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Challenges to market surveillance from e-commerce activities

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UNCTAD - Focal point for Consumer Protection within the UN system

- **UN Guidelines for Consumer Protection (UNGCP)**

UN General Assembly resolution 70/186 of 22 December 2015:
- Approved the revised **UN Guidelines for Consumer Protection** (1985, amended in 1999),
- Created the UNCTAD IGE on Consumer protection law and policy,
- Conferred **UNCTAD** a new mandate that is closely linked to the Sustainable Development Goals (SDGs 12/16/17).
Consumer Protection legal framework

- To build trust and ensure fairness for consumers: without consumers' confidence trade, in particular across borders, will not reach its full potential;

- To provide predictability and market transparency for business development and economic growth;

- To pursue an effective Consumer protection policy it is necessary to combine different tools - law enforcement, education and awareness raising campaigns, business self-regulation, association with consumer organizations - and to engage with different stakeholders;

- International cooperation is vital in the context of the increased globalization and rise of the digital economy.
UN Guidelines for Consumer Protection

- Policy guidance for tackling the XXIst century challenges

- **Definition of Consumer**: First time in an international instrument;
- **National policies for Consumer Protection**: checklist of adequate legal and institutional landscape;
- **Dispute resolution and redress**: ADR (alternative dispute resolution), collective redress, compensation for consumers;
- **E-commerce**: new guidelines;
- **Financial Services**: inspired in OECD/G20 High Level Principles;
- **Energy, Public services, Tourism**: new emerging issues;
- **Good business practices**: first time recommendations aim at the private sector, recognizing shared responsibility;
- **International cooperation**: especially important for cross border cases.
UN Guidelines for Consumer Protection

• Guideline 5: Consumers rights to safety, information, choice and redress are recognized as legitimate needs which all consumer policies should aim to achieve.

• Guideline 63: Member States should work towards enhancing consumer confidence in electronic commerce by the continued development of transparent and effective consumer protection policies, ensuring a level of protection that is not less than that afforded in other forms of commerce.
UN Guidelines for Consumer Protection

- **Guideline 64**: Member States should, where appropriate, review existing consumer protection policies to accommodate the special features of electronic commerce and ensure that consumers and businesses are informed and aware of their rights and obligations in the digital marketplace.

- **Guideline 65**: Member States may wish to consider the relevant international guidelines and standards on electronic commerce and the revisions thereof, and, where appropriate, adapt those guidelines and standards to their economic, social and environmental circumstances so that they can adhere to them, as well as collaborate with other Member States in their implementation across borders. In so doing, Member States may wish to study the Guidelines for Consumer Protection in the Context of Electronic Commerce of the OECD.
UN Guidelines for Consumer Protection

National Policies for Consumer Protection: GL 14, especially (b), (e), (f), (h)
“...should encourage:”

- detailed and specific information about the trader (identity, legal and trading names, geographic address, website/e-mail address, etc.);

- transparent process for confirmation, cancellation, return and refund of transactions;

- secure payment mechanisms;

- consumer privacy and data security.

Education and information programmes: GL 44, especially (g)
- should cover electronic commerce.
UN Guidelines for Consumer Protection

International Enforcement

GL 88

- Member States should provide their consumer protection enforcement agencies with the authority 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.
UN Guidelines for Consumer Protection

Good Business Practices: especially GL 11, (b), (c) and (e)

“Commercial behaviour”: preventing illegal, unethical, discriminatory or deceptive practices;

“Disclosure and transparency”: easy access to information (key terms and contracts) “...regardless of the means of technology used”.

“Protection of privacy”: consumer protection “...through a combination of appropriate control, security, transparency and consent mechanisms relating to the collection and use of personal data”;

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT
Fostering Consumer confidence in E-commerce

- Appropriate legal framework;
- Effective institutions;
- Consumer education - see also digital competences;
- Business education;
- Effective consumer protection enforcement against misleading and fraudulent practices;
- Enhanced protection of children;
- Innovative business strategies;
- Capacity building in Consumer Protection in E-commerce;
- International and inter-agency cooperation.
UNCTAD Intergovernmental Group of Experts on Consumer Protection Law and Policy

First two sessions (2016 and 2017) addressed the challenges brought by E-commerce and collaborative economy.

Key issues that enhance consumer confidence in electronic markets identified include:

- information requirements,
- consumer and business education,
- good business practices,
- developing dispute resolution systems,
- online product safety,
- privacy and
- international cooperation in policy making and law enforcement.
IGE on Consumer Protection work programme for 2017-2018

- Working Group on E-commerce

3 specific areas of focus:
(i) Misleading advertising in e-commerce: aiming to compile best practices from different jurisdictions and landmark decisions and actions by Agencies;
(ii) Consumer and business education and information on e-commerce;
(iii) Cooperation in cross-border e-commerce.

Progress report in the 3nd session of the IGE, 9-10 July 2018.
Digital Economy Challenges

- **Emerging and disruptive business models** - increased innovation. See the rising roles of Internet platforms and social media; C2C transactions, collaborative or sharing economy.

- **Appropriateness of existing legislation and regulatory frameworks?**

- **Competition and Consumer protection authorities** need to keep up with the technological evolution – different market assessment, market studies, new investigative tools for market surveillance and set of enforcement measures.

- **Interaction and coordination with sector-specific regulators (telecoms, media) and Data protection agencies** is essential to have a comprehensive picture.
FINAL REMARKS

• Now is the time for better and more coherent Consumer protection policy. But E-commerce challenges cannot be exclusively addressed by Governments.

• Coordination and deepened international cooperation: sharing best practices and exchange experiences among member States and relevant organizations and networks is of the utmost importance

• Need for strong business engagement - namely through self-regulation initiatives (trustmarks; online dispute resolution mechanisms), complementing and reinforcing Consumer protection legislation

• Civil society organizations (consumer associations, for instance) contributions: awareness raising, education, outreach.
References

References


THANK YOU!

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