do any decisions carry specific legal consequences for follow-on claims for redress (e.g. damages)?
10. Where possible, how many complaints (with percentage) from e-commerce transactions involve cross border B2C transactions?
11. In case of e-commerce complaints involving cross border B2C transactions, do you face any legal/ jurisdictional issues? If yes, please specify in detail where possible.
12. In case of e-commerce complaints involving cross border B2C transactions, do you face any issues regarding execution and enforcement of the order? If yes, please specify in detail where possible.
13. Considering the global nature of e-commerce transactions, do you think there is need for a Global ODR mechanism in place?
14. Considering the global nature of B2C e-commerce transactions, do you think there is need for a model law on consumer protection and dispute resolution in B2C e-commerce transactions?

**TOPIC D: Mechanisms for International Co-operation, Information Sharing and Investigative Assistance**

15. Please identify any networks, bilateral or multilateral arrangements that you use for international cooperation against fraudulent and deceptive commercial practices.
16. What mechanisms or legal tools does your national framework provide to enable your consumer protection agencies to conduct information sharing with consumer protection agencies in other countries? What is the legal basis for sharing information with other authorities, and any limitations on such sharing (Please include citations)
17. Where you have answered 'yes' to Q16 above, where possible please also provide the legal basis for maintaining the confidentiality of the information received. What mechanisms are available that affect the disclosure of such information through transparency or freedom of information laws?
18. What mechanisms does your national framework provide to enable your consumer protection agencies to enter into investigative assistance arrangements with consumer protection agencies in other countries?

## **Annex B: January 2022 Mapping Survey (Responses)**

1. Responses to the survey were submitted by:

- Argentina
- Brazil
- Colombia
- Germany
- Greece
- Peru
- Poland
- Republic of Korea
- South Africa
- Sweden
- Turkey
- United Kingdom
- United States