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The Report of the Working Group on Consumer Protection in E-Commerce to the sixth session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy

June 2022

The [fifth session of the Intergovernmental Group of Experts \(IGE\) on Consumer Protection Law and Policy](#) held on 5 and 6 July 2021, decided to renew the mandate of the Working Group on Consumer Protection in E-Commerce (WGE). The WGE has three sub-groups, each led by the respective consumer protection authorities of the mentioned member States: (1) Consumer education and business guidance: Dark commercial patterns (Argentina and Kenya); and (2) Cross-border enforcement cooperation: Mapping exercise of different legal consumer protection systems across the world (United Kingdom); and (3) Misleading and unfair business practices: Misleading green claims (Colombia). The respective sub-group leaders came up with detailed work plans which were agreed and implemented as follows:

(1) Consumer education and business guidance: Dark commercial patterns

The UNCTAD secretariat circulated to the WGE members a questionnaire which was prepared by Argentina and Kenya. The questionnaire was designed to document which types of dark commercial patterns have been identified and what kind of actions have been taken so far by consumer protection authorities to tackle dark commercial patterns. The consumer protection authorities from 11 member States responded to the questionnaire which are: Argentina, Brazil, Colombia, Germany, Kenya, Peru, Poland, Republic of Korea, Sweden, Switzerland, and Turkey.

The survey results show that: i) responding consumer protection authorities have undertaken a lot of initiatives aimed at addressing dark commercial patterns, either through enforcement action or introducing changes in the legislations, in order to effectively tackle the vice; ii) there is still much work to be done, in identifying what would actually entail dark commercial patterns, considering that, due to advancements in technology, these patterns will present themselves in different ways. Among others, the varied responses from consumer protection authorities indicate that there is need for more cross-border cooperation to address dark commercial patterns.

Consequently, the survey results produced three recommendations which are: i) there is need for enhanced cross-border cooperation facilitated by UNCTAD; ii) there is need for a guide for businesses, a self- assessment tool for them to identify if their conduct amounts to facilitating dark commercial patterns; and iii) there is need for member states to adopt enhanced educational programs and awareness activities for consumers.

Apart from the survey, the secretariat in cooperation with Argentina and Kenya held a webinar on "Dark commercial patterns: Experiences and tools for education and business guidance" on 30 March 2022. Representatives from the United States Federal Trade Commission, Consumers

International, and academics discussed: i) different types of dark commercial patterns; ii) associated law enforcement and policy initiative; and iii) how to better address dark commercial patterns including consumer education and good business practices.

(2) Cross-border enforcement cooperation: Mapping exercise of different legal consumer protection systems across the world

The secretariat circulated to the WGE members a questionnaire which was prepared by the United Kingdom. The questionnaire was designed to to better understand the domestic frameworks and legal powers of consumer protection authorities, as well as mechanisms for consumer redress and international cooperation. The consumer protection authorities from 13 member States responded to the questionnaire which are: Argentina, Brazil, Colombia, Germany, Greece, Peru, Poland, Republic of Korea, South Africa, Sweden, Turkey, United Kingdom and the United States.

The survey results show that 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 Online Dispute Resolution (ODR) or model law proposals. The survey results, however, indicate that there is clear support by responding consumer protection authorities for further thinking on Global ODR and a potential model law on consumer protection and dispute resolution in B2C e-commerce transactions. The survey results propose future discussion topics of the WGE such as i) mapping out the current obstacles both to achieving a model law on consumer protection and securing cross border recognition of judgement, and ii) the question of how a Global ODR scheme could be funded.

Apart from the survey, the University of Reading Commissioned a Study on Cross border enforcement of Consumer Law: Looking to the future as a complement to the work of the Sub-group on cross border enforcement and organized a conference on “Cross-border enforcement of consumer law supported by the United Kingdom Competition and Markets Authority and UNCTAD Secretariat. Representatives from member States consumer protection authorities such as Australia and the United States, and international organizations such as UNCTAD and OECD addressed the conference: i) the difficulties related to the global and cross-border enforcement of consumer law; ii) the value of international co-operation and the design of international networks in enforcement; iii) more advanced system designs; and iv) how technology can facilitate cross-border enforcement. These issues with relevant recommendations are reflected in the study which is made available on [the UNCTAD website](#).

(3) Misleading and unfair business practices: Misleading green claims

The secretariat circulated to the WGE members a questionnaire which was prepared by Colombia in cooperation with Mumbai Grahak Panchayat (MGP) of India. The questionnaire was designed to document which green claims have been identified and what kind of actions have been taken so far by consumer protection authorities to tackle false and misleading green claims. The consumer protection authorities from 17 member States responded to the questionnaire which are: Belgium, Brazil, Denmark, Hungary, Kenya, Mexico, Mongolia, Norway, Peru, Poland, Portugal, Slovakia,¹ South Africa, Sweden, Turkey, the United Kingdom and the United States.

¹ Two authorities, namely the Trade Inspection and the Public Health Authority responded to the questionnaire.

The survey results show that: i) most responding countries do not have in place specific regulation on green claims including online; ii) a large number of complaints received for the last five years have been of international nature; iii) the complaints received for the last five years have been concentrated into cosmetics and food; iv) around 26 percent of the responding countries have not received complaints about green claims, which suggests that consumers might not know about these types of misleading claims.

Based on the above findings, the survey results highlight that i) there is need for guidance on green claims such as laws, regulations and guidelines; ii) there is need for education and awareness initiatives directed to both consumers and businesses; iii) consumer protection authorities should cooperate with overseas authorities.

Apart from the survey, the secretariat in cooperation with Colombia held a webinar on "Consumers' perceptions regarding environmental claims" on 31 May 2022. Representatives from the Netherlands Authority for Consumers and Markets, the Competition and Markets Authority from the United Kingdom, as well as Consumers International and academics discussed: i) how consumers perceive environmental claims, ii) how to deal with greenwashing in the market; and iii) how to nudge consumers towards more environmental (sustainable) products and companies.

For further information, all sub-group Reports will be available on [the UNCTAD website](#).

In conclusion:

The WGE agreed to request to the Intergovernmental Group of Experts on Consumer Protection Law and Policy that its mandate be extended, to continue work on the cross-border cooperation aspect.

Some proposals for possible topics for future work were as follows:

- Continue discussions on specific cross border enforcement issues and plug them in a wider context of Online Dispute Resolution and link it to technology aspects. Reference was made to the two areas explored in the WGE, dark commercial patterns and green claims as issues related to technology and online commerce and tools to apply to protect consumers. There are gaps which could be filled within the work of the WGE.
- Continue the mapping exercise already started in the three areas to have wider coverage, which could feed on [the UNCTAD World consumer protection map](#).
- Develop soft law instruments for example toolkit on cross border enforcement aspects suited for developing countries, a guide on dark commercial practices etc. Work already done by OECD and considering its applicability to UNCTAD membership could be a good starting point.