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Resolution No. 7/2022

Committee on International Protection of Consumers

Contribution

International Law Association

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Contribution by International Law Association

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The 80th Conference of the International Law Association, held in Lisbon, Portugal, 19-24 June 2022:

OBJECTIVE: Engaging Big Techs and E-commerce Global Players in a voluntarily set of standards that supports companies to align their activities with fundamental responsibilities in the areas of consumer rights, data protection, new marketing, redress and enforcement of consumer rights

JUSTIFICATION- Considering the expansion of the digital economy and the new global organization of digital big techs and digital global corporations, sharing platforms and chains of providers, organizing marketplaces to reach consumers, reproducing technologies and practices worldwide it is possible to ask these responsible businesses to voluntarily join a principles-based approach to doing business globally. This ILA's 'Consumer Global Compact' aims to enhance the culture of fairness and cooperation toward digital and global consumers, as the UN Global Compact has done. This means operating and designing business solutions which, at least, meet fundamental responsibilities towards consumers and their personal data, providing models to all small and medium business that work in the marketplace. The original ten principles of the UN Global Compact cover human rights, labor, environment, and anti-corruption; they helped to establish a culture of integrity worldwide.

Now, following the Covid-19 pandemic, the recovery calls for the need to rethink strategies and policies to engage the global business players in enhancing consumer confidence and a new level of doing digital business globally.

Base of this new voluntary statement about corporate sustainability, ethic and ESGs were: The United Nations Global Compact Principles, the UN-Guidelines on Consumer Protection 2015, the ILA RESOLUTION 4/2012- Sofia Statement on the Development of International Principles of Consumer Protection, the OAS Principles on data protection 2021, the Council of Europe Technical study on online dispute resolution mechanisms 2018, the UNCITRAL Technical Notes on Online Dispute Resolution, the OECD Recommendation of the Council on Consumer Dispute Resolution and Redress, the OECD Guidelines for Multinational Enterprises and Due Diligence Guidance for Responsible Business Conduct. Also, EU and Mercosur rules have inspired this text, aiming to implement due diligence processes and corporate responsibility policies to respect consumer rights, data protection and to facilitate consumer redress and access to justice, enhancing confidence amongst consumers.

Therefore, the ILA's Committee on International Protection of Consumers believe it is time to suggest a 'Consumer Global Compact' in the digital economy. The Principles aim to make up for the 'new vulnerabilities' that global consumers are experiencing in the digital economy and create a voluntary common ground to the worldwide activities in consumer e-commerce, platforms and data driven companies, helping the compliance and enforceability of consumers rights worldwide.

‘CONSUMER GLOBAL COMPACT IN THE DIGITAL ECONOMY’

Aiming to raise awareness among responsible business of the digital marketplaces and e-commerce, especially those involved in cross-border B2C transactions, that this set of voluntary standards can support digital companies to align their activities with fundamental responsibilities in the areas of consumer rights, data protection, new marketing, redress and enforcement of consumer rights.

Recalling UN General Assembly resolution 70/186 of 22 December 2015 on consumer protection adopting the revised United Nations Guidelines for Consumer Protection, and the ILA RESOLUTION 4/2012- Sofia Statement on the Development of International Principles of Consumer Protection;

Recognizing the role of voluntary standards to enhance the culture of fairness and cooperation toward digital and global consumers, and recognizing that appropriate business practices can improve consumer confidence and provide more favourable conditions for sustainable online trade worldwide;

Noting the working of the work of the Committee on International Protection of Consumers from 2019 to 2022 and its Interim Report 2022 present at the Lisbon Biannual Congress;

Recognizing that consumers everywhere may benefit when consumer rights are respected, cross-border distribution of unsafe consumer products is reduced, data protection and enforcement of consumer rights are voluntarily developed by design;

And recognizing the special vulnerability of consumers in the digital economy, especially in cross-border transactions, states the follow principles called ‘ILA’s Consumer Global Compact in the digital economy’.

Principles of the ILA’s Consumer Global Compact in the digital economy

The Principles are:

Consumer Rights

1. Business should support and respect consumer rights, especially in compliance with the UNGCP (UN-Guidelines on Consumer Protection, 2015) and grant consumers using electronic commerce and new technology applications a level of protection that is no less that afforded in other forms of commerce, avoiding all kind of consumer discrimination.
2. Business should uphold freedom of choice and provide the consumer with complete and useful information on time and in an understandable manner.
3. Business should develop a unified standard to deal with cross-border consumer transactions and not deprive consumers using e-commerce in cross-border transaction from the most protective provisions afforded to them by the mandatory applicable laws.
4. Business should make sure that they are not complicit of frauds or violations of human rights and environmental rights in the marketplace or supply chains.

Data Protection and New Marketing

5. Business should control and share responsibility of the behavior of intermediaries, employees, influencers, and the addressable marketing personnel.
6. Business should ensure by design, data protection and AI fairness. The processing of the consumers' personal data should be done lawfully, fairly and in a transparent manner, respecting the principles of purpose limitation, data minimization, data accuracy, storage limitation, integrity and confidentiality and accountability, and guaranteeing data subject rights.
7. Business should undertake initiatives to promote greater data protection and consumer privacy. It should be assured a fair algorithmic treatment, that does not make unfair discriminations; algorithmic transparency; and the right of the consumer to contest an algorithmic decision.
8. Business should consider children and adolescents' weakness, aged persons and other vulnerable consumers and not impose to them burdens or constraints.

Redress and Enforcement Rights

9. Business and other stakeholders should work together with national enforcement agencies and seek for consensual and amicable consumer dispute resolution. Business should engage in multiple-stakeholders' discussions and supports international cooperation for cross-border dispute resolution. The introduction of due diligence frameworks would increase the levels of responsible business conduct and international cooperation, enhance information and transparency, increase sustainable development, and enhance confidence amongst consumers.
10. Business should encourage accessible consumer ODR platforms and channels for consumer redress including cross-borders disputes.
11. Business should ensure the compliance of international standards by the ADR/ODR and other services and platforms for amicable resolution of consumer disputes they use or recommend, fostering the development of fair, transparent, accessible, informed, impartial, free of charge or inexpensive for consumer and expeditious solutions for cross border cases.
12. Business should ensure that consumers are free to access voluntarily dispute resolution and redress mechanisms, as well as judicial or administrative redress mechanism for consumers acting individually or collectively, and to benefit from the positive outcomes of such procedures. The ADR/ODR mechanism should be mandatory for business and voluntary for consumers and the decision, if not consensual, should be binding only for business.