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**PROTECTING MALAYSIAN E-COMMERCE CONSUMERS**

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# **Protecting Malaysian E-commerce Consumers**

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# Growth of E-commerce in Malaysia

In June 2019, the Malaysian Communications and Multimedia Commission reported - 51.2% of Malaysians used e-Commerce platforms to shop and sell online.

*(EITN Malaysia, MCMC 2019)*

Covid-19 pandemic, quarantines and business closures have made consumers turn to e-commerce at an unprecedented rate. Despite wide spread unemployment and drop in earnings, global retail e-commerce sales is expected to grow by 16.5%, albeit slower than the 20.2% last year. However, nine countries including Malaysia, are expected to see more than 20% growth in 2020, a substantial acceleration over 2019.

*(E-marketer Insider Intelligence 2020)*

In common with their ASEAN neighbours, many Malaysian consumers have leap frogged to mobile phones and e-wallets without first using laptops and banking services.

*(Bain & Company 2019)*

# **This presentation**

E-commerce law in Malaysia

Problems faced by e-commerce consumers

Connected service provider liability

Disadvantaged and vulnerable consumers

# E-commerce Law in Malaysia

Malaysia has:

- Digital Signature Act 1997, Computer Crimes Act 1997, Electronic Commerce Act 2006
- Consumer Protection Act 1999 (amended in 2007 to include e-commerce transactions)
- Consumer Protection (Electronic Trade Transactions) Regulations 2012

*Malaysia does not have a Privacy Act*

# Consumer Problems with E-commerce

- ***Telco***

Range of problems including: Coverage, poor signal strength, internet speed and unsolved complaints.

- ***Website***

Long to load, crowded with banners, ads, and pop-ups; especially difficult for consumers with low-speed internet.

Security authentication and trust marks are important but difficult to know if genuine.

# Consumer Problems with E-commerce

## *Product*

Range of unfair trade practices:

Misleading adverts and product information, inconvenient payment processes, low quality of products, imitation goods, guarantees and warranties less than in consumer laws, unfair returns and refunds policies, late or non- delivery of products, damaged products, non-compliant products and underperforming complaint systems.

# Consumer Problems with E-commerce

## Data protection and privacy

- Lack of secure systems compromise personal and confidential information.
- Privacy issues - dissemination of sensitive and confidential medical, financial and personal records.
- Spam e-mails or *WhatsApp* messages, tracking by web cookies, unauthorised scrutiny by employers, intrusive persons and even fraudsters.



# Consumer Problems with E-commerce

## Data protection and privacy

- Installation of unwanted software without user's consent - cookies routinely required by information providers.
- Spyware deployed through - free software (browser toolbars and personal organisers), downloaded accidentally (email attachment, clicking onto a website).
- Adware bundled as part of software package - tracks end users web browsing activity - personal information gathered used to tailor advertisements and other targeted information.

# Consumer Problems with E-commerce

## Cyber abuse/Fraud and Cyber Security

- Shopping fraud often begins with bogus websites, mobile apps or social media ads, mimic trusted retailers and a URL easily mistaken for that of reputable retailers. Entice customers with popular items at substantially lower prices, free shipping and next day delivery. Goods not delivered after payment.
- Cyber scams (confidence tricks) lure victims with alluring offers of financial or other gain. Exploit human weaknesses (greed and vanity) and virtues (compassion, altruism).

# Consumer Problems with E-commerce

## Phishing, brushing, malware & ransomware

- Phishing, brushing and identity theft - more targeted approach - unlawfully obtain and use personal data for financial gain.
- Malicious software (*malware*) used to disrupt, damage, or gain unauthorized access to computer system and even block access to computer system till payment made (*ransomware*).

# Consumer Dispute Resolution & Redress

## For domestic e-commerce

- Malaysia has a comprehensive consumer redress scheme:  
Small claims procedure (Order 93, Rules of Court 2012) ,  
Tribunal for consumer claims, Homebuyers Tribunal,  
Ombudsman for financial services, Aviation Code, and  
Multimedia and Communications Consumer Forum.  
(The last three operate by email, but do not report the  
dispute and its resolution in the website.)
- ***Need to establish an on-line dispute resolution for all  
consumer claims, including for e-commerce.***

# Connected Service Provider / Intermediary Liability

- Consumer Protection (Electronic Trade Transactions) Regulations 2012 only requires registration of online market place operators. No liability is imposed on them.
- Of recent China, India and in ASEAN, Cambodia and Indonesia, have enacted new regulations which see online marketplace providers as gatekeepers who can be marshalled to regulate the online market place – the regulations impose duties on these operators.
- The ensuing slides describe some features of the new regulations.

# Recent Regulations

- ***Wider Scope***: Earlier regulations focused on online direct sellers and online market place providers.

Recent laws encompass all online ‘business practitioners’ (websites engaging in retail, classified ads, price comparison and daily deals, etc) and ‘intermediary service providers’ (business entities or individuals providing engine, hosting or caching services).

- ***Domestic Products prioritization***: Requirement to prioritize domestic products, improve their competitiveness and facilitate a special section on their website or marketplace to promote local products.

# Recent Regulations

- ***Consumer Protection:*** Make explicit that online commerce is subject to all consumer protection laws and emphasize unfair contract terms, misleading advertising, guarantees and warranties and prohibition of opt-out clauses.
- ***Data protection:*** Higher standards of data protection imposed. Personal data obtained needs to be relevant with right to correct errors. Data needs to be maintained with appropriate security and retained only for the required period.
- ***Variety of Payment Methods:*** Permit wide range of payment methods (cash, credit and debit cards, e-wallets, etc.) and cater to the unbanked.

## Recent Regulations

- ***Complaints Handling***: Require consumer complaint service - proper procedure to complain, address and contact number, competent staff. follow-up procedures and time period for resolving complaints.

***Dispute Resolution***: No ASEAN country has established an online dispute resolution mechanism or a special procedure for dispute resolution of online commerce.



# Connected Lender Liability

## Liability of creditor for breaches by seller

- UK - section 75 of the Consumer Credit Act 1974 - joint and several liability on the supplier and creditor.
- Us – §433.2 Preservation of consumers' claims and defences for unfair or deceptive acts or practices of seller.

***No ASEAN country has introduced this.***

**Essential consumer protection measure – applicable for all sales and in particular e-commerce.**

# Dispute Resolution & Redress (MCMC)

- MCMC empowered to resolve consumer complaints as regards conduct of licensees (network facilities providers, network services providers, application service providers and content applications service providers).
- Established a Consumer Forum which has issued two Codes – General Code applicable to all licensees, and sub-code for Internet Service Providers.
- Issued Guidelines for consumer complaints handling by licensees. Consumers first complain to the licensee, if matter unresolved complain to the Consumer Forum, and if dissatisfied with the decision appeal to MCMC for a final decision.
- Procedure not mandatory – consumer may choose any other option available under the law before, during or even after the decision.

# Disadvantaged & Vulnerable consumers

**Disadvantaged** by poor quality electrification, inadequate telecommunication infrastructure, low internet penetration and poor quality network connection and high cost of broadband access.

Persistent income disparity, gender gap and rural deficit.

**Vulnerable** due to particular characteristics of the consumer compounded by new technologies and conduct of ICT providers, traders and intermediaries.

## D & V consumers

Persons with Disabilities Act 2008 – Neither comprehensive nor sufficiently inclusive. No rights conferred, no provision for judicial penalties, government may not be sued for wrongdoing.

The Communications and Multimedia Act 1998 Part VIII on Consumer Protection enables Minister to:

- Require special services for ‘disabled consumers’;
- Intervene ‘freely or frequently’ to set rates “for good cause, or as the public interest may require”, determine special rate regulation regimes for particular groups of persons;
- Direct Malaysia Communications and Multimedia Commission (MCMC) to determine a system to make services available to under-served areas or for under-served groups; and
- Establish Universal Service Provision Fund with contribution by licensees.

# OFCOM (UK)

OFCOM (UK) with identical powers provides special services for the vulnerable:

- Broad definition of vulnerable: due to circumstances such as age, physical or learning disability, physical or mental illness, low literacy, communications difficulties or changes in circumstances such as bereavement.
- Providers required to establish, publish and comply with clear and effective policies and procedures for fair and appropriate treatment of vulnerable consumers.
- Examples of special services:
  - ✓ Priority fault repair
  - ✓ Bills and contract in accessible format
  - ✓ Third party bill management
  - ✓ Best tariff notification

# Importance of an ISO Standard

OFCOM's measures made possible by British Standard BSI 18477: Inclusive service provision - identifying and responding to consumer vulnerability.

ISO is developing a similar standard (ISO 22458).

Malaysia is represented in the working committee for ISO 22458.

An ISO standard on inclusive service for vulnerable consumers will be a major impetus for measures to serve the needs of vulnerable consumers.

**Thank you.**

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