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A CRITICAL ANALYSIS OF REPUTATION SYSTEMS AS AN ALTERNATIVE TO  
CONSUMER ONLINE DISPUTE RESOLUTION

By Suellen Ferreira Trigo

Masters of Art (MA) in Dispute Resolution

Independent College Dublin

Dublin, Ireland

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## **Abstract**

This dissertation was written as part of the MA in Dispute Resolution at the Independent College Dublin (ICD).

In this dissertation, there will be a critical analysis of three online dispute resolution platforms that address consumer disputes in different jurisdictions. This research will take into consideration the platforms' structure and design, the services they offer, if they attend to principles that are determined in the EU ODR Regulation (due to the lack of a global framework), and their outcomes. This critical analysis will focus on whether those platforms embrace reputational tools and investigate the consequences of using it or not.

This research aim is to respond the question if reputational tools can be an effective auxiliary to online dispute resolution of consumers' issues and how it should be operated. Furthermore, in response to this argument, case studies of multiple sources have been undertaken, where the researcher analysed qualitative and quantitative data. From this, it can be concluded that those platforms that used reputational tools such as ratings, reviews, white and blacklists lists had registered more visitors and complaints than that one which does not use them. This leads to the confirmation that the research hypothesis with regards reputational tools can be effective auxiliary to consumer disputes in the online environment.

Key words: Online Dispute Resolution (ODR), Consumer Disputes, Reputation Systems, Reputational Tools.

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## **Introduction**

This research argues that the use of technology to assist any method of dispute resolution plays an important role in the attempt to increase consumers' access to justice. It is important to highlight that sometimes legislations all over the world will guarantee access to the courts to its citizens, but depending on how it is conducted, these citizens have no proper access to justice.

Becker & Maia (2018) highlighted Brazil as an example of a country that introduced its digitalization of justice in 2010 and enacted the Small Claims Act in 1995, which had the potential to improve the Justice system, but it ended up being overloaded with a combination of simple and minor cases that are mixed with complex and urgent cases. This led to lengthy delays for those waiting on definitive decision, that sometimes does not even attend to the parties' real needs.

In Europe and in the United States, the biggest constraint to the appropriate redress of consumer disputes is related to the costs of litigation. Consumer disputes usually involve a small amount of money, and to take it to court, they would spend more money on litigation than they have spent on the goods or service. For this reason, most of consumers decide not to take any further measures against a specific trader, which does not mean that there are no disputes in those jurisdictions. This can lead to a significant number of unresolved disputes due to the inefficiency of court, which certainly affects citizens' right to have access to justice.

In the early days of Online Dispute Resolution, commentators on this topic would suggest that ODR is literally the transposing of the already known Alternative Dispute Resolution (herein after referred to 'ADR') procedures into the online environment, and it would be most suitable to resolve low-value cross-border consumer disputes. Despite the expansion of its scope of application, consumer disputes are still the field where ODR tools are more commonly employed.

However, throughout the years, other functionalities that were not present in the offline alternative

dispute resolution have been added to online dispute resolution platforms, in order to enlarge its role in the attempt of fulfilling the existent gaps in consumer disputes redress that were mentioned above. Those new functionalities would attempt to create awareness of ADR processes for businesses and consumers and to create an online environment that would be trusted by them for being safe and effective in conflict resolution.

The collateral consequences would be to enhance consumers trust in e-commerce, and consequently increase sales and improve their economy.

Some platforms are well-known by their reputational tools that allow consumers to rate and review businesses, such as TripAdvisor, eBay, Trustpilot, Booking.com, etc. Therefore, this research aims to investigate whether reputational tools could enhance online dispute resolution platforms in seeking consumer redress, and through case studies of three platforms in three different jurisdictions – with or without reputational tools – demonstrate how they operate and which results they obtained.

Chapter 4 will examine inherent concepts related to Online Dispute Resolution since its conception, to allow the readers to familiarise with certain terms and contexts that will be necessary to comprehend the next chapters.

Chapter 5, in its turn, will thoroughly explore ReclameAqui, Better Business Bureau and the EU ODR Platform features that will be critically assessed in the Chapter 6 in light with the following aspects: design and structure, compliance with the principles of impartiality, independence, transparency, effectiveness and fairness, and other elements such as: funding, if the platforms provide incentives to the parties, and their outcomes regarding level of awareness and trust of consumers and businesses, and their dispute resolution rate.

Chapter 7 will propose the creation of a hybrid model of dispute resolution platform that encompass reputational tools that are currently employed by the studied platforms and should be kept in use. It

will also suggest the addition of some features, that have been recommended by renowned authors on this matter, and that could be useful to achieve a more complete consumer disputes redress.

As Online Dispute Resolution is a still an evolving area, this research has strongly considered numerous authors views, as well as it has conducted case studies that may be valuable in the practical aspect of the subject. Hence, this researcher believes that this study will make a valid contribution to the field, suggesting a whole new hybrid model of online dispute resolution that focus on a broad range of reputational tools to enforce outcomes, bring awareness to the process and, ultimately, promote access to justice through efficient online out-of-court procedures.

## **1. Aims and Objectives**

This research aims to investigate whether reputation systems also known as reviews online platforms can assist in resolving C2B (consumer to business) disputes. It will also explore if these are the most adequate means to redress them, and how it should be operated in order to accomplish this important goal.

It is sensible to consider that most of consumer disputes are low-value disputes and in some jurisdictions, considering the high costs of filing a suit, they tend to remain unresolved if there is not an effective out-of-court dispute resolution procedure to handle them in a fast manner and at a low-cost (if is not offered for free). In other jurisdictions, where costs are not a real concern, another problem arises from the exorbitant number of consumers complaints that are regularly filed and overload the civil courts that become unable to provide fast and sometimes effective decisions.

Online Dispute Resolution tools have been a constant subject in books, journals, and conferences around the world. This is where e-commerce and its development are matters of interest as a result of the conflicts and disputes that arise from this increasing type of trade.

In parallel to the growth of e-commerce, there has been an increasing growth in the use of the Internet for every other human activity that happens in the offline world. This includes the use of reputation systems by consumers to review products, services and brands to fulfil their necessity to share their experience, warn other customers or even try to get the attention of the trader to resolve an eventual dispute. There are consumers that use reviews platforms to decide if they should trust a brand and buy a product or pay for a service, which led to the conclusion that the employment of dispute resolution techniques in managing complaints on reputation systems may benefit the growth of e-commerce and foment the global economy. Moreover, the fundamental principle of access to justice

would not remain poorly addressed as it currently is, due the fact that consumer disputes usually remain unresolved in consequence to the lack of an effective means to engage businesses to resolve these disputes.

Therefore, in order to successfully achieve the main objective of this study, which is to comprehend whether Reputation Systems in fact are effective auxiliary to Online Dispute Resolution regarding consumer disputes and how it has been conducted lately, the secondary objectives of the dissertation are listed below:

1. To investigate how three different online dispute resolution platforms that may or may not use reputational tools have been used to attend different audience (consumers in Brazil, The United States and Canada, and countries in the European Union), compare them and analyse the features of these platforms regarding dispute resolution, and point out the strengths and weaknesses on the manners they have been currently managed.
2. Develop a hybrid model that gathers a broad range of reputational tools and online dispute resolution methods that could address the presented concerns in the literature and could potentially correct the eventual failures of the existent platforms.
3. To identify the advantages of reputation systems in order to enhance online dispute resolution, as well as the risks of this activity, mainly legal risks related to false information, defamation, etc.

## **2. Research Methodology and Methods**

The very first step of any research is generating a topic that is relevant to a specific field or even for broader application. Moreover, the question that the research aims to answer or the problem the study is exploring will determine this aspect of relevance. Saunders et al. (2019, p. 42) outline that ‘one of the key criteria of your research success will be whether you have developed a set of clear conclusions from the data you have collected. The extent to which you can do that will be determined largely by the clarity with which you have posed your research question.’

This work has the following research question that is understood to be clear and significant to the Alternative Dispute Resolution field, which is: Can reputational tools such as reviews online platforms enhance the resolution of consumer disputes through Online Dispute Resolution websites? How can it be operated?

In the current scenario where people have been using the Internet to complete multiple different tasks on a daily basis, including online shopping, the eventual breach of contracts, crimes or any other types of disputes that happen on the Cyberspace create a new range of challenges in the field of dispute resolution. It happens because the existent set of laws sometimes is not applicable to an online relationship, or because it is difficult to identify the parties that entered into a commercial relationship or because these parties are allocated in different parties of the globe. Also, it has to be considered that consumer disputes are usually low-value disputes and in some jurisdictions, it is not viable to take them to the Court. This can potentially increase the lack of trust by consumers in e-commerce, that becomes a factual impediment for its growth.

The lack of trust in e-commerce was and still is a concern for many countries, and this situation was a decisive factor that motivated online traders to develop the first reputational tools in their websites.

This is where consumers who bought a product or a service could input information about their purchases and share their experiences to make recommendations or to warn other customer about a dodgy trader or a risky transaction. This can create a net of information that is able to guide people through online shopping.

Some online businesses, such as eBay and Amazon had seen it as an opportunity to add Alternative Dispute Resolution mechanisms to their website to handle reviews and foment trust among their users. Therefore, they have been considered the pioneers of such advent.

As a result, over the years their outcomes have been noted by the Online Dispute Resolution community and considered as successful cases. Nevertheless, this is a still evolving sector and the relevance of this topic and of the research question lies on the fact that even though there are numerous researches on this theme, there are not many works that analysed and compared different platforms to respond whether and how reputational systems can enhance Online Dispute Resolution processes to resolve consumers' disputes.

While the method in which data will be collected to answer the research question is important, every research such as a master's dissertation must be strategically structured to do that so. Saunders et al. (2019, p. 130) developed a diagram in the shape of an onion (Figure 1) and for this reason it receives the name of 'research onion', where the content allocated in the centre of this onion is 'Data collection and data analysis'. Around it, there are some layers that must be unpeeled one by one, from the outside towards the centre of the onion. These layers are stages of the research that must be defined previously to the data collection to give more consistence to the work through the development of an effective methodology.



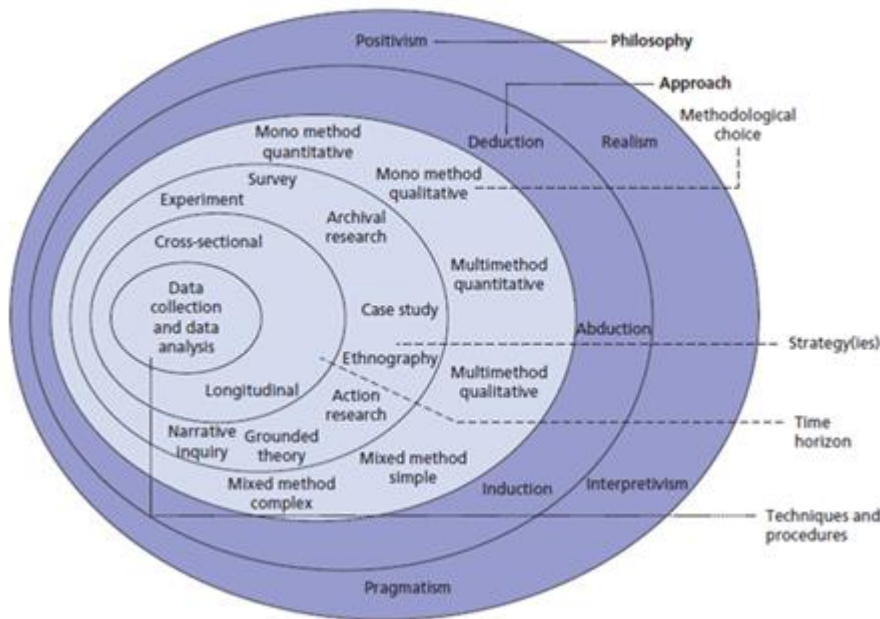


Figure 1. Research Onion. Research Methods for Business Students. Saunders et al., 2019.

## 2.1. Research Philosophy and Approach

According to Saunders et al. (2019, p. 130) the research philosophy will be defined based on a system of beliefs and assumptions, and these assumptions may be categorized as epistemological, ontological, or axiological.

This study makes epistemological assumptions, that are related to ‘assumptions about knowledge, and how we communicate knowledge to others’ (Burrell and Morgan, 2016, cited in Saunders and Thornhill, 2019). This is the philosophy adopted in this research because it is going to analyse how reputation systems and online dispute resolution platforms have been operating so far, focusing it in Brazil, The United States and Canada, and in the European Union countries, and how it could be better explored to enhance the redress of consumer disputes.

Positivism is the research philosophy that will be adopted by this study, once it establishes a hypothesis that will be neutrally tested through data collection, then it will be processed, and it will count on an unbiased analysis of the findings that may: 1) Confirm the hypothesis (wholly or partially), 2) Refute the hypothesis, or 3) Be inconclusive, which will demand future researches.

The hypothesis of this research is that reputation systems can be an effective auxiliary of Online Dispute Resolution to redress consumer disputes in an out-of-court manner.

This research will adopt a deductive approach, once the literature and primary data will be used to test a hypothesis that can be ultimately confirmed, refuted or inconclusive.

## **2.2. Research Design and Methods**

The next stage of the research onion concerns about the methodological choice, which on Saunders et al. (2019) concept is the way the data will be collected, and it could be: mono-method qualitative, mono-method quantitative, multi-method qualitative, multi-method quantitative, mixed methods simple and mixed methods complex.

As it is widely known, quantitative data is usually linked to numbers and qualitative data is usually connected to written information, but this simple concept does not exclude the fact that qualitative data can be analysed quantitatively and consequently quantitative data can be processed qualitatively.

Mixed methods will be applied to this study that aims at answering the research question if and how reputation systems can enhance Online Dispute Resolution in the consumer field through quantitative and qualitative data. Qualitative data will be used to define the concept of reputation systems and Online Dispute Resolution, as to trace their development throughout the years, and also to

demonstrate how reputation systems have been used by consumers lately. It will also consider if they are used as a conflict management tool with advanced features to allow dispute resolution and if it can be an effective way to redress consumer to businesses issues.

Quantitative data will also be used to investigate the outcomes that each platform that will be assessed by this study had, and if their number of visitors, complaints or reviews, and dispute resolution rate will be able to respond the research question.

The collection of quantitative and qualitative data does not have to follow a specific order and they can be conducted at the same time, and for this reason Saunders et al. classify that as concurrent mixed methods. It can also be classified as embedded mixed methods research, which ‘is the term given to the situation where one methodology supports the other.’ (Creswell and Plano Clark, 2011, cited in Saunders et al., 2019).

The research strategy will be case study that encompasses the analysis of three different websites that provide online dispute resolution services to redress consumers’ disputes in different jurisdictions. Two of them embrace reputational tools, and one of them lacks this type of mechanism.

Robson 2002 (cited in Saunders, et al., 2019) defines case study as ‘a strategy for doing research which involves an empirical investigation of a particular contemporary phenomenon within its real-life context using multiple sources of evidence’. And this empirical investigation will take into consideration multiple and embedded cases once it will assess each case findings and compare them in light with several different parameters and aspects.

Regarding the time horizon, this work will adopt a cross-sectional analysis, considering that the data will be collected and assessed at a particular time. There will not be comparison on how it worked in the past and how it works now. Only the present is taken into consideration.

### **3. Review of the Literature**

#### **3.1. The Concept and History of Online Dispute Resolution (herein after referred to ‘ODR’)**

##### **3.1.1. Significant Precedent Developments in the Foundation of Online Dispute Resolution Platforms**

It is quite inevitable before diving into the topic Online Dispute Resolution and its roots to make a brief contextualization about the creation of the Internet *per se*, considering that without the virtual space created by the Internet and its successive improvements, there would not be room to discuss the topic this study is proposing.

The term Cyberspace, which was coined by William Gibson (Irish Times, 2003) in his novel Neuromancer (1984) is widely used by people on their day-to-day basis when they are talking about activities that happen into an online space that is accessible through an Internet connection. The term Cyberspace expresses the idea of a wide room where several different activities such as searching information, paying bills, communicating with other people, and buying goods or services can be performed.

It is also true that all these features were not developed at once or became available to all citizens at the same time. Despite all the magnificent accomplishments the Internet provides to all people in the current days, Katsh (2011) and Mania (2015) pointed out that the Internet was created in 1969 in the United States by a really strict group formed by military and academic professionals that were engaged in developing military technology with the main purpose of enabling them to move and exchange data over a network.

In 1980, military and academic units were no longer working together and only ‘in 1990, the Defence Advanced Research Projects Agency (DARPA) (...) formally completed its work on the development of a civilian network’ (Mania, 2015, p. 77).

In spite of the seeming length to the Internet leave the outside sphere of military and academic groups (approximately twenty years), the changes and improvements that happened in the decade of 1990 were numerous and became more notorious after the first Internet Service Provider (ISP) launching in 1992.

From 1992 on, the Web could be accessed by anyone. It is true, though, that academic people were still the main users of the Internet in the first half of the decade, but in the second half, the Internet penetration rate considerably increased, which still has year by year.

According to Katsh (2011, pp. 20-30), the Internet has been used for different purposes over the years, and those differentiations occasioned the theoretical classification of the Web into two phases. The first stage is called Web 1.0, and it represents the usage of websites mainly to research and collect information. The next stage, which is named Web 2.0, would represent a swift of this dynamic, where websites’ contents are mostly produced by its users who share their experiences, activities, and knowledge on online platforms. Facebook, TripAdvisor, and Wikipedia are well-known 2.0 websites.

While new tools have been implemented in the websites over the years, concerns related to it have appeared. The main concern is whether users can trust the Internet to perform everything that has been transported from the offline world to the online environment, such as Internet Banking, e-learning platforms, e-commerce, etc.

When an Internet user is browsing a website with the sole purpose of researching or entertainment, there are no significant risks, but when people have money or their personal data at stake, their

willingness to complete an online transaction will rely on how risky they judge it could be and what they can lose if something goes wrong.

Trust and security are mentioned here briefly with the purpose of contextualization and they will be thoroughly explored as fundamental factors to the development of online dispute resolution tools in the further chapters.

Ebner (2011) had written about ODR and Trust, more specifically about Interpersonal Trust, and he defends that the concept of trust cannot be defined without a context. He added that in the Online Dispute Resolution field (Ebner, 2011, p. 215), trust can be classified into three categories: trust in the platform administrator/service provider, trust in the ODR process, and Interpersonal Trust.

Furthermore, Balboni (2008), who had written a book about Trustmark had stated in it that:

While people have a generalised understanding of the concept of trust, it is not readily amenable to clear definition. Research has at least implicitly accepted a definition of trust as a belief, attitude, or explanation concerning the likelihood that the actions of another individual, group or organisation will be acceptable or will serve the actor's interests (p. 218).

The act of buying products or services through a website has been named as E-commerce, and it can be defined as a commercial activity which has on one side a seller of a product or service that uses the Cyberspace to advertise or simply offer a product or service. And on the other side, there is a buyer that is interested in purchasing a specific product or service and then finds a seller or a provider on a website that apparently matches his/her needs. Therefore, the entire commercial process occurs on the online environment, including the communication between the parties and the payment for what was purchased.

The literature categorizes e-commerce into different types, but this study focuses on Business to Consumers type (B2C). In Cortés (2011) words:

A consumer transaction (B2C), akin to a consumer dispute, will be one where an individual, acting on a personal capacity, buys goods or services for his or her personal use. Conversely, a business is an individual or an entity that acts on a professional capacity selling goods or services as part of their profession (p.151).

Where people are communicating, negotiating, and exchanging money for goods or services, as well as imposing obligations on other people, disagreements will likely emerge. As long as consumers feel familiarised with the Internet and comfortable to buy online, the number of online transactions tend to increase and jointly the number of disagreements among consumers and businesses, and it will give rise to the so-called business to consumers disputes.

In the consumer to business realm, there is still a common figure that is called intermediary. Vikki (2011) highlighted that the Internet intermediary ‘can be defined broadly as any third party that is not the buyer or seller but provides some sort of service that facilitates a commercial transaction’. In addition, Vikki (2011) noted that the role of intermediary platform is mainly to connect small and medium merchants to consumers regardless their location in the world.

An example of Internet intermediary that is constantly mentioned by commentators of Online Dispute Resolution is the American company e-Bay, that was founded in California in 1995, and as mentioned in eBay Annual Report (2018):

‘eBay Inc. is a global commerce leader, which includes Marketplace, StubHub and Classifieds platforms, and it connects millions of buyers and sellers around the world (...). technologies and services are designed to give buyers choice and a breadth of relevant inventory and to enable sellers worldwide to organize and offer their inventory for sale, virtually anytime and anywhere.’

The number of consumed transactions through the eBay platform has been expressive since its launch in 1995. The report previously mentioned has found that only in 2018, eBay identified 179 million of active users and generated \$95 billion in Gross Merchandise Volume ("GMV"), which includes all the closed transactions between users, regardless of whether the buyer and seller actually consummated the transaction. These numbers would not be increasing year by year if the users did not trust the platform as an effective tool for selling and buying goods, and also if they did not trust the way eBay deals with eventual disputes that may arise from these commercial relationships.

It is true that eBay could argue its non-liability in case of fraud or breach of contract by its buyers and sellers and opt to step away from consumers and businesses conflicts. However, this decision could potentially impact users’ trust and implicate on the abandonment of the platform and consequently the end of eBay.

At the end of the 1990' eBay developed a feedback tool and a Dispute Resolution Centre to handle buyers’ complaints, investigate their claims and provide redress to them. Katsh and Rabinovich-Einy 2017 (cited in Dal Pubel, 2018) highlighted the expressive outcomes reached by eBay in 2012 handling complaints through its Dispute Resolution Centre and using Online Dispute Resolution tools, and the numbers show that they handled over sixty million disputes with an 80 percent satisfactory outcome.



Undoubtedly, eBay achievements are a milestone on the Online Dispute Resolution History, once the company is a pioneer of e-commerce and in an early stage could see the advantages of handling disputes online to protect its reputation and keep users actively using their platform, inspiring trust and reliability.

Katsh (2011) mentioned that at the beginning of the decade 2000's many start-ups were created to offer online dispute resolution services, but most of them did not survive due to the numerous challenges regarding data protection, the usage of reliable safeguards and its high costs. Another difficulty was the uncertainty about which set of laws are applicable to cross-border disputes (consumers domicile, trader domicile or from the jurisdiction where the business was concluded according to the contract). Moreover, the author highlighted that in 2011 there was also a wave of new ODR start-ups coming up as it happened one decade earlier and their survival through those challenges would remain to be seen.

The previous paragraphs aimed to trace a timeline where it is possible to visualize: (i) the progress of the Internet since its development, (ii) the introduction and the concept of e-commerce, (iii) how all of this generated a new range of disputes that gave birth to the central topic of this research, which is Online Dispute Resolution.

### **3.1.2. The Actual Concept of Online Dispute Resolution**

Although Online Dispute Resolution has been a recurrent topic over the decades, the main authors on this topic still diverge about its concept. Some of them believe that ODR is the same as ADR when it is complemented or assisted with ICT ('Information and Communication Technology') tools. Cortés (2011) takes into consideration a broader concept that includes all the online procedures that are

conducted on the Internet through a tailored online platform to resolve disputes. He assumes, though, that this concept is still evolving.

Hörnle et al. (2018) share the same understanding, and stated that ODR, ‘consists in practice of a range of techniques using various software tools’, that includes filling platforms by parties or their advocates, storage of evidence, artificial intelligence to generate decisions based on previous judgments, platforms to facilitate communication through videoconference, chat boxes, audio clips, etc., and artificial intelligence to enhance pre adjudicatory processes, such as negotiation and mediation, by generating most common resolution to complainants (assisted negotiation) or blind-biding negotiation, as well as replacing the human third neutral party in mediation sessions.

Diversely, the American Bar concept of ODR does not distance much of the idea that ODR is literally a transposing of Alternative Dispute Resolution methods into the online environment, where technology-based tools enhance its outcomes. They also include the possibility of resolving offline disputes (those disputes that did not arise from a web-based commercial relationship) through an ODR tool and they admit the possibility of resolving disputes by concomitant adoption of offline and online dispute resolution methods.

Other authors such as Benyekhlef & Vermeys (2015), though, consider that the term ODR is outdated and does not correspond to the reality of how technology has currently assisted the resolution of online disputes. They suggest that the terminology ‘Technologically Assisted Dispute Resolution Systems or Services (or TADRS)’ would be more suitable. Their opinion considered that the most known ODR systems so far, such as eBay feedback system, ‘are moving away from the ODR models towards more comprehensive conflict resolution solutions’.

DeMars (2015) comprehension of the term ODR is considerably broad as she stated that ‘an ODR system may be as simple as an email-based process for collecting documents. It could also be a

process that uses highly sophisticated systems including data collection and storage, automated response processes, computed assisted resolution, internet supported conferencing, and a multitude of other services.’

Pablo Cortés (2011) goes further and divided ODR into two categories that for the purpose of this research it is particularly important.

ODR can be divided into dispute avoidance and dispute resolution. The first refers to the use of ICT to impede the occurrence of disputes between the parties and the resolution of disputes at an early stage without requiring the disputants to become fully engaged in a dispute resolution process (p. 58).

Regulatory wise, the most important documents that aim to build a legal framework for ODR are the European Union Directive on Alternative Dispute Resolution (2013/11/EU), the European Union Regulation on ODR (524/13/EU), and UNCITRAL Technical Notes on Online Dispute Resolution.

Hörnle (2012, p. 1) stated that ‘European consumer protection law is currently being widened to add Online Dispute Resolution (ODR) into the toolbox of European consumer redress’, and it comes to the encounter to Pablo Cortés (2011) position, that suggests that for the sake of the e-commerce growth in European territories, and to foment the proportional growth of the economy in the whole continent, it is paramount to make consumers believe that in case of any problem that may occur from online trading, they will be supported and have it sensibly redressed. Hörnle (2012) added that:

The main thrust of the EU Proposals is twofold (1) they aim to ensure that there is an ADR scheme, complying with certain minimum standards (...) (2) they create an ODR platform for cross-border B2C e-commerce disputes to ensure that such disputes can be solved efficiently. (p. 9)

Hörnle (2012, p. 8) also highlighted the fact that the EU Proposals and the UNCITRAL Working Group III have distinct goals when trying to create a legal framework for ODR. While the European Union aims to improve consumer protection by establishing high standards to be followed by ADR and ODR providers in order to increase trust on these mechanisms and the e-commerce itself, the UNCITRAL has a more pragmatical approach, which consists in creating ‘a cost-effective procedure for high-volume, low-value disputes’.

The first article of the EU Directive on ADR establishes what is expected from any alternative dispute resolution provider and from the process itself. It also determined which are the ADR principles to be considered as: independence, impartiality, transparency, effectiveness, and fairness (which includes due process).

The case studies that this research proposes will take into consideration whether the reputation systems/online dispute resolution platforms that will be assessed attend to these principles and if they do not, how it should be conducted in order to fulfil them. This critical analysis will be helpful in designing a hybrid online dispute resolution model, which should integrate reputational tools and dispute resolution techniques, which will be discussed in the last chapter of this project.

### **3.2. The Concept and History of Reputation Systems**

Reputation systems, more commonly known as reviews websites or feedback platforms, are a successful example of 2.0 websites, that, as mentioned previously in this work, are those websites that have its users as the main content's producers.

In the Internet realm, the most valuable resource is undoubtedly information. Hence, reputation systems are focused on collecting information relating to consumers' experiences to use them to generate ratings and other metrics that can demonstrate how satisfied a consumer is towards a specific trader.

Some reviews websites gather feedbacks on one specific sector, as TripAdvisor, that is focused on the tourism sector. On TripAdvisor platform, travellers can write about their experiences in their trips, rate and assess companies that provide accommodation, touristic attractions, food, and all the services within this niche. These ratings and reviews become available for public access and they serve as an ancillary on the decision-making process for many people, who seek to avoid any inconvenience when travelling and see the feedbacks systems as a way to mitigate risks of a bad decision.

Besides the space to write a review, TripAdvisor allows reviewers to rate their experience as 'excellent', 'very good', 'average', 'poor' and 'terrible' and as long as a reviewed gather more ratings and reviews, the website is able to calculate their average rate. The reviewed company is allowed and encouraged to answer the reviewer, and this dynamic of gathering reviews and managing them has the potential to become an effective channel to address consumer disputes if followed some requirements that will be discussed in the following chapters.

There are other websites that do not attend to a specific sector, but they gather consumer complaints about any type of business, manage ratings and reviews to calculate businesses reputation and create

a space for the reviewed company to access those complaints and handle them as it suits them best. This type of website is the object of the present research.

And there are other websites that collect consumers feedbacks on businesses as a secondary tool to complement the main objective of their platforms.

Facebook is an example of that. As it is stated on Facebook Investor Relations webpage, Facebook's mission is 'to give people the power to build community and bring the world closer together. People use Facebook to stay connected with friends and family, to discover what's going on in the world, and to share and express what matters to them.'

While Facebook reached people from every country in the world and it has become quite popular, this gap where consumers find themselves without an official portal to write reviews and have the issue redressed remains out there. The visibility and quick spread of information that Facebook promotes caused the insertion of a new role for its website, which is to allow people to expose their experiences as consumers by rating and reviewing businesses on their Facebook pages.

Other examples of websites that do not have as a mission to collect people's reviews are Amazon, eBay, and AliExpress. They figure the top three positions on the list of the biggest e-commerce companies according to E-commerce News Europe annual list. These companies implemented feedback tools to enhance the development and improvements of their business and eBay and AliExpress developed Dispute Resolution Centres to handle buyers' complaints. They have learned that it is part of their role to make sure buyers will have their issues accordingly addressed and sellers will not be unfairly exposed in order to build trust among their users.

In this regard, Vilalta, A.E. (2019) states that 'electronic feedback, reputation, and private execution systems are complementary ancillary tools that provide significant added value to webs and digital intermediary platforms as they plan an essential role in creating the necessary trust and credibility'.

She lists and explains some other mechanisms that a reputation system may have in order to be more a conflict resolution tool that is able to provide a more complete and effective redress to consumers' issues. Those mechanisms are ratings, chargebacks and payment escrow, trustmark, blacklist, and others. A better understanding of these features will be given in the following paragraphs.

Cortés (2011) categorizes online dispute resolution tools into dispute avoidance and dispute resolution. However, when the subject is the nature of reputation systems into this classification, there might not be a correct answer, once it will exclusively depend on how a company decides to handle their reviews.

A legitimate concern that is raised by Cortés (2011), Mania (2015) and Vilalta (2019) regards to the vulnerability the companies face by the possibility of being victim of fake reviews. There are some consumers or other business engaged in writing fake reviews as an attempt to destroy their reputation. If the reputation systems administrators do not adopt measures to prevent fake reviews or to minimize its negative impacts on businesses, it could jeopardize the trustworthiness of the platforms and unfairly damage companies' reputation.

A survey held in 2019 by the Central Statistics Office ('CSO') verified that 'of the internet activities carried out by individuals in 2019, the most popular activities were finding information on goods and services and e-mail (sending/receiving emails), both at 84%.' (Central Statistics Office, 2019)

Another survey held by BrightLocal in 2019 (BrightLocal, 2019) revealed that 76% of consumers trust online reviews as much as recommendations from family and friends, which means that the weight that online reviews have on consumers decision making is huge and to ensure a reputation system is reliable and it could be an efficient conflict management tool, the reputation system administrator must comply with certain standards regarding users identity checking, review of content and prevention of fraudulent reviews.

The last chapter of this work will undertake an analysis of two reputation systems that are currently popular in different jurisdictions (Brazil and The United States) and are used as online dispute resolution platforms at a certain stage. The European Online Dispute Resolution Platform will also be assessed and compared to these platforms.

This research seeks to point out the strengths and weaknesses of the three platforms based on:

- 1) Their fulfilment of the principles of ADR established in the EU ADR Directive and EU ODR Resolution, as well as on the UNCITRAL Technical Notes on Online Dispute Resolution.
- 2) What the actual literature on online dispute resolution has been defining as indispensable for the success of an online dispute resolution platform to resolve consumer disputes.
- 3) The analysis of official reports/statistics on the functioning of the three ODR platforms.



## **4. Presentation of the Data**

### **4.1. Fundamental Failings of Online Dispute Resolution Platforms**

In order to propose the creation of a whole new hybrid model that takes into consideration some valuable lessons from the existent reputation systems and online dispute resolution platforms, it is paramount to identify those aspects that could imply the failure of a platform, by its presence or its absence.

Considering there are many online reputation systems and it is not feasible to analyse every one of them, this research narrowed it to two reputation systems and one online dispute resolution platform without reputational tools that will be critically assessed regarding: (i) its features, structure, and operation, (ii) its penetration within the Internet community, (iii) its effectiveness in addressing consumers' complaints and having traders engaged in resolving disputes, and (iv) their rate of complaints resolution.

The following aspects will also be taken into consideration, such as funding of the platform (private or public), the fulfilment of the standards established by ADR Directive which affects the level of trustworthiness of the platform (independence, transparency, and fairness, as well as whether the platform administrator adopts any measures to prevent false allegation), and if any incentives are conceded to the parties to use these platforms and to engage in online dispute resolution processes.

Further, after the collection of data on these platforms, their strengths and weaknesses will be assessed, and jointly with the literature comments on this topic, a hybrid model of reputation system and online dispute resolution will be proposed.

The platforms that will be embraced by this research are the following ones: Brazilian platform ReclameAqui, the American non-profit organisation Better Business Bureau (herein after referred to as “BBB”) feedbacks website, and the European Union Online Dispute Resolution Platform launched in 2016.

#### **4.1.1. ReclameAqui**

In 2001, Maurício Vargas, ReclameAqui founder and their CEO, had a problem with an airline company which implied in a loss of important business. When he tried to find an online portal to share his experience and warn other consumers, he could not find it. This situation gave him the idea to create a website where consumers could express their negative experiences with businesses and form a net to help each other to make informed decisions. Maurício’s personal experience motivated the creation of ReclameAqui, where consumers can relate businesses failures on their products, services or customer service.

ReclameAqui means ‘Complaint Here’ in Brazilian Portuguese and in the Institutional area of their website, they claim: ‘We are not only a website for complaints’. It could be attributed to the fact that ReclameAqui website use its complaints to build businesses reputation according to their engagement in resolving consumers’ problems through ratings, white and blacklists. These mechanisms will be thoroughly examined in the following chapters.

This emphatic statement demonstrated that the initial objective of ReclameAqui was to give voice to consumers who wanted to expose a company failure through a negative review to prevent other consumers to face the same problem. Over the years, though, the website has admitted other

functionalities, where business have been encouraged to publicly respond to consumers' complaints and try to resolve those issues, otherwise their reputation could be affected.

As a matter of fact, Brazil is known for its litigious culture, which is endorsed by The Court of the State of São Paulo that claims they are the biggest court in the world in terms of volume of suits. The National Justice Council (2018, p. 73) released a report that found that in 2017, Brazilian Courts held 80.1 million pendent cases altogether. Over 3.3 million of them are consumer disputes (pp. 181-184).

The same report shows that the average time to have a case fully resolved through Brazilian Small Claims Courts is 1 year and 11 months (p. 144). While the average time in the State Courts only to have a first instance judgment is 30 months (p. 144). It has to be considered that if the unsuccessful party appeals from this decision, the case could be kept in the Appeal Court for another 11 months. Moreover, if the counterpart does not comply voluntarily and it is necessary to implement enforcement procedures, the average time to resolve this case jumps to 6 years and 10 months (p. 143).

These figures demonstrate why ReclameAqui might have become widely used to redress consumers' disputes in Brazil. Silva, Fernandes & Gomes (2018) outlined that the Justice system in Brazil 'can be evidenced by the inefficiency, slowness and excessive demand for a "litigation culture"'.

Furthermore, ReclameAqui claims they have over 15 million of consumers registered on their platform, as well as 120,000 businesses. The website still accounts an average of 600,000 researches a day, which contributes to the final and impressive number of 30,000 complaints a day and 42 million of visits a month.

According to the website Statista, Brazil 'is set to exceed 130 million digital buyers in 2020', which means that 11.5% of Brazilian digital consumers are registered on ReclameAqui website. Although,

only those consumers who want to write a complaint must register on the website, but those ones that only want to research a company reputation, will not be required to register or log in on the platform.

The next sub-chapter will be focused on describing how the platform operates for consumers who use that as a research engine, for complainants, and for the businesses.

#### 4.1.1.1. How ReclameAqui Operates

The simplest feature that ReclameAqui offers is a research field, where anyone can type the name of a specific company, product or service to check other consumers complaints and if and how the company engaged in resolving it at most, or if the company offered at least an explanation on their own. If the company did not reply to the consumer at all, this information can also be viewed. (Figure 2)(Figure 3)

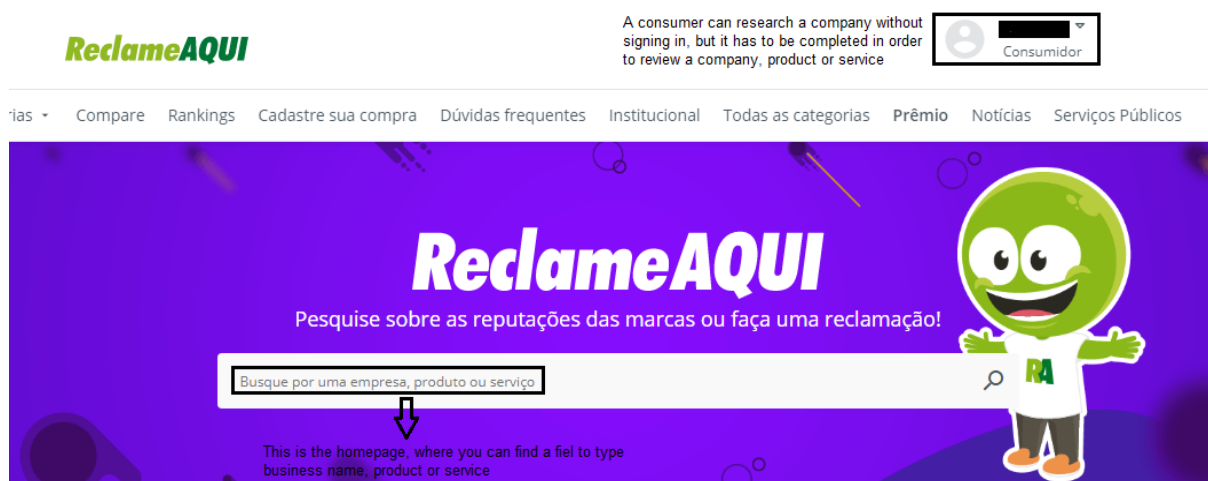


Figure 2. Reclame Aqui. (n.d.). Home Page. Retrieved April, 2020, from: <https://www.reclameaqui.com.br/>

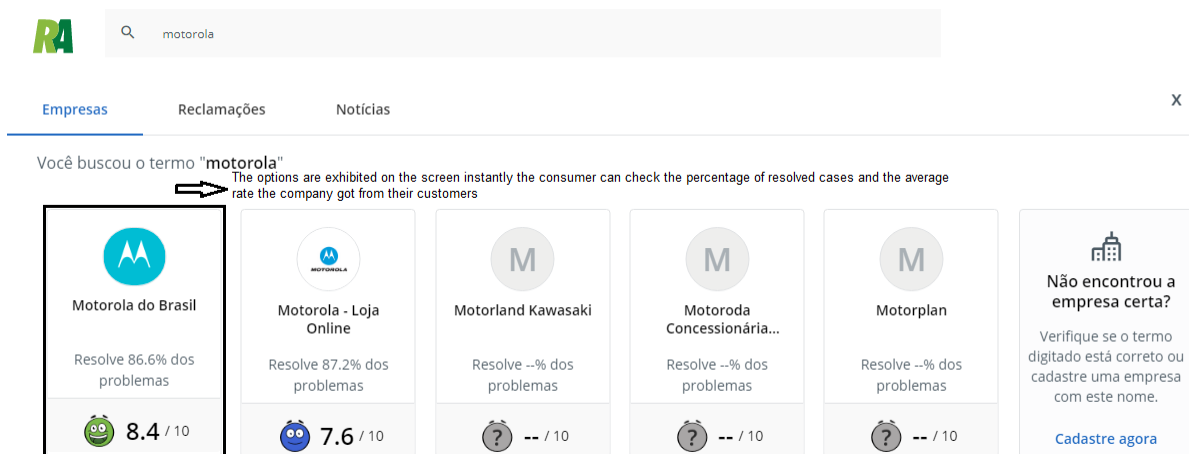


Figure 3. ReclameAqui. (n.d.). Complaints by Business – Motorola Page. Retrieved April, 2020 from: <https://www.reclameaqui.com.br/empresa/motorola/>

Consumers can select the type of complaints they want to see (Latest, Replied, Non-replied, Assessed), as well as the period they would like to filter the reviews (six months, a year, two years, general) and besides the reviews area, there is a table with the metrics that compose the company reputation (Figure 4), which are: Percentage of Replied Complaints, Percentage of customers who would trade with the company again, Dispute Resolution Rate, Average Score Given By All Complainants of that brand.

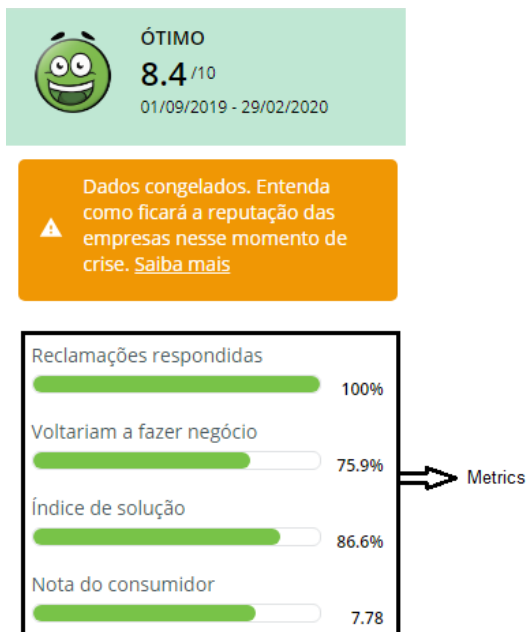


Figure 4. ReclameAqui. (n.d.). Complaints by Business – Motorola Page. Retrieved April, 2020 from: <https://www.reclameaqui.com.br/empresa/motorola/>

If a user wishes to register a complaint, the first step is registering into the platform, then finding the company (s)he would like to complain about and follow the steps the website will show on the screen. It will shape the complaint in a way the reviewed company will be able to investigate what happened and contact the consumer through the platform or by another mean (by phone, e-mail, etc.).

The fact the platform requires users identification is valuable, considering that one of the factors that affects the trustworthiness of a reputation system is the refuse of the platform administrator to adopt measures to exclude false reviews.

In this regard, Rule & Singh (2014) outlined that:

‘In many corners of the internet identities can change as easily as one changes an email address. It is relatively easy to create a new account and besmirch a shop, restaurant, or hotel, because a) in many reputation systems the review can be left anonymously, and b) the reviewer faces almost none risk of ever being caught or held accountable if her or his identity is not shared.’ (p. 179)

Asking for a consumer to fill out a form and provide a valid e-mail address may not impede all people in bad faith to write a fake review, but it might stop some of the bad intentioned reviewers. It is compulsory for every consumer who wants to write a complaint on ReclameAqui website to inform their CPF number, which is a serial number given to every Brazilian citizen who is registered at Revenue. This number is asked for nearly anything a Brazilian citizen (or someone from another jurisdiction who was naturalised in Brazil) needs to do, including contract a service, apply for a governmental benefit, fill out insurance and bank documents, etc.

As ReclameAqui is focused on Brazilian business to consumers disputes the only language available on its website is Portuguese. The website does not exclude problems that did not arise from an online commercial relationship, but instead of giving a blank space for consumers to write their reviews, it gives some guidance to the consumers when (s)he is filling out the complaint form, in a way the trader will have enough information to process the complaint and adopt the measures they judge adequate.

Hardly a false reviewer will have detailed information and documents that confirm an existent interaction with a trader, therefore this step may impede fake reviewers to conclude their complaint.

When the consumer selects the company (s)he wants to review, the platform screens three fields to be filled out (Figure 5): category of the problem (pre-defined options according to each company will be screened), type of product or service and what is the specific problem the consumer is facing.

Detalhe o máximo possível o seu problema com a empresa:

Detail your problem as much as you can



Você está reclamando da:

[Trocar empresa](#)

Qual a categoria do seu problema? What category your problem is in?

Celulares e Smartphones ▾

Qual é o tipo de produto ou serviço? What is the type of product or service?

Acessórios e Periféricos ▾

Qual é o problema? What is the specific problem you have?

Não carrega ▾

Figure 5. ReclameAqui. (n.d.). Complaint Registration Area. Retrieved April, 2020 from: <https://www.reclameaqui.com.br/reclamar/1961/detalhes/>

Next, the consumer will be asked to inform the order number, title of the complaint, and then describe the facts as much as possible (Figure 6). The consumer will be able to attach up to three files that can be useful in proving the existence of the transaction (Figure 7) and it will help the trader to identify the problem and decide how to deal with that.




Título da sua reclamação **Title of your complaint**

Número do pedido **Order Number**

O problema que você está tendo ocorreu por causa da pandemia da COVID-19/Coronavirus?

☐ Sim ☐ Não **Is your problem related to COVID-19 Pandemic? Yes or Not.**

Agora, conte sua história ;)


 Nunca inclua dados pessoais no texto. A empresa receberá seus dados junto com a reclamação.

Escreva aqui todos os detalhes da sua história...


**Write here all details of your story...**

Figure 6. ReclameAqui. (n.d.). Complaint Registration Area. Retrieved April, 2020 from: <https://www.reclameaqui.com.br/reclamar/1961/detalhes/>

Você pode enviar até 3 imagens ou documentos para empresa.

 **Enviar um arquivo**

**You can send up to 3 files to the business**  
**And only the company will be able to see them.**

 Fique tranquilo, só a empresa poderá ver o seu anexo. Nada que você anexar aqui é público.  
Formatos de arquivo permitidos: PNG, JPG ou PDF com até 5Mb.

Qual o telefone que a empresa pode entrar em contato?

(11) 947904219 **Contact Numbers**

( ) \_\_\_\_\_



 **publicar**  **Publish**

Figure 7. ReclameAqui. (n.d.). Complaint Registration Area. Retrieved April, 2020 from: <https://www.reclameaqui.com.br/reclamar/1961/detalhes/>

After publishing the review/complaint, the website will send it to the company which was the target of the complaint to make them aware of it and to give them the opportunity to investigate the case and contact the consumer. However, the complaint is available on the ReclameAqui website as soon as the consumer click on the 'Publish' button and can be read by other consumers on the business' page.

ReclameAqui claims in its Terms and Conditions of Use that the company is not liable for any information or allegation the consumer does in his/her review, and as a consequence of that, ReclameAqui does not provide a content moderation, and the only editions the website provides are to hide inadequate words or consumers personal details that published by themselves regardless ReclameAqui request for not do it.

Furthermore, if a reviewer uses the words 'crime' or 'lesioned', these words might be hidden as well, once the trader could argue the reviewer is defaming the company and the conflict would escalate to another level.

It is up to the trader to respond to these complaints and how long they will take to do that, but the responsiveness of the company is taken into consideration to elaborate its reputation score.

Every complaint will be public for as long as the reviewer wants to, and it is up to the consumer to inactivate that whenever it suits him/her. However, reviews that were given over three years ago will no longer be part of the sample for calculation of the company's reputation score.

A remarkable characteristic of this platform is the lack of a neutral third party to mediate the interaction between consumers and traders. The platform creates room for a directive negotiation and ReclameAqui does not interfere in anything is talked between the parties or assesses the quality of the outcome reached by the parties.

This form of negotiation that ReclameAqui encourages is the plain negotiation, where the role of the website is only to create space to that and publicise the whole process for other consumers consultation. ReclameAqui is a non-profit organisation which is part of a Corporate Group, that sells a customer service solution named HugMe, that allows traders to contact complainants in private to negotiate their issue and it is 100% integrated to ReclameAqui platform.

This tool is only available for those companies which pay for it, but the outcome reached in the private negotiation only will be computed in their reputation score if the trader publicly inform their response to the complaint and the consumer assesses the entire process on the platform.

Other types of negotiation, such as assisted negotiation (or blind bidding) and automated negotiation are not performed through the website.

According to Thomson Reuters' study on the impact of ODR in the UK (Thomson Reuters, 2016), blind bidding negotiation systems 'accept confidential settlement offers from parties and determine what is acceptable to both parties'. Whereas 'automated negotiation is AI-type (artificial intelligence type) that calculates outcomes that lead to the maximum satisfaction of parties'. These negotiation styles were adopted by e-Bay in different stages of its evolution regarding online dispute resolution, and some examples of companies that provide these services are SquareTrade, Modria, and Smartsettle.

If the consumer problem is not resolved or if the trader compromised to do something and did not comply with it, there is no further step to be followed by the consumer in order to enforce it. However, after getting a response from the trader, the consumer will have the opportunity to respond to the trader or finalise the communication/negotiation stage and assess the whole process. This assessment will also compose the business reputation score, and other costumers will be able to visualize their resolution percentage on the website.

A common question that arises from the fact that there is no pre-established enforcement procedure on the outcome reached by consumers and businesses through online dispute resolution platform is: What would motivate parties to engage in negotiation through this platform then?

A pragmatic approach could lead us to think that there is no motivation for the parties and for this reason the platform is deemed to be a failure. However, the already mentioned survey elaborated by BrightLocal (2019) verified that 76% of consumers trust online reviews as much as recommendations from family and friends, which means that if consumers believe that a company is not committed to customer needs, this company might not deserve his/her money and trust, and that is the aspect where the high percentage of voluntary compliance by the companies lies on.

There are different ways to expose business' failure or success in engaging in dispute resolution that will be appropriately addressed in the further chapters, and how a reputation system/dispute resolution platform manage that can define their success or failure in effectively redress and resolve consumer disputes.

#### **4.1.1.2. The legality of ReclameAqui Activity and Liability of Reputation Systems Administrator in Case of False Reviews or Defamation**

Freedom of speech is a fundamental right present in the Federal Constitution of the Republic of Brazil (article 5º, paragraph IV), and it includes the right of consumers to freely manifest their opinion regarding product suppliers and services providers through specific portals, through press portals or any other mean.

Moreover, the Brazilian Consumers' Protection Code foresees in its Article 6 that access to information is a basic right to every consumer. Therefore, both ReclameAqui activity and consumers' practice of writing reviews, even those with a tone of criticism, are underpinned by Brazilian legislation.

However, it does not mean that consumers are allowed to indiscriminately allege anything they want without compromise with the truth or they can use any word they judge is adequate to express their feeling of frustration towards the trader and the company has to accept that whatsoever. The Brazilian set of consumer laws aims to protect the weakest party, but it cannot persist in a situation where the consumer is trying to take advantage or damage the image of a company by giving false reviews.

If a trader can prove the consumer allegation is not true, or the chosen words extrapolate the consumer right of free speech and offend the company's honour as well as damages its public image, and for this reason file a suit against the reviewer, (s)he might be compelled to delete his/her review (or may the judge notify the website to do so) and depending on the case may the reviewer be awarded to pay compensation to the company.

According to the portal of news Migalhas (2016), a doctor filed a suit against ReclameAqui to argue that a patient's review extrapolated his/her rights of sharing his/her opinion and it was offensive and caused damages to the plaintiff. The doctor did not succeed in her initial plea and sequential appeal, once the first instance and also the 2<sup>a</sup> Chamber of Private Law of State of São Paulo understood that ReclameAqui is a mere website that connects consumers and businesses, which does not assess consumers reviews, which it is understandable, otherwise its activity would be impossible to perform.

The Appeal Court of the State of São Paulo considered that the plaintiff could have notified ReclameAqui about the argued offensive review in order to ask them to remove it and/or she could have filed the suit against who wrote the feedback instead, but the Court found it was not suitable to consider ReclameAqui liable for any effects that review may have caused.

In 2012, a financial service provider filed a suit (Ap. , 2017) against a consumer who wrote a bad review on the ReclameAqui website and used certain terms that would suggest a practice of crime by the company. The first instance judge and the Court of Appeal understood that the consumer used colloquial language and heavy tone to demonstrate his dissatisfaction, but it would not have extrapolated the limits of his fundamental right of freedom of speech. Moreover, the Court has mentioned that the platform is only a specialised channel where consumers could write their opinions and complaints, and the divulgation of such reviews shelter the public interest in getting information about previously existent relationships between a certain trader and its consumers, in order to enable future consumers to make informed decisions before purchasing a product or a service.

In another case, a company filed a suit against a consumer (Ap., 2019) who argued in a review that the company refused to emit an invoice regarding a purchase (which could configure the commitment of a crime – tax evasion). The company presented the proof of emission of the invoice, and due to this fact, the consumer was awarded in damages and his appeal was denied.

To sum it up, the treatment Brazilian courts give to ReclameAqui activities is that the website is only a channel that connects consumers and traders in order to promote a healthy dialogue in favour of conflicts resolution, and the platform is not liable for eventual false allegations that a reviewer makes, but if a trader thinks a consumer has exasperated his/her rights, may the company seek legal measures against the consumer, since it is proved the consumer abused of his/her right of freedom of speech and aimed at damaging the company's reputation.

Besides the defamation subject, The Brazilian Civil Process Code, in its Article 334, 7<sup>th</sup> paragraph, allows even electronic conciliatory sessions to happen, as well as the Brazilian Mediation Act, in its 46<sup>th</sup> Article, validates online mediations, as long as the parties agree on it. It seems that Brazil is welcoming to the transposing of some offline activities to the online environment, as long as parties will-power, good faith and consumers' rights protection are in place.

#### **4.1.1.3. Reclame Aqui Incentives for Businesses to Engage in Dispute Resolution**

According to Cortés & De La Rosa (2013, p. 421), the success of an ODR platform will depend on the creation of incentives to the parties in three different stages: incentives to encourage participation, incentives for early settlements and incentives to enforce outcomes.

Different incentive tools may generate positive or negative effects and these effects are the key elements for an effective online dispute resolution platform as well as a reputation system.

As a private non-profit organisation, ReclameAqui cannot impose financial sanctions or suspension of selling of goods or services to businesses, but what incentivises traders to engage in negotiation with customers is how their reputation may be affected according to their interaction on the platform.

ReclameAqui provides rankings that qualify companies positively or negatively within the following categories: Best Resolution Rate, Best Consumers' Retention Rate, Best Average Scores, Businesses That Resolved More Complaints within thirty days and six months, Worst Companies in the last thirty days, Businesses with More Complaints in the Past Thirty Days, Businesses with More Complaints within One Week, Businesses with More Complaints in the past Thirty Days.

Those lists are known in the e-commerce universe as blacklist (negative effect) or white list (positive effect) and they usually serve as an enhancer tool on consumers' decision-making process.

Vilalta (2019) noted that blacklisting 'is another enforcement mechanism by means of which a non-compliant trader becomes part of the listing of, and statistics for, traders who are risky to users.' Therefore, a white list would represent a roll of companies that complied with certain rules, standards or practices and have been acknowledged by a governmental body or another type of organisation for that (in this case, ReclameAqui).

Both lists are effective in promoting traders' engagement in negotiate, resolve the problem in an early stage and to enforce outcomes, otherwise, they can figure a blacklist or be prevented from figuring the white list. But ReclameAqui and any other reputation system or online dispute resolution platform that are willing to elaborate and publish blacklists should be extra careful with the origin and veracity of the information they provide because here the content is produced by the platform and 'if the information contained in the blacklist is false, the publication could give rise to civil liability for defamation, and even to criminal prosecution in jurisdictions where defamation is a crime.' (Cortés, 2013)

Another feature ReclameAqui promotes is the conference of Trustmark to companies that achieve some of their pre-established performance-related goals and as an acknowledgment of this positive attitude, a seal is conferred and exhibited on the company profile on ReclameAqui website, to distinguish companies with commendable attitudes from those ones who are only good, regular or bad.

Trustmark Organisations (TMOs) were created in the US 'in the late 1990s, a potential solution to the need for trust of consumers and merchant'. And 'in a nutshell, TMOs are organisations which present themselves as independent parties that provide trustmarks – labels or visual representations indicating that a product, process, or service conforms to specific quality characteristics.' (Balboni, 2008, p. 33)

Along the years, if a trustmark organisation is well-known and trusted, a seal of this company may mean a lot to the traders, in the way that gaining trust with consumers, their business figures may increase, once trust is the main factor that can encourage or bar a consumer of purchase something.



If a company is inserted in a competitive sector, having a trustmark may give some advantage among the others, so complying with the established standards in the trustmark policy is the only way to be awarded the seal.

When businesses are scored by consumers on ReclameAqui, their average score will classify the company as 'great' (between 8 and 10), 'good' (between 7 and 7.9), 'average' (between 6 and 6.9), 'bad' (between 5 and 5.9), 'not recommended' (under 5).

To give a company the seal RA 1000, ReclameAqui will take into consideration five criteria: (i) the company must have over fifty reviews. (ii) their responsiveness rate must be over 90%. (iii) their resolution rate must be over 90%. (iv) their average score must be equal or superior to 7. (v) and equal or above 70% of consumers must have answered they would trade with that business again.

Even if a company achieve these objective criteria, the seal attribution is not compulsory. There will be a thorough assessment of the company's reviews and performance to decide if they are entitled to the seal or not. This moderation is a mechanism to prevent bad intentioned business to pursue the seal through fraud, such as gathering false-positive assessments on the business' performance.

Awareness of the trustmark is an essential factor in the accomplishment of its finality because if consumers are not aware of this tool and they do not use it when deciding which company will sell a good or provide a service to them, this tool is not very helpful.

Even though ReclameAqui is undoubtedly well-known in Brazil, most companies which hold a RA1000 seal do not exhibit them on their webpage (e.g. Tigre, Aurora Alimentos, Pampili), and it is understandable because if they exhibit a seal from ReclameAqui on their website, the first information a potential new customer will get is that consumers are complaining about them, and even though the company is engaging and resolving problems, this very first impression towards the company may not be positive.

It is not clear on the ReclameAqui website if there is constant monitoring of RA 1000 companies in order to check if they constantly comply with the standards determined in the policy and if ReclameAqui takes the seal out from those companies which do not keep the same performance in a certain period.

Cortés (2013, p. 28) comments that a reputable trustmark ‘would require monitoring and include procedures to withdraw the trustmark when necessary’ and ‘the threat of withdrawal of a trustmark would be an effective incentive if consumers are aware of the trustmark and make purchasing decisions based on it.’

Those comments are sensible considering that if a trader is able to achieve a trustmark eternally regardless of the continuity of good practices, a consumer would not have reasons to rely on a company that exhibits a trustmark but may or may not engage in conflict resolution.

The possibility of being recognised as a company that is committed to consumers' needs is an incentive to traders to engage in negotiation through the ReclameAqui platform, while the possibility of withdrawal would be an incentive to companies to enforce the outcomes that were reached with the consumer.

ReclameAqui does not provide mediation or adjudication services, and negotiation is the only stage of interaction between consumers and businesses, however, the platform shows to researchers how long a company usually takes to reply to a complainant. So, if a company does not engage with complainants as soon as possible, this information will be displayed, and it might count against the company when new potential consumers are assessing their reputation.

Even though Reclame Aqui is a private non-profit company, its rankings inspired an elevated level of trust and seriousness in Brazil to the point that public organs such as Brazilian Telecom Agency

(ANATEL) and Prosecution Office of the State of Rio de Janeiro used its database to underpin public actions against companies that had numerous unresolved complaints on ReclameAqui website.

According to Maurício Vargas, ReclameAqui CEO, who gave an interview to the radio *JovenPan*, ReclameAqui was working with ANATEL on gathering complaints against Telecom companies and those complaints underpinned the decision ANATEL made to suspend the commercialization of new contracts by the companies which were under investigation until they resolved the problems those consumers were complaining about.

In 2011, the Prosecution Office of the State of Rio de Janeiro prohibited Lojas Americanas to sell goods online until they had delivered all the good they sold until that date, once consumers were complaining about delivery service on ReclameAqui website, and only in one day the website had 20,000 new complaints against Lojas Americanas.

Those examples demonstrate how serious ReclameAqui work is taken by governmental bodies in Brazil and this type of work inspires trust in consumers and serves as an incentive for traders to take complaints against them seriously and appropriately redress them.

In 2013, ReclameAqui decided to acknowledge and award businesses that respect consumers' rights and are engaged in improving their customer services. This awarding process is sponsored by a renowned Brazilian magazine called *Época*, and as defined in the first article of the award regulation, 'the award was created to identify, award and spread good practices to the companies who respect the consumer'. (ReclameAqui, 2020)

ReclameAqui and *Época* provide an annual celebration where the companies who were nominated to a category of the award will know of the results on this moment. It could be considered as an Oscar for the companies with the best practices at resolving consumer disputes.

The companies which are interested in competing for the award must register online and follow the regulation criteria, which is: (i) minimum of one year of registration on the ReclameAqui platform. (ii) reputation score as Good, Great or RA1000 (seal) in the last twelve months. (iii) the company must not have been investigated for eventual non-compliance to ReclameAqui terms and conditions.

Then ReclameAqui will assess if all the subscribed companies attend to the rules and the next stage is asking consumers from all over the country to vote for the company, they believe respect consumers rights most.

Undoubtedly this award is a form of incentive for companies to participate in negotiation through the ReclameAqui platform and obviously to seek to resolve consumers' problems in a timely and fair manner. Doing that so, they may be recognised for that on different levels, including the opportunity to exhibit the award's logo in their publicity campaigns as well as being praised by a renowned magazine, and all of this may be an important factor to enhance their reputation.

#### **4.1.2. Better Business Bureau History**

The history is told on Better Business Bureau website dates to 1912, and relates its creation to a movement that was leaded by the sales manager of The Coca-Cola Company, Samuel C. Dobbs, who would in the future occupy the position of president of the company. This movement arose from the necessity that Dobbs identified of encouraging consumers to believe in advertisements again, and to promote that, companies would have to compromise to the truth when advertising.

The idea of creating an organ that would comply with the role of fomenting honest advertising had its beginning in one Court session, where The Coca-Cola Company was being accused by the government of false advertising of its products, and Dobbs heard from Coca-Cola's own attorney:

‘Why all advertising is exaggerated. Nobody really believes it’ (Better Business Bureau, n.d.). He could not remain inert after listening to this statement and the first steps to build the actual Better Business Bureau were taken.

The private non-profit organisation that has carried numerous different names throughout the years was set up to accomplish the goal of enhancing truth in advertising, but it turned out that consumers’ associations had been risen in the 1930’s to give voice to the consumers that felt vulnerable towards business, and ‘Better Business Bureaus reacted to this consumerism movement of the 1930s by trying to persuade business to recognize the critical consequences it represented. In 1939 and 1940 the Association of Better Business Bureaus sponsored business consumer conferences, bringing together representatives of business, education, government and the public in a pioneering program for building a better understanding of and greater public confidence in advertising.’ (Better Business Bureau, n.d.)

And since then, BBB has assumed as its mission ‘to be the leader in advancing marketplace trust (...) by setting standards for marketplace trust, encouraging and supporting best practices by engaging with and educating consumers and businesses, celebrating market place role models, calling out and addressing substandard marketplace behaviour, and creating a community of trustworthy businesses and charities’.

In the current days, BBB has offices all over The United States, Canada, and Mexico, and embrace three main fronts: gather consumers’ reviews on businesses, online complaint system, and accreditation system. Better Business Bureau also offers consumers’ advisement and admits consumers’ complaints by letter, or another means but Internet. So, those consumers who are not familiar or comfortable with technology are not precluded from using their services to redress their issues with companies.

Although Better Business Bureau added this role as neutral intermediary between consumers and companies, they are still compromised to foment truthfulness to advertising sector and protect consumers from scams and bad deals.

#### **4.1.2.1. How Better Business Bureau Operates**

##### **4.1.2.1.1. Accreditation System**

Having trust as its core principle and considering the context that originated the Better Business Bureau, it is sensible to start this chapter by describing their well-known accreditation system.

It seems that Better Business Bureau Accreditation process is more complex than ReclameAqui RA1000 seal, since it counts with numerous requirements and a more subjective assessment of each business.

Moreover, it is valid to consider that the concession of the Better Business Bureau Accreditation Seal is not compulsory or automatic. Even if a company has good rates and it apparently follows BBB standards, the concession of the seal will depend on the own business' application. Next, BBB will assess if the company comply with all the accreditation standards that are exhibited in a long list on the organisation's website.

The accreditation standards are: (i) the company's profile must be operational for the past six months, (ii) be free from government action. (iii) fulfil all licensing and bonding requirements of applicable jurisdictions, (iv) be rated at least as B, (v) 'in its relationship with BBB: meet all applicable standards

within the Accreditation Standards; cooperate with BBB's activities and efforts to promote voluntary self-regulation within the business' industry; honour any settlements, agreements or decisions reached as an outcome of a BBB dispute resolution process; and complete the required application and pay all monetary obligations to BBB in a timely manner', (vi) advertise honestly by following federal/states/local advertising law and also BBB Code of Advertising, (vii) tell the truth, (viii) be responsive, (ix) be transparent, (x) honour promises, (xi) protect any data collected. (Better Business Bureau, n.d.)

The BBB Accreditation Agreement, available on their website, mentions that the agreement may be terminated or suspended if the company does not comply with the terms of the agreement, and in response to that, the company shall immediately cease the use of BBB seal.

It is not informed on the website how often BBB monitors the accredited businesses in order to verify if they are in constant compliance with their accreditation standards. It is briefly mentioned, though, that BBB continuously monitors the accredited companies' performance to ensure that only those ones who are entitled to hold their seal will do that so.

In 2016, the online news platform CNBC divulged that the American lender Wells Fargos had lost their accreditation seal 'making it possibly the biggest business ever to fall into that category'. The loss of the seal seemed to be negative to the company's reputation, that had been investigated for the practice of illegal sales, which was a scandal by that time (Cox, 2016).

As previously mentioned, one of the criteria for achieving BBB Accreditation Seal and to be entitled to keep it, is the company to be free from any government actions. Nonetheless, considering that Wells Fargos was involved in a sales scandal, it is likely the company did not comply with this rule.

Heikkinen wrote a report on DealNews website (Heikkinen, 2019), where she questioned the reliability of BBB accreditation and rating system (Can you Trust the Better Business Bureau? is the

name of the news reporting). She highlighted the fact that companies that want to hold BBB Accreditation Seal must pay an annual fee that can cost between \$500 and \$10,000, depending on the size of the organisation. The reporter stated that if a company does not comply with the regular payment of the fee, it will incur in breach of contract which could lead to the withdrawal of the accreditation seal.

The reporter suggested that the fact companies must pay a fee to hold an accreditation seal compromises the truthfulness of the process, in the sense that it would seem that BBB would be providing a service for businesses. It could also imply that positive ratings would be granted to businesses that pay for the seal, regardless their real performance towards consumers' conflicts resolution.

A CNNMoney (2015) report took an investigation against Better Business Bureau and had found that over a hundred companies that are accredited by BBB are still holding an A+ rating despite they have been sued by the government, which is a non-compliance to their own accreditation standards.

For those reasons, Heikkinen (2019) states that 'the faith consumers once held in the BBB may have reached its breaking point.'

In spite of the recurrent questioning of Better Business Bureau's transparency and reliability, BBB is still considered by various Online Dispute Resolution authors as the pioneer of certification of businesses that are engaged in dispute resolution.

Balboni (2008) designed the following diagram (Figure 8) to demonstrate how a certification process (also known as accreditation or trustmark) should be carried out in order to be trustful. The assessment whether BBB Accreditation System and RA 1000 Seal had complied with this workflow will be held in the last sub-chapter of this section.



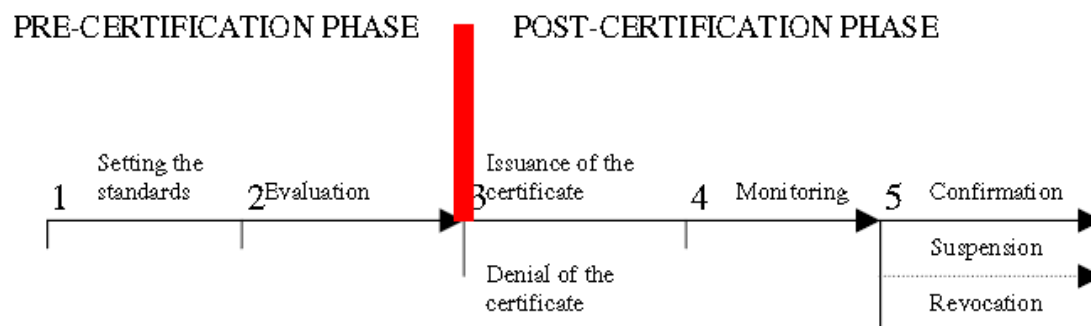


Figure 8. The certification process. Balboni, P. (2008) Trustmarks: Third-party liability of trustmark organisations in Europe.

#### 4.1.2.1.2. Better Business Bureau Reviews Section

The reviews section of Better Business Bureau website allows consumers to write positive, negative, or neutral reviews, and besides the possibility of writing about an experience, the consumer will be able to rate the company out of five stars.

Better Business Bureau platform distinguishes reviews from complaints. It is taken into consideration that if a consumer wants to share his/her experience to warn other consumers, the review tool will be the right channel for that. The review does not initiate any dispute resolution process, but the business will have the opportunity to respond it.

If the consumer intends to relate a problem in an attempt to resolve it, BBB online complaints system is the right path. In this channel, the consumer can file an online complaint form that will be addressed to the business that will be required to reply that within fourteen days.

However, reviews on BBB website are not instantly published. When the consumer writes a review, the website administrator notifies the company and it requires the confirmation of the existence of the transaction. When it is confirmed, the review is published.

Businesses scores are formed by their performance at handling complaints, and reviews are not part of it. Consumers are not allowed to write a review and file a complaint against the same business for the same problem. One or another has to be chosen.

Differently from ReclameAqui, the same company may have a different profile for each branch, on BBB website. Each profile will be separately rated and reviewed, which could be confusing and would not demonstrate the real performance of a company as an overall. If a consumer does not select a location of a company when doing the research, the website will screen all the options they have for that company, and then exhibits the rate of each branch and if they are accredited or not (Figure 9). To register a review or a complaint, the consumer will have to select the location, and this requirement follows the own BBB structure, that has offices distributed within Canadian, American, and Mexican territories.

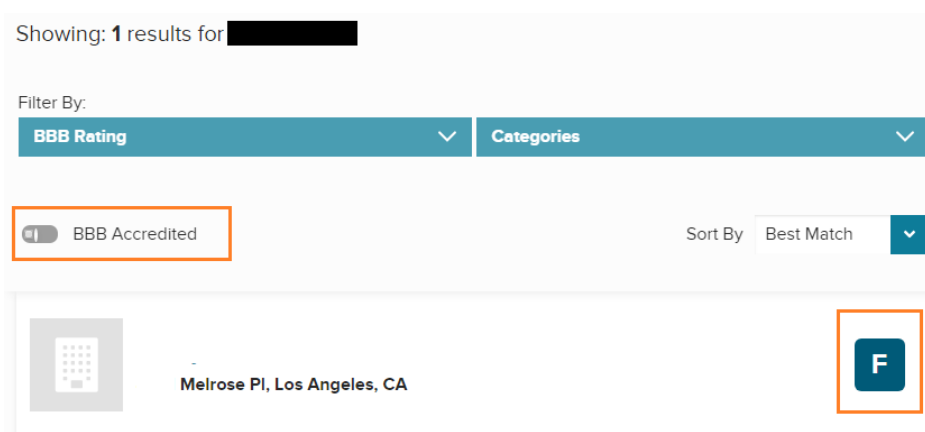


Figure 9. Better Business Bureau Website. April, 2020, retrieved from: [https://www.bbb.org/search?find\\_country](https://www.bbb.org/search?find_country)

When a business is chosen by the consumer, the following set of information is screened, which seems easy to understand. It also provides links for other tools the website offers, such as criteria for BBB rating, section where the consumer can read reviews and complaints, and bottoms that lead the consumer to the area where (s)he can write a review or file a complaint (Figure 10).

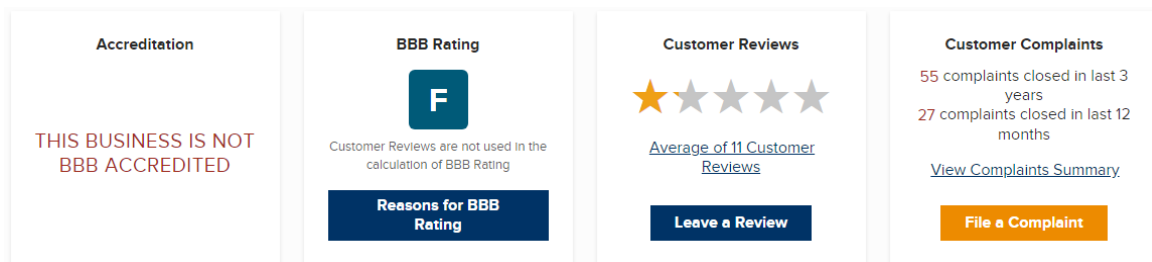


Figure 10. Better Business Bureau Website. April, 2020, retrieved from: <https://www.bbb.org/>

By clicking on the link ‘Average of Customer Reviews’ the consumer will be able to read all the reviews on that company.

If a consumer wants to write a review, (s)he has to click on the bottom ‘Leave a Review’, and the following field is screened, where the consumer rates the business out of five and then write his/her opinion (Figure 11):

What do you think? Add your review.



10 word minimum.

Tell us what you think!

☐ I agree to the Customer Review [Terms and Conditions](#)

Leave Your Review

[cancel](#)

Figure 11. Better Business Bureau Website. April, 2020, retrieved from: <https://www.bbb.org/>

A consumer will only be allowed to send a review if (s)he agrees with the Customer Review Terms and Conditions, where the importance of providing true information is highlighted (Figure 12).

CUSTOMER REVIEW TERMS AND CONDITIONS

- I affirm that this review is a truthful account of my experience with the business, and I understand that the text of my Customer Review will be publicly posted on the BBB website for 1,095 days (3 years).
- I understand that this Customer Review, along with my contact information, will also be sent to the business. I understand that customer reviews are not used in the calculation of the BBB Rating.
- I understand that if I file a complaint with BBB on this business that my customer review on this business will not be posted.
- I understand I should not include any personally identifiable information in describing my Customer Review and that BBB may edit my Customer Review to protect privacy rights and to remove inappropriate language.
- I understand that BBB may use my contact information for verification purposes, and BBB may share information provided by me and the business with other BBBs and with third parties such as regulatory agencies and law enforcement authorities (see [BBB Privacy Policy](#)).
- I understand that BBB does not accept anonymous reviews.
- I understand that BBB reserves the right to not post in accordance with BBB policy, including if I have a personal or business affiliation with the business or I have been offered or received any incentive or compensation to write this review.

Figure 12. Better Business Bureau Website. April, 2020, retrieved from: <https://www.bbb.org/>

Although BBB adopts some measures to prevent false reviews, the company states that it is nearly impossible to guarantee that every review is truthful. The list below is the set of procedures that BBB implemented to avoid fake reviews:

- Validating the email address or phone number of reviewers.
- Allowing the business to confirm an interaction with a consumer before the publishing of his/her review, and then when the interaction is validated, to respond to customer comments.
- Comments from third parties are not allowed.
- Scrubbing reviews to remove any inappropriate language or personal information before the review is published.
- Not allowing anonymous reviews or reviews in which the consumer was compensated.

Despite the adoption of certain measures to minimise the number of false reviews, BBB website lacks guidelines to educate consumers on how to write a review and the consequences of giving false information. It would be valuable if the company also warned those consumers who use the platform to make decisions, to carefully read and assess each review.

Better Business Bureau has offices all over The United States, most of Canada and in some locations of Mexico, and those offices work as branches and act with certain independence. The office from California has a newsletter page, and only there it was found a text addressed to consumers that aims to enable them to identify false reviews. The list of tips addressed to the consumers includes: ‘Check for the verified purchase stamp, avoid the anonymous reviewer, keep on the lookout for scripted reviews, do not blindly trust on online reviews, and do research beyond online reviews.’ (Pope, 2018)

The article has a tone of friendly advice, and there are no policy or guideline addressed to BBB platform users in this regard. This study will claim that this is a point to be improved by BBB and any other online dispute resolution platform once information is empowering and it has the potential of avoiding some issues to become real disputes.

It must be considered, though, that there is a section on BBB webpage where they establish the Code of Ethic for Consumers (Better Business Bureau, n.d.), which is a truly short list of principles that are listed below:

- ‘Education. Know your rights and responsibilities, comparison shop, read contracts, and ask questions before you buy. Investigate offers that sound too good to be true.
- Truthfulness. Do not return used goods under the pretence that they are damaged if they are not. This practice, as well as price tag switching and shoplifting (or failure to report shoplifters), costs all consumers in terms of time and money.
- Honest. Exhibit the same kind of honesty you expect to receive from business firms. If a salesclerk makes a mistake in your favour, point it out as quickly as you would a mistake in the company’s favour.
- Integrity. Live up to your obligations. Enter agreements in good faith and pay your bills when they are due. If you cannot, inform the merchant and explain why.
- Courtesy. Recognize that store employees are individuals. Treat them as you wish to be treated.
- Sensibility. Do not make unreasonable demands. Respect the firm’s right to limit services and products offered. Do not expect to get something for nothing. Remember, always turn to your BBB for assistance with any marketplace decision or dispute.’

The above-mentioned principles are the pillars for Better Business Bureau activities, as they claim, and can somehow offer a certain guidance for consumers regarding their conduct, but they are too basic and unspecific. In order to achieve the goal of being a trustworthy tool that aims to offer redress consumer disputes in large scale, a better work in this regard should be done.

#### 4.1.2.1.3. Better Business Bureau Online Complaints System

Better Business Bureau platform seems to be user-friendly when it comes to their online complaint system. At the superior right corner of the screen the user has access to a link to file a complaint against a business (Figure 13).

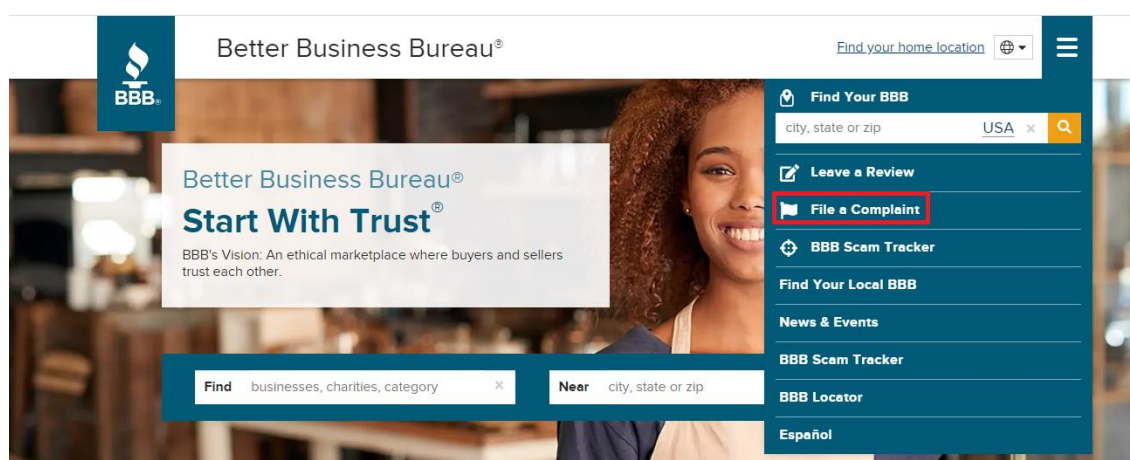


Figure 13. Better Business Bureau Website. April, 2020, retrieved from: <https://www.bbb.org/>

Before going to the page where the complaint is properly filed, the platform exhibits which type of cases cannot be handled by the BBB platform, online complaints workflow, and the criteria the consumers have to follow in order to have their complaint accepted by BBB.

The matters that cannot be handled by BBB platform are: 'Employee/employer disputes, discrimination claims, matter that are/have been litigated/arbitrated, complaints against individuals not engaged in business, issues challenging the validity of local, state, or federal law, complaints

against government agencies, including the postal service, and matters not related to marketplace issues.’ (Better Business Bureau, n.d.)

In 2014 BBB started to publish the content of the complaints in response to consumers feedback. Differently from ReclameAqui, though, BBB does not publish the details of a complaint as soon as the consumer files it. When the consumer submits the complaint, BBB will forward it to the complained within two business days.

From the receipt of the complaint, the company will have fourteen days to respond the consumer and if this time limit is not respected, BBB will make a new request. The cases are closed within thirty business day.

To be accepted by Better Business Bureau, the complaint must include the complainant’s name, a postal address, an email address, business’ name and address, the complaint must come from a person or representative or entity that had a marketplace relationship. The issue must have arisen in the past twelve months, and it has to be related to a product or service the company agreed to provide. If the matter have been in litigation or arbitration or was settled by the parties, then BBB process will not be suitable. And the final requirement is that the complains must not contain abusive language.

May the consumer opt to follow the process in Spanish if (s)he is from Mexico. If the consumer is not from Mexico and the process follows in English, the consumer will indicate if (s)he is from Canada or U.S. and chose from pre-selected categories which type of issue (s)he is trying to resolve (nature of complaint), and them fill out his/her personal details, business’ location, business’s details and any other information or document that will be helpful (Figure 14).



Step 1: Nature of Complaint	Step 2: Find Business	Step 3: Your Information	Step 4: Your Complaint	Step 5: Additional Details	Step 6: Review & Submit
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### Verify the nature of your complaint

**Is the business in the United States or Canada?**

☒ Yes ☐ No

**Your complaint involves a:**

- ☐ vehicle
- ☐ cell phone or wireless carrier
- ☐ business's product or service (other than a vehicle or cell phone)
- ☐ business's advertising
- ☐ business's privacy policy or practices
- ☐ charity

**Are you an active duty service member, a civilian employee of the Department of Defense, a military dependent or retired from active duty?** (required)

**What do we do with this information?**

☐ Yes ☐ No

**Next** ▶

**HELP**

Answering the questions on this page will help us make sure your complaint is processed promptly.

Figure 14. Complaint Registration Area. Better Business Bureau Website. April, 2020, retrieved from: <https://www.bbb.org/>

This stage where a consumer tries to reach a trader to resolve an issue directly with him/her is clearly the negotiation phase, where the parties may present their side of the situation, set their expectations regarding an eventual outcome, and ‘listen’ the other party version of the facts and then seek together a mutual agreement. Better Business Bureau, though, does not include this phase of the process as part of their Dispute Resolution Program, that will include conciliation, mediation, informal dispute settlement and arbitration.

When a consumer is filing a complaint, (s)he is not informed about the options (s)he will have in case a settlement is not reached through negotiation. However, as this study could not go further to check how negotiation is carried out through the platform and which information parties have access during the process, it stays here the mere impression that BBB Negotiation (online complaint system) and their other dispute resolution procedures are not integrated.

Maybe this lack of integration exists because none of the dispute resolution services that BBB offers are held online.

Conciliation is held by a BBB staff who contacts the parties by telephone or mail and tries to help them to communicate effectively in order to understand each other's version of the facts. If a mutual agreement is not reached through conciliation, parties may be directed to mediation, that will be conducted by a professionally trained mediator that 'clarifies and reframes problems and helps the two sides talk with each other and discuss solutions. Mediators do not decide who is right or wrong. Instead, they help people reach a solution on their own one that works best for them.' (Better Business Bureau, n.d.)

Mediation is confidential and voluntary, and the parties who want to resolve their issue through mediation will be asked to sign an agreement to mediate. Parties can seek legal advices or representation, which will not be provided by the mediator. Parties when brought together will meet at a location that will be chosen by BBB.

In the three previously mentioned processes (negotiation, conciliation, and mediation), any outcome or decision necessarily comes from the parties. But if they could not resolve the issue at those stages, they still can submit their issue to Informal Dispute Settlement or Arbitration.

Informal Dispute Settlement is:

A process in which two parties present their views of a dispute to an impartial third party, called a hearing officer, who will make a non-binding decision on how to resolve the dispute. While the hearing officer's decision is not binding on any party, BBB Accredited Businesses have agreed to act in good faith in determining whether, and to what extent, they will comply with the decision. (Better Business Bureau, n.d.)

The final stage of dispute resolution offered by Better Business Bureau is arbitration, and an interesting characteristic of this phase is that BBB conducts three different types of arbitration: Conditionally Binding, Binding, Binding for Pre-Dispute Arbitration. In a conditionally binding arbitration, the consumer is not completely bound by the decision and (s)he can seek a different result in Court, while the business is bound by the decision. Conversely, a binding arbitration decision may not be reviewed in Court, regardless who wants it, except from extremely strict situations the law will establish.

European countries and Brazil adopt a different approach regarding the submission of consumer disputes to arbitration when it is compared to The U.S. understanding. Cortés (2013) pointed out that ‘while in the US arbitration is commonly employed for these type of disputes (...), other national laws including many EU Member States, Latin-American jurisdictions and Japan, invalidate these clauses in consumer contracts’. Cortés also clarifies that in the EU this prohibition comes to attend to the principle of liberty, where a consumer cannot be compelled to an out-of-court procedure before a dispute emerges.

For this reason, ReclameAqui and EU ODR platform lack of an arbitration module, which will not negatively impact the assessment and comparison of the platforms.

#### **4.1.2.1.4. BBB Rating System**

The whole point of all the services that Better Business Bureau provides is to empower consumers with information that will base their decision in which company they should trust or not. From reading reviews and closed online complaints that involve a company, the consumer can gather important information.

As well as ReclameAqui, Better Business Bureau calculate ratings for each company, but BBB calculation does not follow only objective criteria as ReclameAqui does. The elements that are taken into consideration to score a company are:

- Number of complaints filed with BBB against the business.
- The size of the business.
- If complaints have been filed, whether in BBB's opinion the business appropriately responded to them.
- If complaints have been filed, whether in BBB's opinion the business resolved the complaints in a timely manner to the customer's satisfaction.
- If complaints have been filed, whether in BBB's opinion the business made a good faith effort to resolve complaints, even if the customer was not satisfied with the resolution.
- If complaints have been filed, whether in BBB's opinion the business failed to resolve the underlying cause(s) of a pattern of complaints.
- The age of resolved complaints. Older resolved complaints have less of an impact on the rating than newer complaints.
- Business' complaint history with BBB.
- Type of business.
- Time in business.
- Transparent Business Practice.
- Failure to honour commitments to BBB.
- Licensing and government actions known to BBB.
- Advertising issues known to BBB.

Those factors are assessed according to the chart below that is available on BBB website (Figure 15). Even though there is a certain objectivity in the way the businesses will be assessed, it is at the Better Business Bureau officer discretion to decide where the company stands at in each category.

Element		Range of points that can be earned or deducted (maximum to minimum)
1.	Complaint Volume (Weighted by Complaint Age)	15 to 0
2.	Unanswered Complaints	40 to 0
3.	Unresolved Complaints	30 to 0
4.	Complaint Resolution Delayed	5 or 0
5.	Failure to Address Complaint Pattern	0 to -31
6.	Type of Business	0 to -41
7.	Time in Business	10 to 0
8.	Transparent Business Practices	0 or -5
9.	Failure to Honor Mediation/Arbitration	0 to -41
10.	Competency Licensing	0 or -41
11.	Government Action (per action)	0 to -34
12.	Advertising Review (per incident)	0 to -41
13.	BBB Trademark Infringement	0 or -41

Figure 15. Overview of Ratings. Better Business Bureau Website. April, 2020, retrieved from: <https://www.bbb.org/overview-of-bbb-ratings>

Better Business Bureau opted to classify business' performance through letter rating from A+ (higher) to F (lower) that will be defined according to the score each company got out of 100 (Figure 16).

From	To	Letter Rating
97	100	A+
94	96.99	A
90	93.99	A-
87	89.99	B+
84	86.99	B
80	83.99	B-
77	79.99	C+
74	76.99	C
70	73.99	C-
67	69.99	D+
64	66.69	D
60	63.99	D-
0	59.99	F

Figure 16. Overview of Ratings. Better Business Bureau Website. April, 2020, retrieved from: <https://www.bbb.org/overview-of-bbb-ratings>

In Frequent Answers and Questions (FAQ) area of the BBB website, the organisation states that businesses are constantly monitored in the light of their standards to keep up to date each company score.

#### **4.1.2.2. Legality of Better Business Bureau Activity and BBB Liability on False Reviews/Defamation**

As Better Business Bureau has a more significant representation in The United States, this chapter will focus on the matters of legality and liability related to this jurisdiction.

The U.S. is at some extent considered the nest of Online Dispute Resolution and Reputation Systems, so it is a valid assumption that BBB activities do not face any impediments regarding its legality. However, the remaining question is whether online dispute resolution or reputation systems administrators such as Better Business Bureau would be liable for defamation in case of negative comments written by its users in the U.S.

In this regard, Rule & Singh (2014, p. 181) noted that ‘generally, anyone who repeats someone else’s statements is just as responsible for their defamatory content as the original speaker – if they knew, or had reason to know, of the defamation’. However, Section 230 of the Communication Decency Act has established that ‘no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider’ (47 U.S.C. § 230), which includes online platforms that act as intermediary between consumers and traders.

Rule & Singh (2014, p. 181) highlighted, though, ‘this immunity is lost if the administrator materially alters the third-party content’. Although ‘The US courts have not clearly defined the point at which content alteration goes from acceptable editing to material alteration.’

A case that involved the owner of an energy services business and Better Business Bureau may illustrate how the American courts were deciding this matter in 2012. As it was divulged on Ottawa Citizens online news website (Egan, 2018), Mr. Walsh sued BBB on the grounds that BBB rating system would be defamatory and did not correspond to the reality.

According to Mr. Walsh’s testimony to the news portal, his company was accredited to BBB in the period of 1996 to 2007, and one of the shops used to be rated as ‘neutral’ and the other one as ‘unsatisfactory’, until Better Business Bureau has adopted letter rating, and changed its rating system, which started to consider the grade ‘neutral’ as B and ‘unsatisfactory’ as D minus. Apparently, the reason for this negative review was the fact that the business had not answered one consumer that

filed a complaint against Mr. Walsh's company in 2007. Mr. Walsh alleged the ratings had negatively impacted his business, and he could testify a significant drop in the selling of his services.

In the first instance, the case was dismissed and consequently no defamation was found, and the BBB was awarded \$348,000 in costs. However, Mr. Walsh appealed from this decision, and the Divisional Court ruled that D minus was defamatory, but the case went to Ontario Court of Appeal to decide about damages, that, in the end, were not awarded, once the Court of Appeal understood that 'BBB is protected by the fair comment defence, which essentially allows it to publish negative things about companies as long as the comments are based on facts'. (Egan, 2018)

In 2017, the American Congress enacted the Consumer Review Fairness Act that aims at protecting people's right to share their honest opinions about business' products, services, or even about their customer services in any forum, including online reviews platforms. As the Federal Trade Commission clarifies, this legislation is a response to the attempt of businesses minimise their bad reviews from including in their contracts that those customers who write a negative review would be sued.

The new legislation classified it as illegal, and businesses that insist on this practice may suffer financial penalties, as well as review of their contracts, terms and conditions to exclude illegal clauses that threaten consumers' right to share their honest opinion.

The American approach to the liability issue is similar to the understanding that Brazilian Courts have on this topic. However, it may be different other jurisdictions. The fact is that legality and liability of reputational systems and online dispute resolution administrators should be assessed in each country where they will operate, which can be challenging.



### **4.1.3. The European Union Online Dispute Resolution Platform**

#### **4.1.3.1. The context in which the EU ODR Platform was created**

As previously mentioned in this study, the European Union Online Dispute Resolution Platform, or just EU ODR platform, was developed to comply with the Regulation EU N° 524/2013 ‘that aimed to create an ODR platform at Union level. The ODR platform should take the form of an interactive website offering a single point of entry to consumers and traders seeking to resolve disputes out-of-court which have arisen from online transactions.’ (European Parliament and of the Council on Online Dispute Resolution for Consumer Disputes, 2013)

Although the main purpose of the mentioned regulation was to redress cross-border consumer disputes in an efficient way that citizens of the European Union Member States would not be discouraged to purchase goods and services from other Member States, the platform allowed people to resolve domestic disputes too. Domestic disputes are those ones where consumer and business are based in the same jurisdiction.

Each Member State of the European Union is in charge of creating a single point of entry to the EU ODR Platform, and in Ireland, as well as in other European countries, the European Consumer Centre (ECC) is the responsible body for this role. And only in 2016, the platform got ready to go online to attend consumers complaints within the EU territory.

#### 4.1.3.2. How EU ODR Platform Operates

The platform embraces all the spoken languages in Europe (it does not include Irish / Gaeilge, though), and before directing consumers to the area of the platform where they file a complaint against a company, the platform offers a type of conflict diagnosis tool. The consumer will be required to select the type of problem (s)he is facing and the platform will screen the options (s)he has to handle that (Figure 17). It is important to mention that the parties do not have to pay to use the platform, but if parties chose to use the services of an ADR entity, those services might be paid.

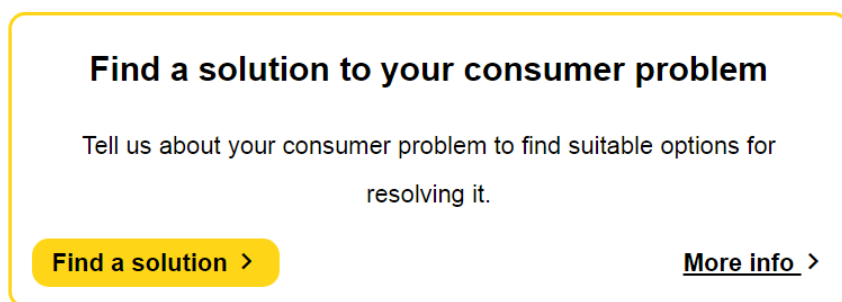
The image shows a screenshot of a web interface for the EU ODR Platform. It features a yellow border around the content area. At the top, the heading 'Find a solution to your consumer problem' is displayed in bold. Below this, a text prompt asks the user to 'Tell us about your consumer problem to find suitable options for resolving it.' At the bottom left, there is a yellow button with the text 'Find a solution >'. At the bottom right, there is a link labeled 'More info >'.

Figure 17. Start your case. European Commission. The EU ODR Platform. April, 2020, retrieved from: <https://ec.europa.eu/consumers/odr/main/index.cfm?event=main.home2.show&lng=EN>

When the consumer clicks in ‘Find a solution’, the platform will first ask him/her to inform where (s)he lives. Next, where the trader is based in and whether the transaction was online or offline.

Although the dispute resolution process does not include offline transactions, it is valuable that the conflict diagnosis tool considers this type of conflict and it is able to give an alternative other than the use of the platform.

The platform requires the consumer to inform if (s)he had tried to directly resolve the issue with the trader, but it does not prevent consumers who did not try to resolve it before to use the platform.

The figures below (Figure 18) (Figure 19) show the solutions a consumer based in Ireland would have to resolve an issue with a trader based in Spain, who has sold a product that costs less than EUR 5,000 in a physical store. This issue is not related to a financial product or service or fraud. The means of dispute resolution this consumer can seek are advice and help from European Consumer Centre (ECC) and/or contact a Dispute Resolution Body straight away or make a claim against the trader before European Small Claims Procedure.

### Tell us about your consumer problem

The form is titled "Tell us about your consumer problem" and contains the following fields and options:

- I live in ... \***: A dropdown menu with "Ireland" selected.
- The trader is based in... \***: A dropdown menu with "Spain" selected.
- I purchased it... \***: Two radio buttons. "Online" is unselected, and "Not online (shop, door-to-door, mail order)" is selected.
- I have already tried... \*  
(Tick all that apply)**: A list box with the following options: "Contacting the trader", "Using a dispute resolution body", "Court procedure", and "Other / Don't know". "Contacting the trader" is selected.
- My problem concerns... \*  
(Tick all that apply)**: A list box with the following options: "Financial services (mortgage, insurance, banking, etc.)", "A good or service that cost more than 5 000 EUR", "An internet fraud/phishing/scam", and "Other / Don't know". "Other / Don't know" is selected.

At the bottom left is a "Cancel" button, and at the bottom right is a "See the results >" button.

Figure 18. Start your case. European Commission. The EU ODR Platform. April, 2020, retrieved from: <https://ec.europa.eu/consumers/odr/main/index.cfm?event=main.home2.show&lng=EN>

## Thank you!

Here are some of the tools that may be able to help you:

The screenshot displays three yellow-bordered boxes on a white background. Each box contains a title with a dropdown arrow, a descriptive paragraph, and a link. The first box is for 'European Consumer Centres (ECC)', the second for 'Dispute resolution body', and the third for 'European Small Claims Procedure'.

European Consumer Centres (ECC) ▾	Dispute resolution body ▾	European Small Claims Procedure ▾
European Consumer Centres provide assistance with cross-border consumer issues. They can advise you on your rights and contact the trader to resolve the dispute free of charge. There is an ECC in every EU country, plus Iceland and Norway. <a href="#">Find your ECC</a>	A dispute resolution body is a neutral third party that can help you solve a dispute with a trader. Going to a dispute resolution body directly can save you time. Some traders might even be required to use them. To find a dispute resolution body <a href="#">go here</a>	Make a claim against a trader based in another EU country (except Denmark) for a maximum value of EUR 5 000. <a href="#">Go here</a>

Figure 19. Start your case. European Commission. The EU ODR Platform. April, 2020, retrieved from: <https://ec.europa.eu/consumers/odr/main/index.cfm?event=main.home2.show&lng=EN>

In a similar case, where the only difference is that the purchase was made online, the solutions the platform present include the use of the ODR Platform (Figure 20), where the consumer will be able to choose from two types of alternative dispute resolution: direct negotiation with the trader or another out-of-court process, which in practice means mediation.

If the consumer uses the platform to directly contact the trader, the parties will have 90 days to reach an agreement, otherwise the case will be automatically closed by the software administrator. However, if the consumer decides to submit the case to a third neutral party, the parties will have 30 days to agree on a dispute resolution body to use.

## Thank you!

Here are some of the tools that may be able to help you:

### The ODR platform ▼

The ODR platform is a free web tool for problems related to online shopping. You can use it to contact the trader to solve the problem directly or to agree on an out-of-court dispute resolution body to solve it for you. It has time limits and is available in all EU languages.

[Find out more](#)  
[Start ODR process](#)

### European Consumer Centres (ECC) ▼

European Consumer Centres provide assistance with cross-border consumer issues. They can advise you on your rights and contact the trader to resolve the dispute free of charge. There is an ECC in every EU country, plus Iceland and Norway.

[Find your ECC](#)

### Dispute resolution body ▼

A dispute resolution body is a neutral third party that can help you solve a dispute with a trader. Going to a dispute resolution body directly can save you time. Some traders might even be required to use them. To find a dispute resolution body [go here](#)

See other dispute resolution tools [here](#). Our suggestions do not constitute legal advice nor make any guarantees that you will be able to resolve your dispute.

[Restart](#)

Figure 20. Find a solution. European Commission. The EU ODR Platform. April, 2020, retrieved from: <https://ec.europa.eu/consumers/odr/main/index.cfm?event=main.home2.show&lng=EN>

The next step is filing a complaint form, where the consumer will provide personal details and information on the trader, as well as a description of the problem. The parties will be able to exchange messages through the platform, attach documents that may be useful to the process, and schedule an online meeting within 90 days, but if they fail to settle during this time, the case will be closed.

If the trader decides for some reason not to directly negotiate with a consumer, the trader may send a list of ADR entities to the consumer that can help them to find a mutual accepted agreement. The parties will have 30 days to agree on the ADR entity they will use, otherwise the case will be closed.

If the consumer and trader fail to resolve their dispute through the EU ODR platform, may the consumer use the EU ODR Platform solution diagnosis tool to find another way to redress the issue. Other options will be given, such as contacting local European Consumer Centre to get advices and ask them to contact the trader on their behalf, or even to bring the matter to litigation but using the European Small Claims Procedures.

This sense of continuity of the process accomplishes to the European Union intent of protecting the consumer by offering several different dispute resolution tools that may attend to his needs in different levels and stages of the conflict.

In the first years, the EU ODR Platform did not allow the parties to exchange messages, and documents and negotiate the issue. Instead, it was only offered to the parties the possibility of negotiating the use of an ADR entity to handle the case, and it would be up to the ADR entity to use the EU ODR Platform or another form of communication.

It seems that negotiation functions were incorporated to the platform to improve the poor results obtained in 2017 and 2018. The platform outcomes can be visualised on the Reports on the Functioning of the European ODR Platform provided by the European Commission, and they will be discussed in the following chapters.

#### **4.1.3.3. EU ODR Platform Outcomes**

As De La Rosa F.E. (2017, p.30) would say, the European Online Dispute Resolution Platform ‘is like a baby taking its first steps’. The platform was released to the public in February 2016, and during these four years since its launching, needs of improvement were noted by the European Commission and by the numerous commentators on this theme. Some of these improvements were implemented and some of them remain to be seen.

The first report on the functioning of the platform provided by the European Commission (European Commission, 2017) collected data within 12 months (from 15 of February of 2016 to 15 of February of 2017), and it showed that within this period the platform registered 1.9 million visitors, which means

that on average the website received over 160,000 unique visitors per month. Regarding the complaints, on average more than 2,000 complaints were submitted per month, and at the end of the year the total of 24,000 complaints were registered. So far, these numbers do not indicate success or failure of the platform, but the following figures may suggest the outcomes did not come close to what was expected from it.

In the same year, Germany, the United Kingdom and Spain were ranked as the countries where most of complaints came from, while Ireland figured the eighth position (European Commission, 2017). Clothing, airline tickets and information and communication technology goods were the sectors with more registered complaints.

The same report showed that from those 24,000 complaints, 85% were automatically closed because the parties could not agree on an ADR body to handle the complaint within 30 days, 9% were closed because the trader refused to participate in the process, and 4% of the cases were closed because at some point one or both parties withdrew from the process.

Finally, only 2% of complaints moved forward and were designated to a specific ADR body. However, it is estimated that half of these cases could not be handled by the ADR bodies in reason of procedural failures. Furthermore, in some instances, either consumers or traders withdrew from the procedure before it was completed.

In the end, less than 1% of the cases were submitted to mediation, and in 2/3 of those cases the final outcome was reached within the 90-day deadline, which means that only approximately 21 cases out of 24,000 were dealt by an ADR entity and had reached a final outcome (positive or not).

‘Nevertheless, the Commission estimated that around 44% of the submitted complaints were settled bilaterally outside the ODR platform, thus giving some credit to the platform as facilitator for settling consumer disputes.’ (Schmidt-Kessen, et al., 2019)

The second report that assessed the platform performance in the next 12 months verified a considerable increase of the number of visitors that reached the mark of 5 million of people. At the end of this period, 36,000 of complaints were registered, which means an increase of 50% on the number of complaints.

However, the number of cases that reached the ADR procedure stage remained in 2%, while it is believed that 1% of total complaints were resolved by the ADR entities.

After assessing the reports on the functioning of the platform, Cortés (2015), cited by Cortés (2018, p. 109) outlined that the platform should include additional functions to focus on the majority of disputes, such as trustmark and a negotiation tool. He added that other forms of incentive should be provided to encourage parties to enter into online dispute resolution, engage in the process and to promote voluntary enforcement of ODR outcomes.

In June 2018 the European Commission hosted a two-day event that gathered ADR stakeholders, such as ADR bodies, businesses representants, Consumer Protection bodies and academia. This meeting aimed to reunite professional opinions on the best practices regarding ADR and ODR, which would culminate in the changes that have been implemented.

A whole new report has not been provided by the European Commission so far, however, in September 2019 the Commission had released a new report containing some data regarding the performance of the platform until June 2019. It has not showed any expressive improvement, as the figure below demonstrates (Figure 21).



**ODR platform – number of complaints submitted per month**

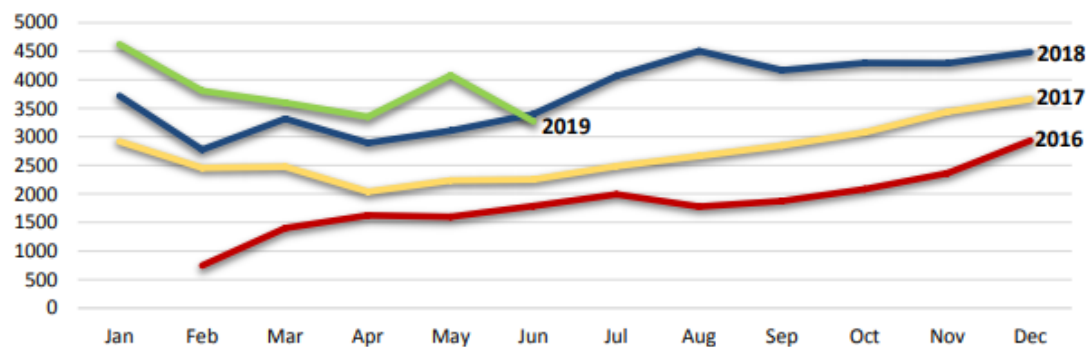


Figure 21. ODR platform – number of complaints submitted per month. European Commission (2019, p. 21). Report on the application of Directive 2013/11/EU of and Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes.

Therefore, considering the recent implementation of a negotiation tool that allows parties to exchange messages and the possibility of scheduling an online meeting, there is an expectation that those types of cases that usually are closed before selection of a ADR entity (85% in 2017 and 81% in 2018) or in which traders refused to participate (9% in 2017 and 13% in 2018) will be resolved at this stage.

Another factor that must be considered is the ongoing Covid-19 pandemic, that put billions of people in isolation at home, and it has the potential to increase online sales. It has to be considered that even though lots of people had lost their jobs, those ones who are working from home or on social welfare payments schemes might use the Internet more often to buy their essential and non-essential goods. With the potential increase of online sales, disputes arising from it tend to increase in the same pace, and considering people's outdoor activities are currently limited, the Internet may be the venue to resolve consumer disputes.

Statista Research Department published a report in April 2020 (Statista Research Department, 2020) that found that supermarket and online sales in France increased after the coronavirus outbreak. It can happen in many other European jurisdictions, which only will be confirmed in the next months.

## **5. Data Analysis / Findings: Assessment and Comparison of the Studied Platforms**

### **5.1. Design and Structure**

The first aspect to be assessed in this topic is about users' registration on the platforms. None of the platforms admit anonymous or unregistered reviews or complaints, in order to avoid businesses to become victims of false allegations that could undermine the trustworthiness of the entire process and the platform.

Every user is required to provide a valid e-mail address that is verified by the platform administrator. Complainants are required to provide their personal details and documents that prove the occurrence of the transaction, but obviously it cannot be seen by other consumers, in compliance with data protection legislation.

ReclameAqui requires consumers to inform his/her CPF number (which is a registration number every citizen has before the Revenue in Brazil) to proceed with the registration, and the platform has a database that does not allow the insertion of inexistent numbers, which certainly difficult the action of bad intentioned users of the platform. Thus, if a consumer can be identified by his or her CPF number, it seems unlikely this consumer will write a fake review or complaint.

In terms of structure, it seems that ReclameAqui is the most limited of the three platforms once the platform only encompasses direct negotiation between trader and consumer. The platform aims to gather consumers' bad experiences through complaints that will be addressed to the business. The platform does not embrace mere reviews.

ReclameAqui does not comport with exchange of private messages between consumers and traders in general. The company may contact the consumer by phone or another mean, and if they reach a

mutual acceptable agreement out of the platform, the online complaint can be update with the addition of this information. If the complaint is closed and the consumer assessed the business' performance, this assessment will compose the company's score. If the company prefers, the negotiation can be handled through exchange of public messages on the platform that will be available for consulting by other users.

There is a software that is 100% integrated to ReclameAqui database, and it is commercialised by one of the other companies that are part of the same Corporate Group that ReclameAqui is part of, and it allows consumers and traders to directly negotiate in private. This is a paid service which is not obligatory to any company.

Better Business Bureau, in its turn, differentiates reviews from complaints, and does not include the ratings that reviewers provide on the businesses (out of five stars) in the accountancy of their letter ratings. If the only intention the consumer has is to share an experience, (s)he should review the company, while if he wants to resolve the dispute, (s)he should file a complaint, that will not be available for the public until the case is closed with or without a settlement. None of these services are paid, but the user is not allowed to file a review and a complaint about the same case to the same company.

Until 2018, the European Union Online Dispute Platform did not allow businesses and traders to exchange messages and negotiate their issue through the system. However, after ODR commentators criticism and two reports that found that over 80% of the cases were closed without any redress, this functionality was included in two different levels: asynchronous negotiation (exchange of messages in different times, such as an e-mail) and the possibility of scheduling an online meeting, which constitutes a form of synchronous negotiation.

Those consumers and traders who are based in the same country or in different countries within the European Union can use the platform (domestic and cross-border disputes).

Consumers can file the complaint in their language, which can be a facilitator. However, if the parties speak different languages and choose to submit their issue to mediation, it may be difficult to find a mediator who speaks both languages. If they find someone, though, it may generate an extra cost with the translation service.

In addition, the European Online Dispute Resolution Platform offers a solution diagnosis tool, where the consumer is required to fill out some fields with the type of dispute, where it was originated and who are the parties and where they are based in, and the platform indicates the direction that consumer should follow to resolve his/her issue, even if the case is not suitable to the ODR platform. Redress of every type of consumers' disputes seems to be a concern of this platform, however, this study will criticize and propose the inclusion of offline domestic disputes in the scope of an ideal online dispute resolution platform.

Only Better Business Bureau and the European Online Dispute Resolution Platform have a multi-tier process, such as UNCITRAL suggests, that moves the case to mediation, conciliation, arbitration or other type of alternative dispute resolution if the parties fail in reaching an agreement through negotiation and if they want to get help from a neutral third party.

Nevertheless, Better Business Bureau dispute resolution services are not uniformly offered to all its users. It may vary according to the country, state or city, once BBB does not centralise its functions and designates to the local offices to handle the cases of their area, which means that while some offices will provide mediation, conciliation, informal dispute settlement and arbitration, some others will provide only one, two or three of these procedures.

Better Business Bureau Dispute Resolution Processes and Guides suggests that the first step after negotiation is conciliation, that will be held by a BBB Staff by phone, where this officer contacts both parties to help them to effectively communicate to reach a mutual acceptable agreement. If it fails, the next step would be mediation, where the mediator is a specialised professional that will also try to help the parties to effectively communicate by using reframing and clarification techniques.

If the parties agree to go to mediation by signing an agreement to mediate, the mediation session will be held in person at a place and date to be designated by Better Business Bureau.

Another process that may be offered by some BBB offices is called informal dispute settlement, that is characterised on the naming of a neutral third party called a hearing officer, that will provide a non-binding decision on the parties. Notwithstanding the non-binding nature of the decision, accredited businesses must comply with the decision, otherwise it could culminate in the withdrawal of the accreditation seal.

If after all those steps, the dispute remains unresolved, may the consumer seek the competent court to decide the matter or (s)he can accept to submit the case to arbitration by signing an Arbitration Agreement. Two types of arbitration are offered by Better Business Bureau, and they are conditioning-binding, which is only binding on the trader, and binding arbitration, in which the decision cannot be reviewed by a court, excepted under very limited circumstances.

The three platforms present circumstantial differences related to their design and structure, but it does not necessarily mean that the platform that embraces a more tiered process reaches more consumers and resolve more disputes. This discussion will be undertaken in the following sub-chapters.

## **5.2. Compliance with ADR Directive Principles: independence and impartiality, transparency, fairness, and effectiveness**

It seems obvious that the European Online Dispute Resolution Platform should observe the principles that the Alternative Dispute Resolution Directive has defined, once both the legislation and the platform (that was created in attendance to the Online Dispute Resolution Regulation that is underpinned by the Directive) are part of the efforts of the European Commission in creating an European toolbox to redress consumer disputes (Hörnle, 2012).

Although there are two fronts that should be assessed, and the first one is whether the EU ODR Platform attend to those principles, and the second one is if the dispute resolution bodies linked to the platform comply with them as well.

The platform administrator does not interfere in the negotiation between trader and consumer, and from the date the consumer contacted the trader, the parties have 90 days to reach an agreement before the case is closed by the system. The same treatment is given to both parties and plenty of time is given to them to engage in negotiation, which seems to be fair.

If the trader wants to submit the case to another type of dispute resolution, it may be proposed to the consumer and the parties will have thirty days to agree on an entity body, and when they agree on it, then they will have more 90 days to reach a final outcome.

The ADR entities that are listed on the platform 'have all been approved for quality standards relating to fairness, efficiency and accessibility' (European Commission, n.d.), which fulfil the requirements of Articles 8 and 9 of the Directive (fairness and efficiency).

It is implied that those approved entities act with independence and impartiality, once both consumer and trader will have to agree on the entity will handle the case, and nor parties or EU ODR platform administrator will interfere in the process.

However, the platform website has no information on how often those entities are monitored or any report on their performance. Details of the standards that base the accreditation of the ADR entities are not published either, which could compromise the aspect of transparency.

A factor that lacks in all the studied platforms is the existence of an Ombudsman office to regularly monitor their interaction with the users and ADR entities, and the outcomes that are reached through their processes, and also to be available for direct contact by users that may want to complaint about an irregularity on the platform or the process.

The United States government created a platform where consumers of financial products and services can complaint against its providers. The Consumer Financial Protection Bureau registered 97% of businesses responsiveness to consumers complaints. The actions consumers may seek include (i) resolve the case with monetary relief, (ii) resolve the case without monetary relief or (iii) administrative response.

The fact is that linked to this body, there is an Ombudsman office that claims to be ‘an independent, impartial, and confidential resource to help you informally resolve process issues arising from CFPB activities’ (CFPB Ombudsman). It certainly demonstrates a high level of concern about due process and transparency, and it increases the trustworthiness of the platform and process, and it also answers the question: If an online dispute resolution platform administrator monitors ADR entities, who will monitor the platform?

The reports on the functioning of the EU ODR Platform in 2017 (related to activity in 2016) and 2018 (related to activity in 2017) offered detailed information on the platform performance and they can



be accessed by everyone. However, up to now no detailed reports from 2018 and 2019 were divulged by the European Commission.

Nonetheless, regarding how the process is and all the solutions the consumer can seek are provided in a clear manner by the platform.

Effectivity and accessibility are present, once the platform is designed to be user-friendly, and consumers and traders can use the platform for free. The only costs that may appear during the process are related to conciliation, mediation or arbitration (if the latter is allowed in the jurisdiction where the parties are based in), and these costs tend to be lower than those ones practiced in Courts.

ReclameAqui scope is stricter than the other two platforms, as well as the level of interference the website does in the consumer and business interaction due to the fact that the only redress that is provided by the platform is the opportunity that parties have to direct negotiate.

If on one hand, ReclameAqui envisages to help consumers to redress their disputes, on the other hand ReclameAqui does not admit malicious and untruthful complaints to damage a business' reputation, and requires detailed registration on the platform before allowing consumers to write a complaint.

Although ReclameAqui does not stipulate a number of days in which the trader should respond a complaint, if the business decides not to take any action, it will count on its disfavour, once other consumers will become aware of the lack of responsiveness of that specific trader.

Regarding the RA 1000 process, ReclameAqui has set clear and objective standards that businesses must comply with to obtain the seal, and the same process establishes in which circumstances business will lose the right to keep it. Moreover, ReclameAqui does not ask any financial support from the companies that carry the RA 1000 seal.

ReclameAqui offers detailed information on how consumers and businesses can use the platform, how companies' ratings are calculated and what is the process for granting and taking their trustmark. The website provides the mathematical formula that is used to calculate businesses' ratings, including a detailed guideline on how to use the formula.

The manner ReclameAqui empowers its users with clear and detailed information leads to the conclusion that transparency is a concern. The fact the platform does not interfere in the parties' issues and does not stand closer to one or another party gives the sense of compliance with the principles of independence and impartiality. Furthermore, ReclameAqui trustmark process has objective rules and does not seem to favour or disfavour companies under doubtful reasons. It seems that consumers and businesses are equally treated and the processes that they voluntarily enter into respect fairness and due process principle.

Expertise is not a decisive factor to the assessment of ReclameAqui, once its main feature is to create an online room for parties to interact, and create ratings, black and white lists based on the data provided by the parties. The platform does not offer any dispute resolution service that would require a neutral third party with specific and certifiable knowledge.

Effectiveness can be expressed by the penetration ReclameAqui has within Brazil. Despite the lack of a research on how many Brazilians know of the platform or acknowledge it to be the most important mechanism of consumers' disputes redress in Brazil, the fact that the website registers 42 million visit/month and 30,000 complaints a day indicates the platform still attracts many consumers.

ReclameAqui should provide annual reports on the functioning of its platform, to indicate dispute resolution rates, most recurrent problems, regions of the country with more complaints, etc. Statistics may be helpful in the development of online dispute resolution mechanisms and to inform businesses

and government which improvements are necessary to ensure efficient protection of consumers' rights.

Ultimately, Better Business Bureau features will be assessed in light with the principles of the ADR Directive.

The fact that Better Business Bureau charges a fee to maintain business's accreditation seal may affect the aspects of fairness, impartiality, independence, and transparency altogether. As Heikkinen (2019) outlined, the fact that BBB charges considerably high fees from accredited business' is a concern that was corroborated by CNNMoney (2015) report that found that several companies breached BBB rules and they were still accredited. With that, Better Business Bureau own reputation is at stake regardless how long they have been offering dispute resolution services.

Nonetheless, in 2018 Better Business Bureau registered over 860,000 complaints from Canada and The United States, and resolved 78% of the cases, which is a high dispute resolution rate, and it could imply BBB platform complies with the effectiveness principle of the Directive.

It has to be highlighted, though, that Better Business Bureau was launched in 1912, and they deal with online and offline dispute resolution processes, and it is not indicated in their reports how many cases were resolved online and which mechanism was more successful (negotiation, conciliation, mediation, informal decision settlement or arbitration).

Apart from reviews and direct negotiation, all the other dispute resolution services are not performed on the platform. Conciliations are held by phone, mediation sessions, and informal decision settlement and arbitration are held in person.

Obviously traditional ADR should not – and will not – be entirely replaced by online dispute resolution, once they are needed to attend those ones who are not familiarised with online

environments, and that ODR may not be suitable to every type of dispute. However, it seems that Better Business Bureau is underusing the capacities of the Information and Communication Technology (ICT) by not implementing the other dispute resolution services into their platform.

### **5.3. Essential Elements: Funding, Incentives and Enforcement of Outcomes**

Cortés (2011) listed three main constraints to Online Dispute Resolution, and the first one is the financial constraint. He outlined that if a platform or ADR service is paid by one of the parties, it would impact on the balance of power between them, as well as the neutral third party could be biased, which would compromise the impartiality and independence that are required from them.

As previously mentioned, BBB's impartiality and independence have been publicly questioned, because accredited businesses must pay a fee to keep their accreditation seal, which gives the impression that BBB provides a service for those companies, and it consequently affects the credibility of their accreditation system.

ReclameAqui provides a free service for both consumers and traders, and ReclameAqui claims its platform is a project of the company Óbvio Brasil, that uses it as a laboratory where they observe consumers and businesses interaction in order to develop software, trainings and other solutions that will be commercialised and will generate incomes that will be partially used to fund ReclameAqui activities.

The analysis whether this dynamic would undermine ReclameAqui's independence and impartiality once the platform could hypothetically benefit those companies which pay for Óbvio Brasil's products and services would require a whole new research, so this study does not aim to answer this question, but it is important to raise this point for the sake of this study.

The European Online Dispute Resolution Platform is publicly financed, which can give a more perceptive sense of impartiality and independence of the platform. Parties do not have to pay to use the platform, which is appealing. However, as Schmidt-Kessen, et al. (2019) observed, the incentives provided by the EU ODR Platform are minimal, not to say none.

The European Commission had taken for granted that consumers will use the platform because it is free of charges, and that business will accept to use the platform because it is their main concern to foster e-commerce growth by increasing consumers' trust.

In spite of the continuous increase of registered complaints on the EU platform, its outcomes are not expressive which can be related to the level of awareness that consumers have of the platform added to the lack of reasons they have to believe the process will work out for them. As Hanriot (2015-2016) noted: 'non-binding outcomes can only rely on private enforcement mechanisms to be enforced, which can prevent consumers from seeking redress if these systems are not built on efficient incentives.'

Both Better Business Bureau and ReclameAqui use reviews and rating systems as private enforcement mechanisms. And it seems to attract a high number of visitors that want to check business' reputation before shopping. Both platforms use trustmark, and in Hanriot (2015-2016) words, trustmarks are incentives in form of 'quality labels that take the form of seals or logos granted by institutions that establish standards of conduct.' (Hanriot, 2015-2016)

Regarding private enforcement mechanisms, ReclameAqui is the platform which has the broader range of them, offering in addition to the previously mentioned methods, the publishing of lists of companies with worst performance and other lists to acknowledge those companies who engaged in dispute resolution (black and white lists).

And as an extra effort to keep businesses engaged in ODR, ReclameAqui promotes an annual event that is sponsored by a renowned Brazilian magazine to award those companies that satisfactorily performed to attend to consumer's needs. This event seems to be glamorous and the award is a public recognition of business' commitment to online dispute resolution.

As Better Business Bureau offers conditionally binding and traditional binding arbitrations, arbitrated parties may seek the Court to enforce the outcomes, if necessary. However, as Cortés (2011) noted, ODR processes have been developed to redress consumers disputes outside the courts, once court procedures tend to be expensive, slow, and less effective, so the guarantee that consumers can seek court procedures is not a real incentive.

#### **5.4. Awareness and Effectiveness**

The table below objectively compares awareness versus effectiveness (Table 1) among the three platforms. The numbers indicate that Better Business Bureau and ReclameAqui have attracted more consumers than the European Online Dispute Resolution Platform in the same period. It potentially demonstrates that BBB and ReclameAqui have been more successful at making consumers aware of their online dispute resolution services to redress their disputes.

Platforms	Platform Penetration Figures (2018)	Dispute Resolution Rates
Better Business Bureau	170,350,626 inquiries 860,847 complaints (reviews are not computed in the report and they do not distinguish how many online and offline complaints they had)	78% resolved cases 20% unresolved cases 2% complaints unable to pursue
EU ODR Platform	36,000 complaints 360,000 visits / month	81% closed automatically 13% business refused to participate 4% complaints unable to pursue 2% handled by ADR body 1% reached a final outcome
ReclameAqui	42 million visits / month 120,000 registered businesses on the platform 30,000 complaints/day 15 million of complainants	It is only possible to check each company dispute resolution rate. There is no dispute resolution rate of the platform.

Table 1. ODR Platforms Outcomes – Case studies. Developed by the writer. May, 2020.

It has to be considered, though, that Better Business Bureau has been in activity for over 100 years, while ReclameAqui was set up 20 years ago. The EU ODR Platform, in its turn, was launched 4 years ago. No reputation is built from one day to another, and it will not be different with online dispute resolution platforms. Consumers and businesses will have to find good reasons to trust on the method, on the platform and its services, and there are forms of doing it that will be discussed in the following chapter.

Moreover, these three platforms might overlap some of each other's features, but they were created in different contexts, for different purposes, and they are addressed to users located in different jurisdictions, who live different economic, political and legal structures and realities.

## **6. Discussion: Development of a Hybrid Model of Reputation System and Online Dispute Resolution Platform**

The previous chapters aimed to build essential concepts related to alternative dispute resolution and online dispute resolution. They also proposed the assessment of the features that three of these platforms offer to its users, their outcomes, and how it could be used to build a more effective platform in consumer disputes redress in order to increase consumers' access to justice.

This study had as hypothesis that online dispute resolution platforms when complemented with reputation systems, such as ratings and reviews schemes, could be more effective due to the likelihood that consumers will feel more comfortable to give it a chance, if the worst scenario possible (business non-compliance with the outcome) could be managed somehow (through the exposition of the business failure in complying with the outcome and committing to its consumer needs). While traders would more seriously engage in resolving consumers' issues if they knew they would be awarded for this positive attitude or they would be penalised if they ignored it.

The critical analysis this study performed has focused on three reputation systems/online dispute resolution platforms that deal with consumers' disputes in different jurisdictions, and even though they have many functional similarities, their outcomes related to number of visitors, number of complaints and dispute resolution rates are distinctive.

Considering that the EU ODR Platform had recently implemented a negotiation tool and there is no report on the functioning of the platform after this implementation, the collected data of its outcomes goes back to 2018. The main distinctions among the other platforms and the EU ODR platform were the lack of a negotiation module and reputational tools in the European website.



ReclameAqui was and still is a mono-tiered platform, where only negotiation is available to its users, but a broad range of private enforcement mechanisms are available to incentivise business to engage in negotiation, resolve the problem as soon as possible and to comply with the outcomes, otherwise their failure in doing that will be exposed to other consumers.

Despite this mono-tiered characteristic, the number of visitors and number of complaints that are filed every month on ReclameAqui website are compelling. It is likely that if another tier was included to the process to provide mediation and/or conciliation as a next stage, those unresolved cases could be settled in this next phase.

Although Better Business Bureau offers a multi-tiered dispute resolution process that is not entirely online, it presents a considerable higher number of visitors and complaints than the EU ODR Platform. Thus, this study will certainly propose a multi-tiered online dispute resolution process, that initiates with a conflict diagnosis stage, then it goes to direct negotiation, following to mediation or conciliation, and it could finish with a recommendation.

## **6.1. Multi-Tiered Process**

As Cortés (2011) noted as well as many other commentators, Information and Communication Technology is still underused by the current available online dispute resolution platforms, and that can be confirmed by the fact that until 2018, only Better Business Bureau provided a multi-tiered process, that it is not entirely online.

The EU ODR Platform recently included a module for negotiation, but if a case is designated to an ADR body, it is at their discretion to decide if the next stage will be conducted through the platform

or by another means. Nonetheless, the platform also has recently received a type of diagnosis tool, where the consumer select the options that best represent his/her situation and the platform will indicate the options the consumer has to redress his/her issue. The implementation of this tool goes to the encounter to what Cortés (2013) had stated about the functionalities an online negotiation tool should have: ‘an effective negotiation tool could tailor the information into different types of complaints, acting as a diagnostic tool that discourages unmeritorious complaints’.

This study also proposes the inclusion of a diagnosis tool to be the first step of the hybrid model of reputation system and online dispute resolution, once besides the fact it will provide a more complete assistance to consumers to identify the most suitable way to resolve their issue, it will filter fair from unfair complaints. Furthermore, it will be possible to generate reports where it indicates the most common cause of complaints and other details in this regard, which could be helpful to businesses to identify their recurrent problems and then improve their products and services. It could also be used to fill consumer protection bodies or sectorial agencies in on how businesses are performing in the market, and if any punitive measure is necessary.

The first step of the process should also include a broad range of guidelines addressed to businesses and consumers regarding their rights and obligations, as well as tips and directions on how to effectively negotiate, how to communicate, and what is essential or irrelevant to the dispute resolution process. Voet (2013) noted that one of the pillars of Belmed (Belgian Mediation software) is information, which ‘contains a guide on how to settle a dispute in an amicable way’, and it provides ‘concrete examples’. The Belgian platform has been active since 2011 and it can be considered as one of the European ODR frontrunners, though this platform does not embrace negotiation as an initial phase of the dispute resolution process, but it envisages to empower users to appropriately enter into mediation.

In addition, Thiessen, et al., (2014) noted that what they define as eNegotiation can be as sophisticated as the platform administrator wants it to be, ‘and tutorial cases, demonstrations, and hands-on user training with simulations’ could be valuable tools in educating parties to amicably settle. Simulation modules would be helpful at diminishing the existent power imbalance between consumer and trader, by the fact traders deal with complaints on a daily basis and they tend to be more familiarised with the platform than consumers that rarely use it.

After this informational stage, the hybrid model will establish as the point of entry for the entire online dispute resolution process, an area where the consumer will report his/her issue, providing the necessary information and documents that the trader will have access to confirm the transaction, which will work as a review. The business will have five days to confirm the transaction and then the review goes public, and from the confirmation of the transaction, the business will have fifteen days to respond the consumer review.

Within these twenty days since the consumer review submission, the trader will be able to direct negotiate with the consumer by exchanging private messages (asynchronous communication) and if parties wish, they can schedule an online meeting to talk in real time (synchronous communication). If the main purpose of technology is to enhance communication, it seems appropriate to offer different means to do that so. Hence, this study proposes the creation of a negotiation module that includes synchronous and asynchronous forms of communication, following the negotiation structure that the EU ODR Platform has.

A valuable suggestion made by Cortés & De La Rosa (2013, p. 415) is that if the parties are able to reach a mutual accepted agreement, should the platform be able to automatically generates the agreement that will formalize that settlement regardless whether it is binding or non-binding, in order to empower the parties with information on what they have negotiated and agreed upon.

If the parties fail to reach an agreement in the negotiation stage, then they may be directed to mediation or conciliation (parties should be able to choose the style they prefer). As well as negotiation, mediation and conciliation are voluntary processes, in which a neutral third party will help the parties to effectively communicate and assist them to set out their expectations, and to explore and find creative options that might serve them both. The role of the mediator, though, will be restricted to enhance communication by using techniques such as reframing and paraphrasing, while a conciliator usually intervenes in the matter a little bit more, by making suggestions, but never imposing any outcome to the parties.

To comply with the voluntary nature of the process, parties should have options of ADR professionals or bodies to choose from, but if parties cannot agree on which entity will conduct the process within a certain period of time, the process should not be ended. Otherwise most of cases would be closed as it has happened in the two first years of usage of the EU ODR Platform.

The UNCITRAL Technical Notes on Online Dispute Resolution (2017) followed this dynamic and established that when parties could not resolve the matter through negotiation or mediation, the case would automatically move to the next stage. The Article 42 of the Technical Notes stipulates that: ‘it is desirable that the ODR administrator appoint a neutral, and notify the parties of that appointment, and provide certain details about the identity of the neutral’, which seems adequate for this research.

Firstly, the hybrid platform would address to the parties the role of deciding on the entity or professional that will handle the mediation or conciliation, but if for some reason they cannot agree on it, this role should be transferred to the platform administrator for a computer-based decision.

The last tier may be the most challenging to implement, once there are three different procedures that could be applicable, such as adjudication, arbitration, or recommendation.

However, the complexity of this topic has even caused the early disruption of UNCITRAL Working Group III activities in 2016, that had worked for over six years to create a global framework for online dispute resolution, as well as to design the ideal platform to resolve low-value cross-border consumers disputes, but it had failed due to the lack of consensus among its participants who could not agree on which process should occupy the third tier of the platform. About that, Lederer (2018) had noted:

The Working Group, however, faced difficulties in agreeing on the nature of the final phase. In particular, disagreement arose on the question whether it were [sic] to be binding on the parties, the reason for it being that the legal validity of pre-dispute consumer arbitration agreements is treated differently in the various jurisdictions. (Lederer, 2018)

Therefore, this study cannot comprise a detailed discussion on which of these processes should entail the final stage of the online dispute resolution process, in reason of its complexity and time. But while adjudication and arbitration for consumer disputes raise numerous issues regarding its legality and feasibility, it seems adequate for this moment to keep recommendation as the final stage of the process. As a non-binding decision, it would not be prejudicial to any party, but to encourage businesses to voluntarily comply with a neutral third-party recommendation, incentives should be conceded for those ones who did that (e.g. concession of trustmark seal for whom complies with at least 90% of recommendations).

To sum it up, this project proposes a multi-tiered online dispute resolution process that starts with conflict diagnosis and user's education, then the consumer shares his/her experience through a review, that will follow the steps of direct negotiation, conciliation or mediation and it could end up at neutral third-party recommendation, following the structure of the figure below (Figure 22):

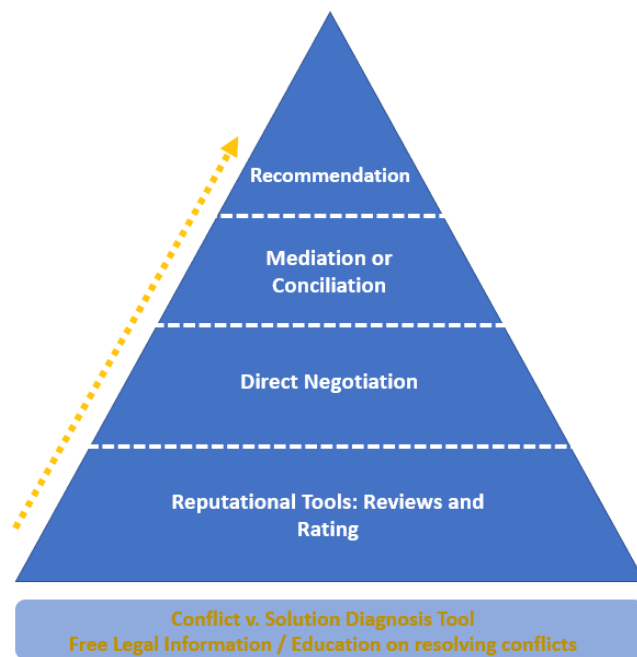


Figure 22. Multi-tiered process – Hybrid Model: ODR and Reputational Tools. Developed by the writer. May, 2020.

## 6.2. Public Funding or Co-operation Public v. Private

Defining who will finance an ODR platform since its development, launching and maintenance is a very important matter, once the origin of the money may raise doubts about the independence of the platform administrator, impartiality of professionals of the ADR entities, and even about confidentiality and data protection. If only one of the parties is paying for the service, or sponsoring the platform (usually businesses), the other one could not feel equal to who is paying (usually the consumer), which would imbalance the power between the parties and it could affect the trust on the entire process.

The perception of neutrality that a third party should carry may be affected by the sense that if one party is paying for the service, the outcome should be favourable for who is paying for it. And, consequently, if one or both parties do not trust the process or the third party, they might not engage in the process as much as they would do if they were not suspicious.

Most of consumer disputes are low-value disputes, though, and imposing on them the obligation to pay for this service, even if a small fee, may be an obstacle to encourage them to participate in ODR. Moreover, the Article 41 of the Directive 2013/11/EU states that: ‘ADR procedures should preferably be free of charge for the consumer. In the event that costs are applied, the ADR procedure should be accessible, attractive, and inexpensive for consumers. To that end, costs should not exceed a nominal fee.’

Therefore, in the scenario where ODR services are free-of-charge, the following questions are raised: If both parties are not paying to use the platform in any of the modules, who is paying for it and how can it be sustained in the long run?

The most secure option seems to be public funding. Many jurisdictions have a governmental body to represent consumers’ interests as a class, and defend their statutory rights by monitoring businesses practices, and penalising those ones who incurs in any irregularity or illegality. Financial penalty is commonly applied for whom does not comply with the law.

According to Competition and Consumer Protection Commission Ireland (CCPC) report (2016), if a business is prosecuted and found guilty for practicing a pyramid selling scheme, for example, this business can be fined in up to 150,000 EUR for this practice, and if there is a continuing breach, the business can be fined up to 10,000 EUR daily.

Furthermore, every time a business practices a price display or product pricing offence, may the business receive a fixed payment notice, which imposes a fine of 300 EUR to be paid within 28 days.

Considering that those entities such as CCPC are designated to protect consumers' rights, and the need of development of a platform to redress consumers' disputes follow the same lemma, it seems sensible to use the collected money from fines to finance the online dispute resolution platform.

A scheme of cooperation between public and private may be suitable too, as long as the private funding participation does not interfere in the transparency and truthfulness of the reputational assessment of the companies that financially collaborates to maintain the platform. Otherwise, 'a bias will also be created if the certifier receives consistent sponsorship by potential clients.' (Balboni, 2008, p. 56)

### **6.3. The Scope of the Hybrid Model: Online and Offline Disputes**

The limitation of scope of the online dispute resolution platform that excludes more complex matters and offline disputes only makes sense if it is expected a decision or a recommendation from the neutral third party, which does not occur in negotiation and mediation, where the parties are responsible for deciding what is best for them.

Only matters of public interest should not be accepted by the platform administrator, such as claims that suggest the commitment of a crime, and for this reason can only be dealt by the competent public department. For example, a claim where the consumer alleges (s)he was a victim of racism. Or if a consumer is trying to obtain a legal precedent, which can only be given by Courts.

Nonetheless, a consumer that bought a defective product in a physical store should be able to seek online redress, as long as (s)he can prove the existence of the transaction with the business (s)he is complaining about. This is the approach of ReclameAqui and Better Business Bureau adopted, which,



according to Cortés and De La Rosa (2013, p. 413), it is not the same approach the UNCITRAL adopted in their attempt to develop a global framework for ODR and design a platform. The Working Group III believed that ‘having a limited scope of application might make the ODR schemes more workable’. Therefore, UNCITRAL suggested that only ‘cross-border low-value, high-volume transactions conducted in whole or in part by the use of electronic means of communication, including mobile phones’ should be handled by ODR.

Better Business Bureau and ReclameAqui do not distinguish online from offline disputes, and they give the same treatment to both types of complaints, which seems to be adequate, considering that the platforms outcomes indicate a high dispute resolution rate and a good performance in overall. For this reason, this model will not limit the scope to exclude offline disputes.

Though, the neutral third-party should be allowed to abstain from writing a recommendation if the case is too complex.

A fact that cannot be ignored is that sometimes people do not buy online because they do not trust they will receive the product, or it will be defective; or because they do not know how to use the Internet.

To overcome eventual lack of e-literacy, public libraries and Consumer Centres should offer support to consumers in how to use the Internet and the online dispute resolution platform in order to promote accessibility. But as the name suggests, ODR is the practice of alternative dispute resolution mechanisms in an online environment, and traditional dispute resolution means such as litigation will always be available for everyone. As Heuvel (no date, p. 23) stated: ‘even if ODR will prove to be successful, it will never completely replace litigation’, neither it is its purpose.

#### **6.4. Enhancing Awareness and Trust**

It may seem obvious that awareness is a decisive factor on the success or failure of a website. Thus, if the platform is underused, and consumers disputes remain without redress, the platform does not achieve its purpose and there is no reason to maintain it active.

ECODIR was a clear example of how the lack of awareness may impact on the failure of an online dispute resolution platform. ECODIR was a project funded by the European Commission and executed by academics in universities of Belgium and Ireland to deal with consumers disputes. The platform included modules of negotiation, mediation, and recommendation. Nonetheless, according to Cruquenaire 2004 (cited in Cortés, 2011, p. 73) ECODIR had no longer been maintained due to two factors: ‘first, the lack of awareness from businesses and consumers; and, secondly, the withdrawal of public funding.’

The above-mentioned platform had a multi-tiered process, professionals with expertise (academia with legal background), independence, impartiality, transparency, and it had public funding, which are elemental for an online dispute resolution platform. However, the lack of awareness from consumers and businesses caused the withdrawal of public funding, and consequently the project could no longer been maintained.

To promote broad consumer awareness of the EU ODR Platform, the European Regulation nº 524/2013 in its Article 14 established that those traders who sell online must include on their website a link to the EU ODR Platform, and they shall state their e-mail addresses that consumers can use to contact the company. As the point of entry in each European Member State, the European Consumer Centres are also required to include a link to the EU ODR Platform on their website.

Besides that, the Article 13 of the Directive n° 2013/11/EU stipulates that traders should ‘inform consumers about the ADR procedures by which those traders are covered and about whether or not they commit to use ADR procedures to resolve disputes with consumers.’

But are those measures enough to promote awareness? Considering that within the first two years since the launching of the EU ODR Platform it gathered around 80,000 complaints, and the European Union territory has over 440 million citizens, it does not seem the platform reached a high level of awareness, which may indicate the failure of the current measures to ensure broad consumer awareness.

The language that is utilised to describe the advents of alternative dispute resolution and online dispute resolution are not familiar to everyone. Heuvel (no date, p. 19) highlighted that even legal professionals took over a decade to become aware of traditional ADR, and they could take over another decade to become aware of ODR. Regarding the general public, Heuvel states that ‘it is safe to say that it is (online dispute resolution) as yet completely unknown to the general public’ and ‘if they heard of mediation, it is usually in the context of divorce proceedings’.

As the example of the figure below (Figure 23), to comply with the ODR regulation, traders in Europe usually inform consumers of the existence of an online platform and provide a link to access it. However, the link stands alone and there is no further explanation about what online dispute resolution is, and in which way it would be helpful. It is likely that most consumers still do not know of the platform, or if they do, they may ignore what this is about and how to utilise that.

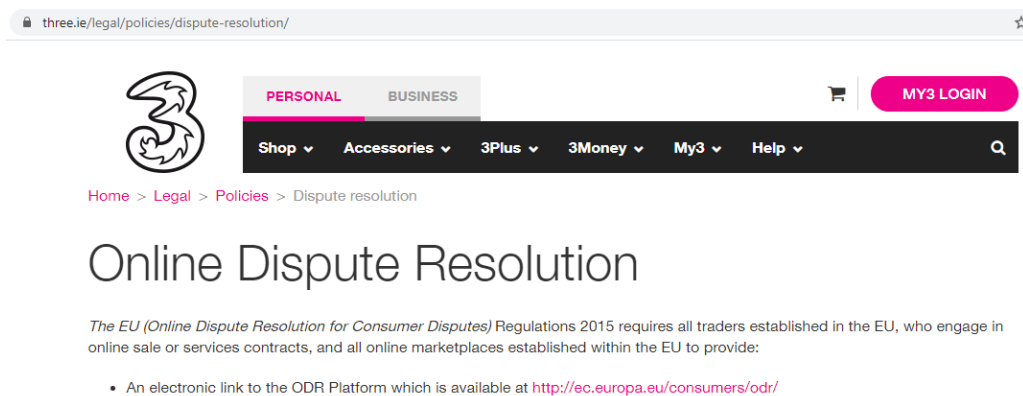


Figure 23. ODR Platform Link on Three Mobile Website. Three Mobile Ireland. May, 2020, retrieved from: <https://www.three.ie/legal/policies/dispute-resolution/>

Online traders should be required to include detailed information about the ODR platform in the e-mail that is sent to the consumer to confirm a transaction, and in every other communication, as well as they should add to the link a brief explanation about the process and its benefits.

Traders who also have physical stores should provide a copy of the Consumers Protection Act or Code in their premises, and a sign where it is indicated that the store complies with the Regulation n° 524/2013 and supports amicable resolution of any issues a consumer may have through an user-friendly and free of charge platform.

Ratings and reviews tools seem to be a good way to enhance awareness of the platform, once consumers that are researching a trader before purchasing a good or service may find the platform to read reviews on a specific company, and then find about the other functionalities the website has. Moreover, reading other consumers stories and how it was handled by the trader may encourage them to use ODR and make them to believe that there is a fast, simple, and inexpensive way to resolve issues that may arise.

The main concern of this research is to investigate if reputation systems (ratings, reviews, referrals, etc.) can enhance and accelerate the development of online dispute resolution to redress consumer disputes in general, and how it can be done. According to Vilalta (2019) reputational feedback systems became essential dispute avoidance tool, which seems to be true and confirmed by this study in some different ways:

- 1) This study indicates that the role of reputation systems embraces other functionalities, such as:  
(i) promote consumer awareness of online dispute resolution procedures, (ii) incentivise parties to participate of the process, (iii) and engage to settle as early as possible, so the consumer would be satisfied and the business would get positive reviews and ratings, (iv) reputational tools are also private self-enforcement mechanism of the online dispute resolution outcomes, in the sense that if a trader does not comply with an agreement, the consumer tends to expose it on the platform, which would negatively affect the business image.
- 2) This study had shown that those platforms in which reputational tools (ReclameAqui and Better Business Bureau) are used by consumers attract more users and have higher number of complaints and percentage of dispute resolution.

In consonance with the multifaceted nature of a reputational tool, Koulu (2018) noted that it ‘does not address the needs of an already escalated dispute, such functionalities encourage desired behaviour in the future. Also, if there is an ODR service incorporated into the site, a user’s non-compliance with the ODR decisions can be listed publicly to encourage future compliance and transparency.’

The examples that Koulu (2018) set and were mentioned above embrace ReclameAqui and Better Business Bureau scope that gathers consumers’ feedbacks and dispute resolution mechanisms. Their outcomes show superior performance of their platform when compared to the EU ODR Platform, and the biggest difference among them, besides the time they have been available for, is the lack of

reviews and ratings tool in the EU Platform. Therefore, it leads to the conclusion that reputational feedback tools are the key element for a successful consumer dispute resolution platform, and a well-designed multi-tiered process when complemented with reviews, ratings and other forms of incentive and private enforcement of the outcomes, may serve to the purpose of redress consumer disputes and increase access to justice.

Yet, reviews and ratings can be used to generate metrics at businesses' performance in handling complaints that can be used as parameters to confer a trustmark to those companies with commendable performance.

This study has not found a conceptual difference between the words trustmark and accreditation. Apparently, accreditation is usually employed to describe the process in which a trusted and neutral institution assesses whether a company follows certain previously established standards, and it is entitled to carry a logo that proofs its compliance with that, whereas trustmark is more commonly employed to describe the seal that is conceded after the accreditation or certification process, which is often called as accreditation seal.

Awareness is an important element, but if the platform does not offer a set of other elements, such as reliable information, structured, fair and transparent processes, independent and impartial bodies and professionals with expertise in dispute resolution, many people being aware of it will not ensure they will trust on the platform and the ODR services.

Trust is considered a vital precondition for sharing information, arousing generosity and empathy and reciprocating trust-building moves in a negotiation process. (Ebner, 2011)

Hence, to promote trust, the hybrid model should have a two-fold accreditation process. One in which businesses would be assessed according to their engagement in resolving consumers issues (as it is conducted by ReclameAqui and Better Business Bureau). And a second one in which alternative dispute resolution entities are assessed according to the principles of expertise, independence, impartiality, fairness, transparency and effectiveness, and other standards that the accreditation provider could define (as it is conducted by the EU ODR Platform).

This model of accreditation system seems to be able to foster consumers trust on alternative dispute resolution methods and professionals, and on the seriousness of the platform to protect their rights.

However, Balboni (2008, p. 42) highlighted that achieving people's awareness is important for a trustmark, but in order to preserve the trustfulness of the seal and process, the accreditation entity must follow its own rules and invest in the accreditation process design. He added that 'it is obvious that a trustmark system which is based more on marketing than on quality can be very dangerous for e-consumers and, in the long run, for the credibility of the trustmark system itself.'

During CNNMoney (2015) investigation it was found that Better Business Bureau did not comply with its own standards and did not revoke the accreditation seal of companies that breached their accreditation rules, and this fact may have had negatively impacted the trustworthiness of their accreditation system, and a proof of that is the existence of numerous journalistic reports raising questions about BBB accreditation process.

Heuvel (no date, p. 21) had raised a valid point when he said that 'there seems to be an ever-growing number of seals of different kinds. In the end this may create the undesired effect that people will not know the value of any seal'. This is a valid concern, however, it does not exist any proof that trustmarks are not efficient tools to enhance trust and awareness, so its potential benefits outweigh the existence of this concern.

The European Union created an e-commerce trustmark that is not linked to the EU ODR Platform, and it is addressed only for companies which sell online. Those businesses who want to be entitled to exhibit the European E-Commerce Trustmark seal must comply with its Code of Conduct, that includes a clause where businesses compromise to inform consumers about the EU ODR Platform and provide a link to the platform. The business application shall be addressed to a National E-commerce Association. In Ireland, for example, this is conducted by the association Retail Excellence that demands its affiliated to pay an annual subscription fee between 250 and 3,885 EUR, depending on its number of employees.

The National E-commerce Associations offer a dispute resolution service to those consumers who have an issue before an accredited business, and they have professionals who can intermediate the dispute and help them to resolve it.

Apparently, some functions of the EU ODR Platform and the European E-commerce Trustmark overlap, which may be confusing for consumers and counterproductive. The creation of the trustmark is valuable, however, it should be incorporated or better integrated to the EU ODR Platform.

Another way to increase trust is to create an Ombudsman body to monitor the platform activities, and to receive users' complaints related to eventual inobservance to the ODR core principles by the platform administrator. Consumer Financial Protection Bureau in the United States and Financial Services and Pension Ombudsman in Ireland have this structure, where they provide online dispute resolution services and monitor financial services providers, but another ombudsman body monitor and handle complaints about the platform and its services.

The proposed hybrid model will count on reputational feedbacks tools and trustmark to promote trust and awareness, and it proposes a change on the strategies to disseminate awareness. The implementation of these strategies will depend on national and international regulation to oblige



businesses to comply with them, or at least the creation of a global legal framework for ODR by a respected organisation such as UNCITRAL.

### **6.5. Private and Public Enforcement Mechanisms: Building incentives in ODR**

Regardless whether the online dispute resolution outcome is binding or not, the availability of mechanisms to enforce online dispute resolution outcomes is the cornerstone to the platform success.

The effects that parties choose to attribute to their settlement is important to determine the most suitable mechanism to enforce it, by public or private initiatives.

It is still possible that public and private initiatives collaborate with each other to monitor how business have been conciliating their economic activity and consumers rights, and to balance this relationship by implementing punitive measures of private or public nature if it is necessary.

If parties' agreement constitutes a binding document, it means that it can be enforced by Court proceedings, which at first might seem as a guarantee of access to justice, but as Cortés (2011) notes, it does not make sense to enforce an ODR outcome in the Courts, for the same reason the parties opted to resolve their dispute online (to save money and time). So, 'ODR providers rely mostly on self-enforcement mechanisms, such as trustmarks, blacklists, technological enforcements, deposits and so on.' He added that the public initiative could enhance that by creating guarantees to these enforcement mechanisms.

Reputational tools serve multiple finalities, and they ultimately serve as private enforcement mechanisms. If a company does not comply with an agreement, it should interfere in the overall rating

of the company, as well as the business could be included in a black list that indicates those business that do not comply with ODR outcomes.

The trustmark process will also serve as a private enforcement mechanism when an accredited business does not comply with an agreement and as consequence of it, the ODR Platform will cancel its seal. The other functionalities that reputational tools have will be explored in the following chapters.

## **6.6. Reputational Tools**

As Devanesan & Aresty (2011) highlighted, enforcement of ODR outcomes is a fundamental aspect of justice to ensure that injustices are appropriately addressed. And this study aimed to investigate if reputational systems that include reviews, ratings, trustmark, white and blacklists, as well as many other private enforcement mechanisms, could enhance the performance of online dispute resolution platforms that deal with consumers' disputes and appropriately address injustices.

Reputational tools, as previously mentioned several times in this work, accomplish several different purposes which are elemental to sustain an effective online dispute resolution platform, such as: bringing awareness to consumers and business about the platform, make them trust on the dispute resolution process and that an eventual outcome will be complied with, incentivise parties to settle as early as possible, and ultimately to serve as a mechanism to enforce ODR outcomes, which is the focus of this chapter.

According to Fernandes, et al. (2018), the key element for ReclameAqui success, which is evidenced by its 600,000 consumers researches and 30,000 complaints a day, 'is the publicity of the results

obtained. It causes, consequently, a concern to the companies regarding the building of a good reputation in the market as well as to their buyers'. In the end, consumers tend not to buy from traders that are likely to cause them too much trouble.

The hybrid model that this project proposes will take on board as many reputational tools as it exists in the current days, as it follows:

- 1) Reviews: this model will not distinguish reviews from complaints. Actually, reviewing a business will be the entry point to the online dispute resolution process. The trader will be able to opt out the form of direct contact that suits best (exchange of private messages or online negotiation), and if parties do not settle at this stage, the process follow to the next level (conciliation or mediation and finally recommendation).
- 2) Ratings: when the online dispute resolution process is closed, regardless its outcome (settlement at any of the stages, parties' withdrawal, recommendation), the consumer will be able to rate his/her experience out of 10. This rating will compose a score for the company.
- 3) Business' Score: ReclameAqui structure of scoring each company according to its performance in resolving consumers' problems seems to be appropriate, once consumers can compare competitors, and decide in which trader they will trust to buy a product or a service from, and this competition to reach the best score shall be able to enlarge compliance of ODR outcomes.
- 4) Blacklists: the more tools a platform offers, the more metric it is able to provide. So, relying on the capability of the platform to generate various metrics, the hybrid model will provide monthly and annual blacklists, similar to what ReclameAqui offers, listing those businesses with higher number of complaints, lower response rates and lower dispute resolution index.
- 5) White lists: on the other hand, the platform will divulge those business that have higher response rates and higher dispute resolution index in each month and year.

- 6) Trustmark: as mentioned in the chapter about awareness and trust, this hybrid model will count on a two-fold accreditation process, where: (i) business that comply with certain standards will be able to hold a seal that confirms their positive attitude towards consumers' dispute resolution. Business will be constantly monitored to check their continuously compliance with the trustmark rules, and if they do not follow the rules, they will lose the. (ii) alternative dispute resolution service providers will be constantly monitored and assessed regarding the online dispute resolution administrator's standards (that follows at least the ADR Directive principles: expertise, impartiality, independence, transparency, effectiveness, and fairness). The same way that happens to businesses, if the ADR entities stop to follow the accreditation standards, they will no longer be able to hold the seal.

The above-mentioned mechanisms are purely private instruments, whilst some of the following enforcement mechanisms came from the private sphere but will count on public co-operation for its fully implementation.

### **6.7. Collaboration of Payments Intermediary Companies**

There is a form of private enforcement of outcomes that is called self-execution, which is largely used by eBay, and it receives this name, because business and consumers, when register to use the platform, agree on its terms and conditions, that includes the use of a payment intermediary, such as PayPal, to manage the payment according to a decision that is given in a dispute resolution process to provide the compliance with this decision.

Also known as escrow accounts, PayPal and other payment providers administer payments to ensure the consumer will receive what was bought, and the trader will be paid. However, in the eBay

dynamic, the trader will only be paid when the good is shipped. If there is any issue from a transaction where PayPal was intermediary, for example, eBay will handle the online dispute resolution process, where parties first negotiate and if they cannot reach an agreement, eBay will render a decision, that may generate a financial consequence to the trader. ‘The money will actually be transferred to the buyer or the seller account, and the traditional means of redress are still available for the unsatisfied party.’ (Hanriot, 2015-2016)

This hybrid model proposes a collaboration between the platform administrator and an escrow payment, where those escrow payment users, when agreeing on the Terms of Use of the payment intermediary, would be also agreeing on using it to comply with the ODR platform outcomes. So it would mean that if a trader agreed to reimburse a consumer through negotiation, and the trader did not voluntarily complied with the agreement, the consumer would be entitled to inform the platform administrator and require an analysis of the case for the adoption of further measures, such as transferring money from the business’ account in order to enforce the agreement they had reached.

Although the use of escrow payments is a private enforcement mechanism, it would require public co-operation. Cortés (2018) suggested, that ‘regulators and enforcement bodies continue to monitor and enforce compliance’ of ODR outcomes, and when it is necessary, to order the escrow payments to freeze funds from those businesses that settle with consumers but do not engage in complying them.’

## **6.8. Business Position on Search Engines**

Cortés (2013, p. 33) had made a valuable suggestion regarding self-enforcement, which this study entirely adheres to. The suggested mechanism would consist in a collaboration between the online

dispute resolution platform and search engines such as Google to ‘rank down traders who have a high number of unresolved complaints or that have not complied with final outcomes.’

Reputation plays a fundamental role in this type of enforcement mechanism, once the position a trader occupies in the search engine list may impact their sales numbers, which consequently will impact their profit. A company that occupies the first page of research on Google, for example, has more chances to be contacted by the researcher than the other companies that have their webpages allocated in the subsequent pages.

This private enforcement mechanism interferes at once in the trader reputation, number of sales and its financial results, and that is why that this study proposed the addition of this feature to the hybrid model of online dispute resolution platform.

## **6.9. Public Agencies**

This study has already mentioned that the Brazilian Telecom Agency (ANATEL) and Prosecution Office of the State of Rio de Janeiro had used ReclameAqui data to order telecom services providers and a retail company to stop their sales until they resolved the issues that consumers were reporting on ReclameAqui website.

This dynamic is also common in the health insurance sector in Brazil, where the national regulator herein ANS (Supplementary Health Agency) may suspend the commercialization of new health insurances when the service provider has been reported as breaching law and contracts, or when the agency verified the insurer has a higher number of unresolved complaints. The action of this agency

is not connected to an online dispute resolution platform, but this proposed model suggests the linking between the platform and sectorial agencies.

Cortés & De La Rosa (2013, p. 424) also reckon this dynamic as an effective incentive for companies to comply with ODR outcomes. But Cortés (2013, p. 23) noted that confidentiality and data protection are fundamental aspects outlined in the ADR Directive, and any online dispute resolution administrator should respect it. He added, though, that ‘the information contained in the ODR platform, if appropriately shared, could improve the enforcement role of regulators.’

As usually Consumer Protection and Regulator Agencies have the power to impose fines to businesses that have consistently breached the law, contracts and disrespected consumers’ right, if online dispute platforms worked more closely and regularly with those bodies, businesses would not want to take the risk of not complying with agreements they celebrated with its consumers.

This model proposes to send every three months a full report for consumer protection entities, and public agencies on the businesses’ performance, regardless requirements in different periods that should be granted, since respected confidentiality and data protection guarantees.

#### **6.10. Enforcing Outcomes through European Small Claims**

When discussing the future connection of online dispute resolution to judicial processes in Europe, Cortés (2013, p. 16) mentioned that it was likely the EU ODR Platform would be linked to a court procedure, such as European Small Claims, as long as the national courts had implemented e-justice technology. Nonetheless, the author had argued that ‘such an option will not be available in the near future at a global level.’

Although courts in Europe had considerably advanced in terms of technology since 2013, and the European Union had implemented the European Small Claims Procedure and the European Payment Order, which are completely online procedures, these venues are not really connected to the EU ODR Platform.

Users of the EU ODR Platform may become aware of these tools by using the diagnosis tool that the EU ODR Platform offers, however, there is no indication that when parties do not reach an out-of-court agreement they are referred for one of these expedients.

It may be a change that the European Union has under their radar and it is on the way to be implemented, however, the difficulties that Cortés (2013, p. 16) highlighted regarding to a global unification of ODR and e-Justice remains out there. A global implementation would have to rely on a convention, such as the New York Convention, that guarantees to its signatories the enforcement of arbitral awards in other signatories' jurisdictions.

The Hybrid Model will defend the possibility of enforcing online dispute resolution outcomes through Small Claims Procedures, as long as parties agree on the binding effect of the settlement, and as long as the courts evolve to encompass this interconnection.

The Terms and Conditions for concession of a trustmark by the hybrid online dispute resolution platform should foresee that the agreements celebrated between consumer and a business that hold a trustmark would be binding on the parties, or only on the business in those jurisdictions where such obligation cannot be imposed to consumers.

If the connection between online dispute resolution platform and Small Claims or European Payment Order could properly function, consumer redress would be faster and more effective, considering that documents, statements, and parties versions of the fact would be already available and could be transferred to the court to decide on the matter.



Another possibility that this connection would generate regards to the imposition of cost sanctions on parties who do not engage in alternative dispute resolution. It would be clearer for the judges to analyse if there was a refuse to participate in the process, and then allocates costs on the right side of the dispute.

Even though, online dispute resolution mechanisms were developed and inserted in the consumer field to avoid courts, it is extremely naive to think that court proceedings should be vanished altogether. The role of online dispute resolution should be to redress most of consumers' disputes, indeed, but also to facilitate the use of litigation to redress those disputes that are still unresolved.

## Conclusion

Online Dispute Resolution has been constantly evolving to the point that even this terminology has been criticised by some authors that defend that ODR has surpassed its initial function of transposing alternative dispute resolution techniques to the online environment and embraced numerous dispute avoidance tools, including technology to be applied in courts.

Thus, this study had no intention to offer destructive criticism, but it aimed to investigate what has been offered by three different platforms in terms of services, reputational tools (if they were employed), and to identify which features of each website could be used in an improved model of online dispute resolution and which ones should no longer be employed.

In order to equally assess each platform, this study established a framework that would take into consideration:

- 1) Design of platform: its features, structure and how it operates.
- 2) Compliance with ADR Directive Principles: expertise, independence and impartiality, transparency, fairness, and effectiveness.
- 3) Essential Elements: Funding, Incentives and Enforcement of Outcomes.
- 4) Achievements: its penetration within the Internet community where it is inserted, its effectiveness in addressing consumers' complaints and having traders engaged in resolving disputes (awareness and trust), and dispute resolution index.

This study has found that Reclame Aqui and the EU ODR Platform apparently observe all the principles of online dispute resolution, while Better Business Bureau has some issues related to transparency, independence and impartiality, mainly coming from the fact that businesses have to pay for an accreditation seal. Moreover, it is not clear how BBB calculates each company's score, and there is a lack of policies and guidelines that would make their process more transparent.

Reclame Aqui and Better Business Bureau are non-profit organisations, but Reclame Aqui does not charge for any of the services, while BBB stipulates fees for accredited businesses. The EU ODR receives public funding.

The EU ODR platform does not use any of the private enforcement mechanisms, which means that the incentives that this platform offers to its users are minimal, once it only counts on the willingness of businesses and consumers to resolve their issues out of court.

ReclameAqui and Better Business Bureau use reputational tools such as reviews, ratings, and trustmark/accreditation seals. However, ReclameAqui still publishes white and blacklists, and every year it promotes an event to award those businesses that committed to consumer dispute resolution.

Regarding structure and functionalities, the three platforms present some distinctions. ReclameAqui encompasses only negotiation, while the EU ODR Platform had recently included a direct negotiation module and allows online mediation to happen. Better Business Bureau embraces various alternative dispute resolution processes, however, most of them are only offered outside the platform (offline procedures).

And the last aspect that was assessed on the three platforms was their outcomes. It is comprehensive that Better Business Bureau has existed for over 100 years, ReclameAqui was founded 20 years ago, while the EU ODR Platform was launched in 2016. This research has also considered that each platform is addressed for different jurisdictions, and different aspects such as culture play a role in it.

However, the figures that ReclameAqui and Better Business Bureau has shown in their reports (related to 2018) are significantly superior to the EU ODR Platform outcomes. ReclameAqui receives an average of 30,000 complaints a day, which would represent almost the total of complaints that the EU ODR Platform received in the entire year of 2018.

In 2018, Better Business Bureau reunited over 1 million of consumers inquiries and complaints in Canada and The United States. They claimed that their dispute resolution index for that year was of 78%. They did not account the number of reviews and they did not distinguish what was resolved through their online platform or by face-to-face alternative dispute resolution.

The EU ODR Platform had reported that in 2018 only 1% of the cases was designated to ADR entities, while it was not divulged the percentage of settlement.

ReclameAqui does not publicly inform its dispute resolution rates (users can check businesses dispute resolution rate, though), but public awareness and trustworthiness are commendable.

The main difference between the most successful platforms (ReclameAqui and BBB) and the less effective platform (EU ODR Platform) is the lack of reputational tools to use as private enforcement mechanisms and incentives by the European website.

Therefore, this research had a hypothesis that reputational tools could enhance online dispute resolution platforms to redress consumers' disputes, and this hypothesis was tested through case studies involving three different platforms (with and without reputational tools), and it has found that those ones that use reputational tools obtained better results than that one that does not use them.

If reputation systems and ODR procedures are gathered in a unique platform that envisages conflict management based on impartiality, independence, fairness, transparency, and effectiveness to redress consumers and business issues, one can guarantee the survival of the another. A reputation system that does not provide redress may be abandoned by their users at some point, once the efforts the consumer had to write a review stand alone. ODR platforms can exist without reputation systems, but it would be more challenging to create awareness among consumers and encourage them to use a random platform to resolve disputes that does not adopt any measure to enforce its outcomes.

Thus, the conclusion of this study is that the tested hypothesis was confirmed by the findings on the case studies. The answer for the research question is that reputational tools have the potential to enhance online dispute resolution to redress consumer disputes, if other important aspects are observed such as impartiality, independence, transparency, effectiveness and fairness of the platform and ADR entities, as well as the use of public funding instead of private sponsorship.

## **Reflection**

The biggest challenge that this research represented to me was to structure and put all my ideas together that could be innovative, but it would be sensible and applicable to the online dispute resolution field.

Technology and Law have always been a passion and understanding how online dispute resolution came from and how it stands right now in different jurisdictions was a valuable experience.

Obviously, this study will not propose a magic formula that is capable to extinguish all the existent gaps in the consumer disputes redress, but it has never been my intent. I have known ReclameAqui for a quite long time, and all my friends and relatives know of this platform as well, but I have noted that most people I know in Ireland does not know how they could handle eventual issues with businesses, which arouse my interest in this topic.

Collecting data and transposing it to my research in a way that the research question could be answered was challenging, but I believe that it has been accordingly accomplished and that it will be a significant contribution to the online dispute resolution realm.

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