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Consumer law, policy and regulatory actions in response to and in the aftermath of the COVID-19 pandemic

Note by the UNCTAD secretariat

Summary

This note addresses the economic impact of the coronavirus disease of 2019 (COVID-19) pandemic on consumers and the global economy. It provides an overview of member State responses during the pandemic and suggests actions that consumer protection authorities might take to address future challenges. Consumer protection laws and policies have proven effective in dealing with the issues faced by consumers at the national, regional and multilateral levels. Consumer protection agencies have taken actions in response to the challenges arising from the unprecedented crisis in a timely, appropriate and effective manner, drawing on the United Nations guidelines for consumer protection. However, agencies continue to face challenges exacerbated by the pandemic in two key areas, namely, consumer protection in digital markets, in particular with regard to vulnerable and disadvantaged consumers, and international cooperation in law enforcement.

I. Introduction

1. 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 requested the UNCTAD secretariat to prepare a report as background documentation for proposed informal consultations during the fifth session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy on “Consumer law, policy and regulatory actions in response to and in the aftermath of the COVID-19 pandemic”.¹

2. This note provides an overview of member State responses during the pandemic and suggests actions that consumer protection authorities might take to address future challenges. The note draws on information from earlier work by UNCTAD on member State responses to the pandemic, desktop research, the UNCTAD world consumer protection map² and contributions received from States and other stakeholders that shared their experiences in this matter in response to a questionnaire circulated by the UNCTAD secretariat.³ Chapter II addresses the impact of the pandemic on the global economy and, in particular, on consumers. Chapter III focuses on measures taken worldwide at the national, regional and multilateral levels to address the crisis. Chapter IV suggests a way forward for the consumer protection-related measures of States during the pandemic and highlights some areas for further discussion.

II. Impact of the pandemic on consumers and the global economy

3. The COVID-19 pandemic has brought economic activities to a near standstill, leading to the most significant economic shock the world has experienced in decades. UNCTAD expected gross domestic product to fall by around 4.3 per cent in 2020, with an expected global recovery of 4.1 per cent in 2021, and it is estimated that 34.3 million additional people, including millions working in the informal sector, will fall below the extreme poverty line in 2020, with countries in Africa accounting for 56 per cent of this increase.⁴

4. According to the World Bank, the pandemic will cause the first increase in global poverty since 1998. As at October 2020, the rate of extreme poverty, measured as the share of the world’s population living on less than \$1.90 per day, was projected to be at 9.1–9.4 per cent in 2020, higher than the share of 8.4 per cent in 2019.⁵

5. The pandemic has spurred the use of digital means. Growing trends in electronic commerce (e-commerce) have been accelerated by measures related to the pandemic, including restrictions on movement. UNCTAD and Netcomm Suisse E-commerce Association conducted a consumer survey in collaboration with the Network Information Centre in Brazil and Inveon in Turkey, covering Brazil, China, Germany, Italy, the Republic of Korea, the Russian Federation, South Africa, Switzerland and Turkey, which revealed that online engagement had increased during the pandemic. Over half of the survey’s respondents shopped online more frequently and sourced digital entertainment and

¹ TD/RBP/CONF.9/9.

² See <https://unctadwcpm.org/map.html>.

³ Antigua and Barbuda, Argentina, Brazil, Chile, Colombia, Germany, Hungary, Indonesia, Ireland, Japan, Kenya, Malaysia, Republic of Korea, Seychelles, Consumers Association of Singapore, Turkey, United States of America Consumer Product Safety Commission and Hong Kong (China).

⁴ UNCTAD, 2020a, *Impact of the COVID-19 Pandemic on Trade and Development: Transitioning to a New Normal* (United Nations publication, Sales No. E.20.II.D.35, Geneva).

⁵ World Bank, 2020, *Poverty and Shared Prosperity 2020: Reversals of Fortune* (Washington, D.C.).

health-related information from the Internet as opposed to through traditional news channels.⁶

6. Digital platforms have become key players during the pandemic and benefited substantially from the e-commerce boom. According to an UNCTAD study covering 23 developing countries, mainly in Africa and Asia, about 64 per cent of third-party online marketplaces have seen an increase in sales and 58 per cent of businesses selling their own products or services online have recorded a drop in monthly revenue.⁷ The Dow Jones fell by 5 per cent in January–September 2020, yet Standard and Poor's 500 increased by 2 per cent and the values of leading technology company stock rose by an average of 41 per cent, such as the price of Apple stock, which increased by 50 per cent, and the price of Amazon stock, which increased by 64 per cent.⁸ The pandemic has severely impacted consumers due to the disruption of supply chains and the subsequent shortages of essential products, causing price increases; deceptive and misleading advertising capitalizing on the pandemic has been widespread; and low-income consumers have become more vulnerable to financial scams and fraud.⁹

III. Responses to the pandemic at the national, regional and multilateral levels

7. During the pandemic, consumer protection law and policy has proven effective. Consumer protection agencies have taken actions in response to the challenges arising from the unprecedented crisis in a timely, appropriate and effective manner. UNCTAD has identified actions undertaken by consumer protection agencies, including actions related to law enforcement and regulations and actions to cooperate with businesses, including online platforms; protect vulnerable and disadvantaged consumers; and facilitate access to justice. States have undertaken various actions at different levels based on the criteria outlined in this chapter.

A. Law enforcement and regulations

8. The United Nations guidelines for consumer protection state that member States should develop, strengthen or maintain measures relating to the control of restrictive and other abusive business practices which may be harmful to consumers, including means for the enforcement of such measures.¹⁰ Some law enforcement measures include sanctions against price gouging and other unfair business practices; strong and vigilant market monitoring; warnings and/or recommendations issued to businesses to encourage compliance when appropriate; and new regulations, guidance and policy statements. Notably, some States, such as Australia, China and the United States, as well as member States of the European Union, have stated that businesses in the tourism industry should respect consumer rights to a full refund.¹¹

⁶ UNCTAD, 2020b, COVID-19 has changed online shopping forever, survey shows, 8 October, available at <https://unctad.org/news/covid-19-has-changed-online-shopping-forever-survey-shows> (accessed 18 March 2021).

⁷ UNCTAD, 2020c, COVID-19 and e-commerce: Impact on businesses and policy responses, available at <https://unctad.org/webflyer/covid-19-and-e-commerce-impact-businesses-and-policy-responses> (accessed 18 March 2021).

⁸ UNCTAD, 2020a.

⁹ UNCTAD, 2020d, Consumers vs COVID-19, 7 April, available at <https://unctad.org/news/consumers-vs-covid-19> (accessed 18 March 2021).

¹⁰ General Assembly resolution 70/186, annex, paragraph 22.

¹¹ Australian Competition and Consumer Commission, 2020, Advice on event and travel cancellations due to COVID-19, available at <https://www.accc.gov.au/media-release/advice-on-event-and-travel-cancellations-due-to-covid-19> (accessed 18 March 2021); China, Civil Aviation Administration, 2020, Free refund policy extended to 0:00 of January 28, available at http://www.caac.gov.cn/en/XWZX/202002/t20200226_201140.html (accessed 31 March 2021); United States, Department of Transportation, 2020, Department of Transportation issues enforcement

1. Actions against price gouging and/or unjustified increases

9. Numerous concerns have been raised worldwide about the overpricing of products such as face masks, hand sanitizer and other essential consumer goods. Antigua and Barbuda included pandemic-related items such as sanitizer under the Price Control Order to ensure their availability at fair prices.¹² In Brazil, the price of primary hospital supplies required during haemodialysis increased, including an increase of 500 per cent in the price of alcohol gel.¹³ France capped the retail price of hand gel in the context of the state of health emergency.¹⁴ The Competition Authority of Kenya issued a remedial order to a supermarket for excessively increasing the price of hand sanitizer and a cautionary notice to manufacturers and retailers on illegal price increases and hoarding in the context of the pandemic.¹⁵ The Competition and Fair Trading Commission of Malawi issued fines to eight pharmacies for excessive pricing of face masks, gloves and hand sanitizer, which had been sold at margins of 100–367 per cent.¹⁶ Portugal imposed a profit cap of 15 per cent on protective equipment and alcohol-based sanitizer.¹⁷ The Republic of Korea enacted a regulation on the hoarding of face masks and hand sanitizer, initially effective March–June 2020 and later extended to June 2021.¹⁸ Saudi Arabia made it illegal for businesses to charge excessive prices for goods or services essential to health, safety or welfare.¹⁹ In South Africa, two suppliers were charged with excessive pricing of face masks, with increases of over 900 per cent.²⁰ Turkey established the Unfair Price Assessment Board and regulations regarding the prices and sale conditions of essential goods such as surgical masks and disinfectants.²¹ The Competition and Consumer Protection Commission of Zambia issued a cautionary note directed at companies and individuals that were

notice clarifying air carrier refund requirements, given the impact of COVID-19, 3 April, available at <https://www.transportation.gov/briefing-room/us-department-transportation-issues-enforcement-notice-clarifying-air-carrier-refund> (accessed 18 March 2021); European Commission, 2020a, Commission notice: Interpretative guidelines on EU [European Union] passenger rights regulations in the context of the developing situation with COVID-19, available at <https://eur-lex.europa.eu/content/news/Covid19.html> (accessed 18 March 2021); European Commission, 2020b, Information on the package travel directive in connection with COVID-19, available at https://ec.europa.eu/info/law/law-topic/consumers/travel-and-timeshare-law/package-travel-directive_en (accessed 18 March 2021).

¹² Contribution to UNCTAD questionnaire from Antigua and Barbuda.

¹³ See

https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_documento_consulta_externa.php?DZ2uWeaYicbuRZEFhBt-n3BfPLlu9u7akQA8mpB9yMxIgnfLNW90T0QxxMRhUkjpDiWuJ-0o1Epo3ADXRvEh-JgZuY9GFDVRzWrQQiCIH5RPz160NvXgm2Imfxv52sa.

¹⁴ France, Ministry of the Economy, Finance and Recovery, 2020, Price regulation for hydroalcoholic gels or solutions, 1 March, available at <https://www.economie.gouv.fr/dgccrf/encadrement-des-prix-pour-les-gels-hydroalcooliques-voir-la-faq> (accessed 18 March 2021).

¹⁵ Competition Authority of Kenya, 2020, Cautionary notice on illegal price increases and hoarding; Remedial order to Cleanshelf Supermarkets, Press releases, 13 and 20 March, available at <https://cak.go.ke/index.php/information-center/Speeches-Press-Releases> (accessed 18 March 2021).

¹⁶ Malawi, Competition and Fair Trading Commission, 2020, Recent decisions by the Board of Commissioners of the Competition and Fair Trading Commission, Press release, 26 May, available at <https://www.cftc.mw/2020/05/26/press-release-recent-decisions-by-the-board-of-commissioners-of-the-competition-and-fair-trading-commission> (accessed 18 March 2021).

¹⁷ Organization for Economic Cooperation and Development, 2020a, Exploitative pricing in the time of COVID-19, available at <https://www.oecd.org/competition/competition-policy-responses-to-covid-19.htm> (accessed 31 March 2021).

¹⁸ See

<https://www.law.go.kr/LSW/admRulSc.do?tabMenuId=183&subMenuId=41&menuId=5#liBgcolor2chrome-extension://glohakccicfcgpelekfpgllfnlameopo/ntp2.html>.

¹⁹ Saudi Arabia, Ministry of Commerce, 2020, contribution made during 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, 19–23 October, available at <https://unctad.org/meeting/eighth-united-nations-conference-competition-and-consumer-protection> (accessed 18 March 2021).

²⁰ South Africa, 2020, Major suppliers of face masks prosecuted for exorbitant price increases, 12 May, available at <http://www.compcom.co.za/2020-media-releases/> (accessed 18 March 2021).

²¹ Contribution to UNCTAD questionnaire from Turkey.

excessively increasing prices of hygiene products.²² The Consumer Council of Hong Kong (China) carried out market surveillance on face masks and sanitary products.²³

2. Actions against other unfair business practices

10. The Australian Competition and Consumer Commission and the Competition and Markets Authority of the United Kingdom of Great Britain and Northern Ireland each launched a task force on COVID-19 to monitor, identify and take measures against unfair business practices.²⁴ In Brazil, the Administrative Council for Economic Defence set up five temporary technical commissions to respond to the pandemic in the following areas: financial pyramids; customer service; alternative conflict resolution methods; alleged abusive prices; and analysis of the regulatory system in Brazil to respond to consumer needs.²⁵ In Colombia, the Superintendency of Industry and Commerce issued an order to three online operators to remove advertising associated with the terms coronavirus and COVID-19 that could mislead consumers; the operators removed 1,286 advertisements.²⁶ The Hungarian Competition Authority carried out a screening, or sweep, of online retailers offering products and face masks advertised as antiviral products and took an interim measure to stop the advertising of cosmetics as treating COVID-19.²⁷ The Consumer Affairs Agency of Japan advised consumers and businesses that no foods had been confirmed to prevent or treat COVID-19.²⁸ In Peru, in December 2020, the National Institute for the Defence of Competition and Protection of Intellectual Property initiated an administrative sanctioning procedure against 10 suppliers for misleading advertising that their products provided a cure for COVID-19.²⁹ The Republic of Korea Fair Trade Commission investigated online false advertising about products with regard to COVID-19, such as air purifiers and humidifiers, and businesses promptly deleted or revised such advertisements.³⁰ In the United States, as at November 2020, the Federal Trade Commission had sent letters warning more than 330 marketers to stop making unsupported claims that their products and therapies could effectively prevent or treat COVID-19 and in December 2020, announced a nationwide crackdown on scams that targeted consumers with false promises of income and financial independence.³¹ According to findings from an Organization for Economic Cooperation and Development questionnaire on financial consumer protection measures during the pandemic, issued in October 2020, 96 per cent of respondents from 89 organizations in 64 jurisdictions, including several non-member countries, were monitoring the risks faced by financial consumers as a result of the

²² Global Compliance News, 2020, Africa: Competition authorities respond to the COVID-19 crisis, 25 June.

²³ Contribution to UNCTAD questionnaire from Hong Kong (China).

²⁴ See <https://www.accc.gov.au/media-release/accc-response-to-covid-19-pandemic> and <https://www.gov.uk/government/news/cma-launches-covid-19-taskforce>.

²⁵ Contribution to UNCTAD questionnaire from Brazil.

²⁶ Contribution to UNCTAD questionnaire from Colombia.

²⁷ Contribution to UNCTAD questionnaire from Hungary.

²⁸ See https://www.caa.go.jp/notice/assets/representation_cms214_200501_1.pdf.

²⁹ Government of Peru, 2020a, Sanctioning procedure begins against 10 suppliers of Ivermectin and chlorine dioxide in La Libertad for offering them as a cure for COVID-19, 30 December, available at <https://www.gob.pe/institucion/indecopi/noticias/322755-se-inicia-procedimiento-sancionador-a-10-proveedores-de-ivermectina-y-dioxido-de-cloro-en-la-libertad-por-ofrecerlos-como-cura-de-covid-19> (accessed 18 March 2021).

³⁰ See

<https://ftc.go.kr/solution/skin/doc.html?fn=5d422938b3771fd704160eba38e9b20172c95af2837cde325842078263525bd3&rs=/fileupload/data/result/news/report/2020>.

³¹ Federal Trade Commission, 2020, FTC[Federal Trade Commission] sends letters warning 20 more marketers to stop making unsupported claims that their products and therapies can effectively prevent or treat COVID-19; As scammers leverage pandemic fears, FTC[Federal Trade Commission] and law enforcement partners crack down on deceptive income schemes nationwide, Press releases, 12 November and 14 December, available at <https://www.ftc.gov/news-events/press-releases?page=3> (accessed 18 March 2021).

pandemic and around half of the respondents had detected and/or issued warnings with regard to scams related to the pandemic.³²

11. During the pandemic, the number of e-commerce transactions and related complaints increased concurrently. In Chile, since March 2020, online purchases have increased by more than 200 per cent and complaints associated with e-commerce received by the national consumer agency have doubled.³³ In Malaysia, the Ministry of Domestic Trade and Consumer Affairs received 11,510 complaints in relation to online transactions in January–December 2020, compared with 5,415 complaints in 2019.³⁴ The Common Market for Eastern and Southern Africa notes that shortly after the start of the pandemic, product delivery was delayed even longer than it had been before the pandemic; some online traders failed to deliver products or there were delays in the issuance of refunds or replacements; and internal complaint resolution systems were not put in place.³⁵

3. Actions related to travel refunds

12. The tourism industry has been significantly affected by the pandemic, with low cash reserves, and Governments worldwide have provided millions of dollars in aid to airlines to help avoid bankruptcy. In this context, airlines may be reluctant to respect consumer rights. In this regard, in June 2020, UNCTAD emphasized that member States should engage with airlines to design satisfactory voluntary voucher schemes, while respecting consumer rights; enforce consumer protection laws against abusive business practices such as penalties or fees and breaches of refund rights; provide clear, precise and accessible information on consumer rights in the event of cancelled flights, including refunds; ensure a transparent process for the confirmation, cancellation, return and refund of products and services; and ensure effective dispute resolution and redress systems for consumers, in particular through electronic means.³⁶

13. The obligation of airlines to provide refunds does not cease when flight disruptions are beyond the control of the air carrier. Some States, such as Australia, China and the United States, as well as the European Union, have stated that businesses should respect the rights of consumers to full refunds. The Australian Competition and Consumer Commission issued advice for consumers and businesses on their rights and obligations in the event of cancellations due to the pandemic.³⁷ China required airlines and their ticket sales agents to offer a refund to passengers within the validity periods of tickets and not charge any fees for all tickets purchased before 28 January 2020 and if a refund was applied for prior to take off.³⁸ The national consumer protection agency of Indonesia submitted a recommendation to the minister of transportation that transportation businesses should not be allowed to provide vouchers as refunds.³⁹ Turkey initiated a measure to balance the needs of consumers with those of businesses negatively affected by financial losses during the pandemic and the amended regulation on package tour agreements provided financial flexibility to businesses by allowing them to return the amount specified in the contract within 74 days after the ban on flights was lifted.⁴⁰ The Department of Transportation of the United States issued an enforcement notice clarifying that United States and foreign airlines remained obligated to provide a prompt refund to passengers for flights to, within or from

³² Organization for Economic Cooperation and Development, 2020b, Financial consumer protection, available at <https://www.oecd.org/competition/sectors/financialconsumerprotection.htm> (accessed 18 March 2021).

³³ Contribution to UNCTAD questionnaire from Chile.

³⁴ Contribution to UNCTAD questionnaire from Malaysia.

³⁵ K Kaonga, 2020, Consumer remedies and redress: E-commerce and cross-border cooperation, presented at the eleventh Annual African Consumer Protection Dialogue Conference, 13 October, available at <https://www.ftc.gov/news-events/events-calendar/eleventh-annual-african-consumer-protection-dialogue-conference> (accessed 18 March 2021).

³⁶ UNCTAD, 2020e, Airlines must respect consumers' rights, 4 June, available at <https://unctad.org/news/airlines-must-respect-consumers-rights> (accessed 18 March 2021).

³⁷ Australian Competition and Consumer Commission, 2020.

³⁸ China, Civil Aviation Administration, 2020.

³⁹ Contribution to UNCTAD questionnaire from Indonesia.

⁴⁰ Contribution to UNCTAD questionnaire from Turkey.

the United States when the air carrier cancelled a passenger's scheduled flight or made a significant schedule change and the passenger chose not to accept the alternative offered by the air carrier.⁴¹ In the European Union, in the event of a flight cancellation by an airline, the air carrier is obliged to offer passengers the choice of a reimbursement (refund), rerouting at the earliest opportunity or rerouting at a later date at the passengers' convenience. Recommendation 2020/648 of 13 May 2020, on vouchers offered to passengers and travellers as an alternative to reimbursement for cancelled package travel and transport services in the context of the COVID-19 pandemic, provides that if a cancellation is due to the pandemic, the consumer of the cancelled package is entitled to a full refund through reimbursement or a voucher, but if a carrier proposes a voucher, this offer cannot affect the passenger's right to opt for reimbursement instead.⁴²

B. Other actions

1. Actions addressed to businesses, including online platforms

14. The revision of the United Nations guidelines for consumer protection in 2015 introduced a set of principles for good business practices to ensure that businesses deal fairly and honestly with consumers at all stages of the relationship so that it is an integral part of the business culture. The principles apply across the guidelines, as benchmarks for good practices that apply to all forms of commerce, including e-commerce; businesses should not subject consumers to illegal, unethical, discriminatory or deceptive practices, such as abusive marketing tactics, abusive debt collection or other improper behaviour that may pose unnecessary risks or harm consumers (paragraph 11 (b)).

15. Brazil approved two guidelines in 2020 aimed at building a culture of good business practices in the digital market: online platforms are encouraged to apply greater control over the registration of business users and suspend those found to be selling illegal products; and online platforms are expected to adopt measures to identify and prevent the presence of illegal products.⁴³ The Government of Jamaica met with the manufacturers and distributors of antiviral and/or disinfectant products to ensure that they increased production to meet consumer demand and stop excessive pricing.⁴⁴ In Nigeria, following a warning issued by the Federal Competition and Consumer Protection Commission to sellers engaged in price gouging, a leading online marketplace operator voluntarily delisted 390 products of 168 sellers of face masks and hand sanitizer from its platform.⁴⁵ In Peru, the National Institute for the Defence of Competition and Protection of Intellectual Property launched a consumers first award that recognizes businesses with good practices that are favouring consumers during the pandemic.⁴⁶ In Seychelles, the Fair Trading Commission held meetings with the Retailers Association to engage them in addressing various complaints in the retail sector.⁴⁷ In the United States, the Federal Trade Commission created the dedicated Business Guidance During Coronavirus website to provide businesses with

⁴¹ United States, Department of Transportation, 2020.

⁴² European Commission, 2020a; European Commission, 2020b.

⁴³ Contribution to UNCTAD questionnaire from Brazil.

⁴⁴ <https://www.consumeraffairsjamaica.gov.jm/portal/index.php/special-features/news-release/405-cac-urging-retailers-to-stop-excessive-pricing-of-cleaning-products>.

⁴⁵ Nigeria, Federal Competition and Consumer Protection Commission, 2020, Jumia delists 390 products on account of FCCPC[Federal Competition and Consumer Protection Commission] warning over hike in prices of protective and hygiene products, 13 March, available at <https://www.fccpc.gov.ng/news-events/releases/2020/03/13/jumia-delists-390-products-on-account-of-fccpc-warning-over-hike-in-prices-of-protective-and-hygiene-products-assures-commission-of-cooperation/> (accessed 18 March 2021).

⁴⁶ Government of Peru, 2020b, The "First, the Clients" award will recognize good practices in favour of consumers implemented by private and public companies and unions, before or during the COVID-19 pandemic, 24 July, available at <https://www.gob.pe/institucion/indecopi/noticias/217729-indecopi-premio-primero-los-clientes-reconocera-buenas-practicas-a-favor-de-los-consumidores-implementadas-por-empresas-privadas-publicas-y-gremios-antes-o-durante-la-pandemia-por-la-covid-19> (accessed 18 March 2021).

⁴⁷ Contribution to UNCTAD questionnaire from Seychelles.

compliance guidance and advice on protecting against scams targeting businesses and, with other sector regulators, created a tool for developers of health-related mobile applications designed to help developers understand the federal laws and regulations that may apply to their applications. The Consumer Council of Hong Kong (China) urged businesses to fulfil their social responsibilities amid the pandemic and to keep prices at a reasonable level.⁴⁸

16. Digital platforms have increased their market power considerably and false and deceptive advertising made through such platforms spread quickly in 2020, causing monetary and physical damage to consumers.⁴⁹ Alleged or false remedies can lead to serious harm or health risks. The European Commission coordinated a sweep of websites with the aim of detecting false claims or products in the context of the pandemic and, in this regard, platforms removed or blocked millions of misleading advertisements or product listings; for example, Google blocked or removed over 80 million coronavirus-related ads globally and Ebay blocked or removed more than 17 million listings from its global marketplace that violated consumer protection rules of the European Commission.⁵⁰ In addition, the European Commission has set up a programme to monitor the actions that platforms are taking to limit the spread of pandemic-related disinformation and, in this regard, Twitter reported that in 1–30 September 2020, 1,263 promoted tweets had violated the platform's policies on the pandemic, with about 93 per cent of the violating content detected by automated systems and approximately 7 per cent subjected to human review and rejected for policy violations.⁵¹

2. Actions to protect vulnerable and disadvantaged consumers

17. The legitimate needs that the United Nations guidelines for consumer protection are intended to meet include access by consumers to essential goods and services; and the protection of vulnerable and disadvantaged consumers (paragraph 5). The guidelines also state that member States should promote universal access to public utilities, taking into account the needs of vulnerable and disadvantaged consumers (paragraph 77).

18. The working group on the protection of vulnerable and disadvantaged consumers has noted that the concept of the vulnerability of consumers is context-specific and that definitions vary between countries. However, consumer protection authorities have traditionally concentrated efforts towards children, the elderly, rural and illiterate consumers and consumers with disabilities.⁵² Some States, such as Egypt and Lebanon, are of the view that consumers are inherently vulnerable.⁵³ Unscrupulous businesses have targeted vulnerable consumers, in particular women, seeking to earn extra income or improve their standard of living. In this regard, the Competition and Consumer Protection Commission of Ireland ran a campaign in May 2020 using digital display advertisements on social media to alert vulnerable consumers of the potential risks of joining a pyramid scheme and the likelihood of losing money and acquiring a criminal record.⁵⁴

⁴⁸ Contribution to UNCTAD questionnaire from Hong Kong (China).

⁴⁹ See Organization for Economic Cooperation and Development, 2020c, Protecting online consumers during the COVID-19 crisis, 28 April, available at <https://www.oecd.org/coronavirus/policy-responses/protecting-online-consumers-during-the-covid-19-crisis-2ce7353c> (accessed 18 March 2021).

⁵⁰ European Commission, 2020c, Coronavirus: Following Commission's call, platforms remove millions of misleading ads, 26 May, available at https://ec.europa.eu/commission/presscorner/detail/en/ip_20_938 (accessed 18 March 2021).

⁵¹ European Commission, 2020d, Third set of reports: Fighting COVID-19 disinformation monitoring programme, available at <https://digital-strategy.ec.europa.eu/en/library/third-set-reports-fighting-covid-19-disinformation-monitoring-programme> (accessed 31 March 2021).

⁵² TD/RBP/CONF.9/2.

⁵³ UNCTAD, 2018, Report: Working group on the protection of vulnerable and disadvantaged consumers, available at <https://unctad.org/meeting/intergovernmental-group-experts-consumer-protection-law-and-policy-third-session> (accessed 18 March 2021).

⁵⁴ Contribution to UNCTAD questionnaire from Ireland. Pyramid schemes are a marketing and investment-related fraud in which an individual is offered an opportunity to market a particular product and profit is gained not through the sale of the product but through the recruitment of others

19. Argentina imposed a ban on the eviction of tenants that failed to pay rent, initially until 30 September 2020 and later extended to end-January 2021; and adopted resolution No. 139/2020 to institutionalize differentiated and preferential policies for extremely vulnerable consumers in national law enforcement.⁵⁵ In Brazil, it is estimated that 45 million consumers have disabilities. The National Consumer Secretariat launched a set of positive initiatives aimed at enhancing the inclusion of people with disabilities in the growing digital consumption market. The Ministry of Human Rights and the Ministry of Justice and Public Security developed public policies to improve the quality of life of people with disabilities. In addition, the National Consumer Secretariat issued information on the rights of people with disabilities in consumer relationships; detailed the duties of service and product providers; and launched a mechanism to better include people with disabilities in e-commerce.⁵⁶ Burkina Faso, Cote d'Ivoire and Mali provided free electricity and water to specific vulnerable social groups.⁵⁷ Germany allowed consumers to temporarily refuse to fulfil payment obligations for electricity, telephone or other essential services, such as certain types of insurance, if fulfilment was not possible without a negative impact on livelihoods.⁵⁸ Italy and Spain prohibited the disconnection of residential energy supply due to non-payment and postponed the increase of social tariffs that must be renewed each year in Italy and every other year in Spain.⁵⁹ Japan established a consumer hotline specific to issues related to cash benefits.⁶⁰ Kenya directed water service providers to continue the supply of water irrespective of billing arrears.⁶¹ In Malaysia, Consumer Protection Act 1999 was amended to prohibit credit facility providers from imposing late payment charges and from initiating legal proceedings against purchasers for a specific period of time, and residents in 691 selected rural areas were provided basic items, such as rice and gas, at prices set by the Government.⁶² The Republic of Korea extended the due date for electricity bills by three months for vulnerable consumers such as the disabled, immigrants and the elderly. In addition, in September 2020, the Consumer Agency launched an education programme on easy access to e-commerce, targeting elderly consumers.⁶³ South Africa introduced restrictions on the enforcement of debts.⁶⁴ In the United Kingdom, the Government and communications operators agreed to keep Internet services affordable for vulnerable consumers.⁶⁵ In the United States, the Department of Justice handled the largest coordinated sweep of elder fraud cases in history, involving more than 250 defendants worldwide that had victimized more than 1 million Americans.⁶⁶

into the scheme (see <https://www.ccpb.ie/business/enforcement/criminal-enforcement/pyramid-schemes>).

⁵⁵ Contribution to UNCTAD questionnaire from Argentina.

⁵⁶ Contribution to UNCTAD questionnaire from Brazil.

⁵⁷ See https://unctad.org/system/files/official-document/ccpb_AFWWeb_WAEMU_EXP_COMP_POLICY_%20final-1.pdf.

⁵⁸ Contribution to UNCTAD questionnaire from Germany.

⁵⁹ Florence School of Regulation, 2020, Measures to tackle the COVID-19 outbreak impact on energy poverty, 22 April, available at <https://fsr.eui.eu/measures-to-tackle-the-covid-19-outbreak-impact-on-energy-poverty> (accessed 18 March 2021).

⁶⁰ Contribution to UNCTAD questionnaire from Japan.

⁶¹ Sanitation and Water for All, 2020, Financing water, sanitation and hygiene in COVID-19 era: Lessons from Kenya, 15 October, available at <https://www.sanitationandwaterforall.org/news/financing-water-sanitation-and-hygiene-covid-19-era-lessons-kenya> (accessed 18 March 2021).

⁶² Contribution to UNCTAD questionnaire from Malaysia.

⁶³ See <https://www.kca.go.kr/home/sub.do?menukey=4002>.

⁶⁴ Consumer Law Research Group, 2020, Consumer law and policy relating to change of circumstances due to the COVID-19 pandemic, *Journal of Consumer Policy*, 43:437–450.

⁶⁵ Organization for Economic Cooperation and Development, 2020c.

⁶⁶ United States, Department of Justice, 2018, Justice department coordinates nationwide elder fraud sweep of more than 250 defendants, 22 February, available at <https://www.justice.gov/opa/pr/justice-department-coordinates-nationwide-elder-fraud-sweep-more-250-defendants> (accessed 18 March 2021).

3. Actions to facilitate access to justice

20. One of the legitimate needs that the United Nations guidelines for consumer protection are intended to meet is the availability of effective consumer dispute resolution and redress, and the guidelines also state that member States should establish consumer protection policies that encourage fair, affordable and speedy dispute resolution and redress (paragraphs 5 and 14 (g)).

21. In Brazil, the National Consumer Secretariat has implemented an online resolution dispute platform since 2015 and, in 2020, made it mandatory for the following three categories of businesses to participate in the platform: businesses with a national or regional reach in the public and essential services sectors; digital platforms in the food delivery and individual and collective transportation segments; and the 200 companies with the highest number of complaints registered in the national consumer defence system.⁶⁷ Chile, the Dominican Republic, France, Mexico, Morocco and Spain, among other States, created dedicated online portals hosting up-to-date information for consumers.⁶⁸ Colombia launched an application for consumers that allows pandemic-related consumer protection breaches to be reported in real time.⁶⁹ The Competition Authority of Kenya launched an online public portal through which consumers can lodge complaints more easily.⁷⁰ Malaysia and Seychelles introduced new methods for submitting complaints, including through social media, to facilitate complaint reporting.⁷¹ The Republic of Korea, through consumer counselling call centres, facilitated the lodging of pandemic-related complaints by consumers. The Consumer Agency has used the online dispute resolution system to promptly respond to consumer problems during the pandemic and, as at December 2020, over 140 businesses were participating in the system.⁷² In Macao (China), the Consumer Council launched Consumer Online, a one-stop platform for complaints and enquiries.⁷³

IV. Future work and areas for further discussion

22. Consumer protection agencies continue to face challenges raised and/or enhanced by the pandemic context. Two key areas of concern may be identified as continuously requiring special attention, namely, consumer protection in digital markets, with a special focus on vulnerable and disadvantaged consumers; and international cooperation in law enforcement.

A. Consumer protection in digital markets

23. According to the UNCTAD business-to-consumer e-commerce index, in 2020, Europe continued to be the region with the greatest readiness to engage in and benefit from e-commerce, led by Switzerland. Criteria include access to secure Internet servers, the reliability of postal services and infrastructure and the share of individuals using the Internet and owning an account at a financial institution or a provider of mobile money services. The 10 developing economies with the highest scores were all in Asia, with Singapore and Hong Kong (China) having the highest scores, and most of the lowest scores were held by least developed countries. Latin America and the Caribbean represented 6 per cent of the total number of global online shoppers in 2019, yet the pandemic has boosted online shopping in the region. For example, in Argentina, during the pandemic, the number of first-time online buyers was equivalent to 30 per cent of the online shopping base in 2019 and, in Brazil, 7.3 million people shopped online for the first time. Less than

⁶⁷ Contribution to UNCTAD questionnaire from Brazil.

⁶⁸ Contribution to UNCTAD questionnaire from Chile; UNCTAD, 2020d.

⁶⁹ UNCTAD, 2020, E-week 2020 summary report, available at <https://unctad.org/meeting/eweek-online-events-dialogues-webinars-and-meetings> (accessed 18 March 2021).

⁷⁰ Contribution to UNCTAD questionnaire from Kenya. The portal is available at <https://competition.cak.go.ke:444>.

⁷¹ Contribution to UNCTAD questionnaire from Malaysia and Seychelles.

⁷² Contribution to UNCTAD questionnaire from the Republic of Korea.

⁷³ See <https://www.consumer.gov.mo/News/Public.aspx?lang=en>.

one third of the population in Africa uses the Internet compared with three quarters of the population in Western Asia.⁷⁴

24. Digital development and connected infrastructure vary between regions and countries and across demographics within countries. Affordable access to open and secure Internet should be provided, taking into consideration the needs of the elderly and of consumers with disabilities who may be less familiar or less comfortable with digital tools and therefore more prone to digital fraud.⁷⁵ The pandemic has exacerbated existing vulnerabilities. For example, a combination of health status, cognitive ability and social isolation have contributed to making elderly consumers more vulnerable to financial exploitation, which has increased the need to ensure their digital capability.⁷⁶

25. States should strengthen consumer protection policy in the digital market, with a special focus on vulnerable consumers, given lessons learned after one year of the pandemic. This can be achieved through a combination of the following instruments:

(a) New legislation addressing unfair business practices in digital markets and conferring new responsibilities to digital platforms;⁷⁷

(b) Continued strong law enforcement, entrusting consumer protection agencies with the necessary enforcement powers to conduct investigations and impose appropriate sanctions and remedies to effectively address infringements;

(c) Increased tailored education and information programmes, with special attention to the needs of vulnerable and disadvantaged consumers in both rural and urban areas, including low-income consumers and those with low or non-existent literacy levels (United Nations guidelines for consumer protection, paragraph 42);⁷⁸

(d) The encouragement of good business practices, through the adoption of best practices and codes of conduct that enhance consumer protection and foster consumer trust;⁷⁹

(e) Online dispute resolution mechanisms, ensuring that businesses make available complaints-handling mechanisms that provide consumers with expeditious, fair,

⁷⁴ UNCTAD, 2021, The UNCTAD B2C[business-to-consumer] e-commerce index 2020: Spotlight on Latin America and the Caribbean, UNCTAD technical notes on information and communications technology for development No. 17.

⁷⁵ European Commission, 2020e, Communication from the Commission to the European Parliament and the Council: New consumer agenda – Strengthening consumer resilience for sustainable recovery, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:0696:FIN> (accessed 31 March 2021).

⁷⁶ See Organization for Economic Cooperation and Development, 2020d, Financial consumer protection and ageing populations, available at <https://www.oecd.org/daf/fin/financial-education/financialconsumerprotection.htm> (accessed 18 March 2021).

⁷⁷ In the European Union, the proposal for a regulation of the European Parliament and of the Council on a single market for digital services (digital services act) aims to reinforce the liability of online platforms, which should, among others, help to maintain information about traders, to help track sellers of illegal goods or services

⁷⁸ The UNCTAD world consumer protection map shows that consumer protection agencies in 80 of the 89 member States that responded to the UNCTAD questionnaire in this regard provide consumer education initiatives and, in 58 States, initiatives related to e-commerce are organized. However, only 40 States organize education initiatives for vulnerable consumers. For example, vulnerable populations given priority are identified, in Australia, as indigenous and minority populations and consumers with disabilities; in Colombia, as children and consumers with disabilities; in Czechia, as the elderly; and in Germany, as children, the elderly or refugees. In Portugal, in 2016, a practical guide for elderly consumers was issued to raise awareness of the rights of elderly consumers online and in the provision of essential public and financial services.

⁷⁹ For example, the National Advertising Division of the United States, the self-regulatory body of the advertising industry, monitors national advertising in all media and one of its priorities is to review advertising claims targeting vulnerable populations. The International Consumer Protection and Enforcement Network encourages stakeholders to give appropriate regard to consumers who may be vulnerable due to their age, experience or digital literacy. This is particularly useful with regard to cross-border cases, in which obtaining consumer redress through law enforcement is more difficult than in domestic cases.

transparent, inexpensive, accessible, speedy and effective dispute resolution without unnecessary costs or burdens (United Nations guidelines for consumer protection, paragraph 11 (f)).⁸⁰

B. International cooperation in law enforcement

26. The global dimension of consumer acquisitions, namely through e-commerce, highlights the importance of international cooperation in law enforcement. The International Consumer Protection and Enforcement Network website dedicated to collecting cross-border complaints registered more than 60,835 international complaints in 2020, compared with 39,000 complaints in 2019. This illustrates the ongoing importance of international cooperation in consumer protection, as cross-border consumer protection issues necessarily accompany the increase in e-commerce transactions.

27. Section VI of the United Nations guidelines for consumer protection is devoted to international cooperation (paragraphs 79–94). The revision in 2015 included recommendations on cross-border enforcement cooperation drawing on the Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices across Borders issued by the Organization for Economic Cooperation and Development. The United Nations guidelines for consumer protection state that member States should cooperate or encourage cooperation in the implementation of consumer protection policies to achieve greater results within existing resources, providing examples such as collaboration in the setting up or joint use of testing facilities, common testing procedures, exchanges of consumer information and education programmes, joint training programmes and joint elaborations of regulations. Such implementation is not homogeneous, as the elaboration of regulations takes place in regional groups and there is a lack of specialized laboratories for testing in developing countries.

28. The UNCTAD world consumer protection map shows that there is limited cross-border enforcement cooperation related to consumer protection (31 of the 89 member States that responded to the UNCTAD questionnaire in this regard reported having any experience in cross-border cooperation), with the applicable law and jurisdiction identified as the main obstacle, and that such cooperation takes place mostly between developed country agencies. Pandemic-related restrictions have paved the way for increased international online trade, which has emphasized language barriers, the lack of legal powers to address cross-border unfair commercial practices and the limited access to justice and redress. Most developing countries with consumer protection laws need to improve their frameworks and strengthen their enforcement capacities. Regional economic organizations can contribute to improving cross-border enforcement cooperation, providing for regular exchanges of information between international organizations and networks on best practices, the identification of common challenges and avenues for cooperation. UNCTAD is well placed to “network the networks” among relevant multilateral and regional organizations and initiatives and to assist the Intergovernmental Group of Experts on Consumer Protection Law and Policy to “exchange information on work programmes and topics for consultations and to identify work-sharing projects and cooperation in the provision of technical assistance” (United Nations guidelines for consumer protection, paragraph 97 (f)).⁸¹

⁸⁰ For example, Brazil, Colombia, Mexico and the European Union have introduced online dispute resolution mechanisms (see TD/B/C.I/CPLP/11). The UNCTAD world consumer protection map shows that 67 of the 89 member States that responded to the UNCTAD questionnaire in this regard offer out-of-court or alternative dispute resolution mechanisms. The Association of Southeast Asian Nations aims for all member countries to have adopted alternative dispute resolution mechanisms by 2025 and, in this context, UNCTAD is implementing a technical cooperation project to deliver online dispute resolution to consumers in South-East Asia (see <https://aseanconsumer.org/read-publication-asean-strategic-action-plan-for-consumer-protection-asapcp-2025> and <https://unctad.org/news/partnership-deliver-online-dispute-resolution-consumers>).

⁸¹ See ACM Cipriano and AI Vila, 2020, International cooperation in consumer protection, Research Paper No. 54, UNCTAD. The working group on consumer protection in e-commerce aims to provide recommendations for developing countries on improving cross-border enforcement cooperation in the digital era, taking into consideration ongoing discussions under the International Consumer Protection

C. Areas for further discussion

29. Considering the measures, decisions and actions on consumer protection undertaken worldwide in 2020, consumer protection agencies have responded quickly and appropriately to the unprecedented crises caused by the pandemic. However, some areas of concern require continued attention, namely, strengthening consumer protection in digital markets, in particular with regard to vulnerable and disadvantaged consumers; and improving international cooperation in law enforcement.

30. Delegates at the fifth session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy may wish to consider the following questions for discussion:

(a) What will be the emerging trends and challenges in consumer protection in the aftermath of the pandemic?

(b) What areas of the United Nations guidelines for consumer protection will need further implementation in the aftermath of the pandemic?

(c) How can UNCTAD better support member States, in particular developing countries, in these critical areas, in particular further encouraging international cooperation in law enforcement?

and Enforcement Network and the Organization for Economic Cooperation and Development. Several discussants at 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 stressed the role of UNCTAD in 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.