1. The online environment is playing an important role in the global market. Both consumers and business will derive significant benefit from online interactions. With these benefits and the expected increase of business-to-consumer (B to C) national and international interactions, come new challenges. Of particular significance are the challenges of identifying the competent forum and applicable law, and of obtaining redress across borders. Given that traditional court-based dispute settlement mechanisms may not provide effective redress for electronic commerce interactions, there is a need to examine alternative dispute resolution (ADR) mechanisms -- both those in existence and under development -- as ways to fairly and effectively settle disputes.

2. Online ADR mechanisms hold the promise of providing speedy, low cost redress for a large number of the small claims and low-value transactions arising from B to C online interactions. In addition, new and developing technologies might provide innovative and potentially more effective dispute resolution, either alone or in combination with existing mechanisms.

3. This Conference on B to C Online Dispute Resolution is organised by the OECD with the Hague Conference on Private International Law (HCOPIL) and the International Chamber of Commerce (ICC). The views of consumers are represented by Consumers International (CI).

Objectives

4. Building on discussions and information shared to date in various fora, the conference will:

   - Provide an opportunity for presenting, discussing and disseminating information on the diverse range of existing online ADR mechanisms (day 1);

   - Explore whether and how online ADR can improve trust for global electronic commerce by helping to resolve B to C disputes arising from privacy and consumer protection issues; this will include identifying what stakeholders view as important elements for fair and effective online ADR mechanisms, recognising that these elements, which are of various types (socio-economic, legal, technical), may vary depending on the type of mechanism and/or dispute; and

   - Discuss the role of stakeholders in fostering the development of appropriate and effective online ADR mechanisms (day 2).
Analysis and Future Work by Co-organisers

5. Based on the two-day discussion, the Conference is expected to help all stakeholders outline their further direction for work in this area. The OECD Secretariat will draft proposals for future work by the OECD in the field of online B to C alternative dispute resolution, which will be presented to the OECD Working Party on Information Security and Privacy, and the Committee on Consumer Policy at their next meetings in early 2001.

Conference Procedure

6. The conference has been organised to facilitate discussion among session participants and with the audience. Under the guidance of moderators, most sessions will begin with brief presentations followed by reactions and comments from panellists, as well as question/answer and active participation of the audience. A wide range of stakeholders, including representatives of business, users and consumers, and government will participate in the Conference. Academics and ADR providers will also participate.


Background materials

8. This Orientation Document is intended to assist Conference participants in discussing the issues to be explored. It highlights the focus for each session, suggests questions to be considered, and provides brief summaries of presentations. Related documents are annexed as follows:

9. Annex 1: A list of online ADR mechanisms as identified by the OECD (based on independent research and materials provided by the ICC and CI) as of October, 2000; and

10. Annex 2: A list of possible procedural, substantive and other elements that might exist in ADR mechanisms.

11. In addition to these annexes, the following documents are posted on the OECD ADR Conference web page at http://www.oecd.org/dsti/sti/it/consumer/index.htm.

1. Various papers and recommendations related to B to C ADR systems produced thus far by the:
   - European Commission (EC) (Commission Recommendation 98/257/EC on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes)
− Asia Pacific Economic Cooperation (APEC) E-Commerce Steering Group (Consumer Protection in Electronic Commerce: Report and proposals for action following the APEC workshop on consumer protection held in Bangkok on 20 July 2000).


− Consumers International (CI) (Disputes in Cyberspace Report, December 2000).

2. Reports and documents related to ADR and trustmark seal programs:


   − Inventory of ADR mechanisms produced by the ICC in “Out-of-court settlement of disputes concerning e-commerce consumer transactions: An inventory of current approaches, September 2000”.


3. Articles and comments submitted voluntarily by the public in anticipation of the discussions at the Conference.
Introduction to ADR

12. “ADR refers to a broad range of mechanisms and processes designed to assist parties in resolving differences. These alternative mechanisms are not intended to supplant court adjudication, but rather to supplement it.” Generally, an ADR process involves a series of procedures, some of which may vary depending upon the form of resolution. The most common forms of resolution are negotiation, facilitation or conciliation, mediation, and arbitration.

13. Though there is not full consensus—in the academic or business fields—on the precise definitions of ADR mechanisms and processes, most experts view ADR as a spectrum of approaches that fits within the broader spectrum of “dispute resolution”—different ways of settling disputes, including corporate consumer complaint services, ADR, and litigation. ADR mechanisms differ on a sliding scale from the most flexible to the most formal in terms of the rules of procedure, the role of the neutral in facilitating or deciding an outcome, whether the outcome is non-binding or binding on all parties or on one of them, and, where the outcome is binding, whether this was prescribed in advance, either before or after the dispute arose.

14. At the extreme ends of the ADR spectrum rest assisted negotiation (the most informal) and arbitration (the most formal, or most “court-like”). For example, in assisted negotiation, decisions remain in the hands of the parties at all times and outcomes are agreed upon. While in arbitration, whether before or after the dispute arises, parties agree to be bound by the final decision of the third-party arbitrator. Between assisted negotiation and arbitration are a large variety of forms of mediation, from neutral evaluation to hybrid forms such as mediation-arbitration (med-arb).

15. ADR is used off-line to resolve many different types of disputes, from local disputes between neighbours to international commercial transactions. Not surprisingly, ADR mechanisms are being developed in the online environment to resolve a wide range of disputes (e.g. domain names, insurance, privacy, family, employment and commercial) between parties (B to B, B to C, C to C, G to B and G to C) involved in electronic interactions. These online mechanisms are not only used for disputes arising online; rather a dispute arising in the offline environment could be resolved using an online ADR mechanism.

16. Online ADR exists in a variety of contexts, including within a particular online marketplace (e.g. online auction sites), as part of a trustmark or seal programme, or on an independent basis. These differences may have an effect on consumer access to ADR and business compliance with the outcome.

17. In recent surveys and inventories, the OECD, ICC and CI have identified more than 40 online ADR mechanisms—most of them offering B to C dispute resolution7. These online ADR mechanisms vary in terms of procedural and technical aspects. It is however possible to distinguish those which are “fully automated”—in that outcomes are generated by a computer program and not with human intervention—from most others which vary from flexible to formal. While 26 of the online ADR providers offer informal, non-binding types of dispute settlement, such as assisted negotiation, mediation, or ombuds-type services, 14 offer more formal, binding arbitration procedures; 11 feature automated dispute resolution, and 14 offer multiple ADR methods.
Focus

18. This conference will explore the use of online ADR systems for disputes involving small values and/or low levels of harm that arise between businesses and consumers online with a primary focus on informal, flexible systems that will allow for the necessary balancing between the type of dispute and the formality of the process for resolution (see shaded area in figure below). For example, the cost or the complexity of the procedure should not be disproportionate with what is at stake.

<table>
<thead>
<tr>
<th>Corporate Complaint Services</th>
<th>Assisted Negotiation</th>
<th>Mediation</th>
<th>Arbitration</th>
<th>Litigation</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Facilitation</td>
<td>- Automated, or not</td>
<td>- Voluntary or mandatory participation</td>
<td>- Voluntary or mandatory submission</td>
<td>- Voluntary or mandatory submission</td>
</tr>
<tr>
<td>- Conciliation</td>
<td>- More or less active guidance by the neutral</td>
<td>- automated or not</td>
<td>- Automated or not</td>
<td>- Automated or not</td>
</tr>
<tr>
<td></td>
<td>- Voluntary or mandatory participation</td>
<td>- Final and binding</td>
<td>- Final and binding</td>
<td>- Final and binding</td>
</tr>
<tr>
<td></td>
<td>- No obligation on the parties to agree, before entering ADR, that the outcome will be binding</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Informal to Formal ADR
DAY 1: OVERVIEW OF ADR IN RELATION TO THE ONLINE ENVIRONMENT

Welcome and Keynote

Building trust is an important policy issue related to the new economy and global information society. In particular, a key element to building trust is ensuring users and consumers effective redress for disputes arising from interactions and transactions in the online environment.

The OECD mandate to explore redress for users and consumers is clearly stated in the OECD 1998 Ministerial Declarations on Protection of Privacy on Global Networks and Consumer Protection in the Context of Electronic Commerce which serve as part of the blueprint for the OECD’s work in electronic commerce. The mandate is further clarified by the 1999 Guidelines on Consumer Protection in the Context of Electronic Commerce, where OECD Member countries stress the importance of providing consumers with “meaningful access to fair and timely alternative dispute resolution and redress without undue cost or burden”. Similarly, the need for appropriate dispute resolution mechanisms in disputes over privacy has been highlighted in the OECD Report on Transborder Data Flow Contracts in the Wider Framework of Mechanisms for Privacy Protection on Global Networks.

Consequently, the OECD programme of work for 2000-2001 places great emphasis on exploring how privacy and consumer protection disputes can effectively be resolved using online ADR.

Welcome remarks

A.H Korthals, Minister of Justice, The Netherlands

Keynotes

Why is ADR a key element for building trust in the online environment?
Herwig Schlögl, Deputy Secretary-General, Organisation for Economic Co-operation and Development

The importance of global partnership in the development and support of ADR
Maria Livanos Cattaui, Secretary General, International Chamber of Commerce

In or out of court? Challenges for the Hague Conference
Hans van Loon, Secretary General, Hague Conference on Private International Law
Introductory Remarks by Day 1 Chair

Peter Ford, Chair, OECD Working Party on Information Security and Privacy

Session 1: Taking stock - Overview of recent discussions about online ADR

Several entities have either developed principles for B to C ADR systems or expressed views on essential elements of such ADR systems. In an effort to provide a forum, at a global level, for exploration of ADR and to foster co-operation among the stakeholders, this session takes stock of the work that has been undertaken on this issue by other fora. Representatives from the European Commission (EC), United States (US), Asian Pacific Economic Co-operation (APEC), Global Business Dialogue (GBDe), and Consumers International (CI) will present the findings from their fora’s examination of online ADR.

While there are areas of common ground on principles for online ADR, further discussion needs to take place. This session is expected to outline similarities and differences in the various approaches to date in order to facilitate the Conference discussion on challenges to be met and gaps to be bridged in terms of essential elements for fair and effective online ADR.

Moderator: Risaburo Nezu, Director, Directorate for Science, Technology and Industry, OECD

Presenters:

Carina Tornblom, Head of Unit, Directorate General for Health and Consumer Protection, European Commission will present the approach of the European Commission based on the 1998 Commission Recommendation on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes and the workshop, which was held in March 2000.11

James Dorskind, Acting General Counsel, U.S. Department of Commerce will provide insight into the recently released report from the joint Federal Trade Commission-Department of Commerce public workshop “Alternative Dispute Resolution for Consumer Transactions in a Borderless Online Marketplace,” which was held in Washington, DC on 6-7 June 2000.12

Yuko Yasunaga, Deputy Director, Commerce Policy Division, Japan Ministry of International Trade and Industry (APEC) will present the results of the APEC Consumer Protection Workshop, which was held in July 2000 in Bangkok, Thailand.13

Constanze Picking, Senior Manager Trade and E-Business, DaimlerChrysler AG will present the GBDe Alternative Dispute Resolution Paper, issued in September 2000.14

Louise Sylvan, President, Consumers International will present a recent report from Consumers International on disputes in cyberspace. The presentation will also cover the principles adopted by the Trans-Atlantic Consumer Dialogue in February 2000.15
Session 2: Illustrating Business -to-Consumer complaints in the online environment

This session will provide information and statistics on the types of complaints received from users and consumers in relation to their interactions and transactions online. The information will be presented by consumer and data protection authorities and consumer representatives in an effort to clarify the types and volume of disputes arising from B to C online interactions and transactions. The purpose of this session is to educate all stakeholders on where to focus their efforts in exploring redress mechanisms and discussing online ADR mechanisms.

Presenters:

Michelle Childs, Head of Policy, Consumers Association, United Kingdom will present the statistics on the types of complaints received by Consumers Association in the United Kingdom as well as by the other consumer organisations, affiliated with the WebTrader scheme, from Belgium, Italy, France, The Netherlands, Portugal, and Spain.

Stephen Lau, Privacy Commissioner for Personal Data, Office of the Privacy Commissioner for Personal Data Hong Kong, China will discuss the nature of consumer complaints in Hong Kong relating to the handling of personal data on the Internet which might be in contravention with the data protection principles enshrined in the Hong Kong Personal Data (privacy) Ordinance.

Marcie Girouard, Assistant Deputy Commissioner, Industry Canada and Maneesha Mithal, Attorney, Bureau of Consumer Protection, US Federal Trade Commission will present statistics on B to C complaints received by their respective agencies. The statistics will mainly be drawn from Consumer Sentinel, a fraud complaint database for use by law enforcement officials in the US, Canada, and Australia. In its less than five years of operation, the database now contains more than 44,000 Internet-related complaints, many of which have a cross-border component. For example, one in eight complaints received by the US and Canadian organisations involve foreign consumers or companies.
Session 3: Dispute Resolution at the Earliest Stage – internal customer complaints handling and customer refunds

In the offline world, business internal complaints handling systems assist in effectively preventing and resolving disputes between business and consumers. It is anticipated that online business internal customer complaint handling systems will be as effective in the online environment. Similarly, chargeback regimes implemented by the payment card industry can provide significant benefits to certain consumers by providing customer refunds; some of these protections are required by law and some are provided voluntarily as a result of marketplace considerations. This session will explore how internal customer complaint handling and customer refunds (as a result of chargeback systems) could resolve complaints and disputes that arise in the B to C online environment. This session will also examine the scope of application and effectiveness of these mechanisms to resolve customer complaints in the online environment as compared to the offline environment.

Moderator: Hugh Stevenson, Associate Director, Bureau of Consumer Protection, US Federal Trade Commission

Panellists:
Jean Ann Fox, Director of Consumer Protection, Consumer Federation of America
Peter Møller Jensen, Manager, European Union Relations, Visa International
Eric Mickwitz, Finnish Consumer Ombudsman
Michel Van Huffel, Directorate General for Health and Consumer Protection, European Commission

Presenters:
Charles Underhill, Acting Chief Operating Officer, Better Business Bureau, will address how the BBB’s codes of conduct and other initiatives assist in promoting effective internal complaints handling by businesses. He will present statistics on the rates of success with the conciliation phase of the BBB’s third-party complaint handling system and data from similar programs. The presentation will also highlight a new initiative by the BBB to encourage internal complaints handling.

Alastair Tempest, Director General, Federation of European Direct Marketing (FEDMA) will explain FEDMA’s role as a clearinghouse for European e-merchants with a particular focus on how FEDMA’s Code of Conduct on e-Commerce & Interactive Marketing and other initiatives (“the Ring of Confidence”) help in ensuring consumer redress, particularly across national borders.

Helen Bridges, Counsel, American Express Services Europe will present American Express’s chargeback policy and consumer card member protections for online transactions.

Suggested questions:
Are statistics available on the number and types of resolutions reached as result of internal complaints handling and customer refunds through payment cards? What are the incentives to encourage business to handle complaints internally? How does online customer complaint handling differ from customer complaint handling by telephone, in writing, or in person? How widely available online are chargeback protections? Are there other innovative mechanisms arising in the online environment that will assist in resolving disputes early or assist in avoiding disputes, like feedback/rating systems, insurance, and escrow systems?
Session 4: Online alternative dispute resolution mechanisms

Global networks and electronic commerce significantly increase the possibility for individuals and companies to interact and transact easily 24 hours a day, 7 days a week, over great distances, regardless of geographic borders, local cultures and legal frameworks. Such benefits, however, raise challenges as to how potential disputes arising from both sides can be resolved in an equally easy way, effectively, and with guarantees of equity and fairness. A pragmatic approach aimed at providing individuals and businesses with accessible and potentially more efficient means to settle disputes that cannot otherwise easily be resolved offers an interesting alternative.

This session will explore through presentations of online ADR mechanisms, already existing or under development, the variety of approaches for solving disputes arising online. In an effort to focus on distinctive procedural and other elements that exist in these various mechanisms and to facilitate the discussion on day 2, the discussion has been divided into three parts. The first discussion is devoted to fully automated mechanisms where outcomes are generated without human intervention. The second and third discussions will examine mechanisms that vary from flexible to formal with regard to procedure and intervention of a neutral. Finally, the fourth discussion, by exploring systems under development, will focus on objectives and methodology necessary for setting up an online ADR mechanism.

Moderator: Bernard Clements, Head of Unit, Joint Research Centre, European Commission

Panellists:

John Borking, Deputy Privacy Commissioner for the Netherlands
Dana Haviland, Partner, Wilson Sonsini Goodrich & Rosati
Ethan Katsh, Director, Center for Information Technologies and Dispute Resolution, University of Massachusetts
Pippa Lawson, Counsel, Public Interest Advocacy Centre
Odile Nicholas-Etienne, Union Federale des Consommateurs
Charles Underhill, Acting Chief Operating Officer, Better Business Bureau

I. Fully automated online resolution mechanisms
(e.g. outcome generated by computer)

Most fully automated ADR systems are designed to settle cash-based disputes, such as insurance claims, and require the parties, before entering a negotiation, to be bound by the generated outcome, if the dispute settles. A small number of automated programs, however, allow parties to choose at the outset whether or not to be bound by the outcome. This session will explore whether automated systems could help settle non-financial B to C disputes arising in the area of privacy and consumer protection.

Presenter:

Richard Belczynski, Vice President, International and Commercial Division, ClickNSettle will present the fully automated system of the ClickNSettle business model, where the outcome is generated by
The presentation will also include the types of disputes that can be and have been resolved using ClickNSettle and the geographic distribution of the parties that have engaged in resolution by ClickNSettle. (www.clicknsettle.com)

II. Flexible resolution mechanisms
(e.g. negotiation/mediation)

Presenters:

Colin Rule, Chief Executive Officer, Online Resolution, Inc. will present a summary of their various online resolution methods with particular emphasis on a new online resolution platform, Resolution Room. This new service is an interactive environment for mediation that combines several communications tools, including e-mail, blind bidding, and chat capabilities. The system is designed to resolve two-party and multi-party disputes. (www.onlineresolution.com)

Cara Cherry Lisco, Director, SquareTrade Online Dispute Resolution Network, will present an overview of a scalable online tool and dispute resolution service set up in February 2000. She will show how SquareTrade has been effectively inserted as the underlying neutral recourse mechanism in nearly 2 million transactions a week as the preferred provider of dispute resolution for eBay users. She will also discuss lessons learned from its successful handling of more than 17,000 disputes from more than 80 countries in multiple languages including English, German, and Spanish. (www.squaretrade.com)

III. Formal resolution mechanisms
(e.g. mediation/arbitration)

Presenters:

Erik Wilbers, Senior Counsellor, WIPO Mediation and Arbitration Center will present practical conclusions, based on the online dispute resolution experience of the WIPO Center, that may be of benefit in creating appropriate methods for the resolution of consumer disputes. Over the past few years, the WIPO Arbitration and Mediation Center has gained experience in the design and application of online dispute resolution procedures. Using on-line methods, the Center this year has administered over 1,600 domain name disputes. It has also undertaken work in the development of more generic applications that lend themselves to the arbitration of all types of disputes under the WIPO Rules. (www.wipo.org)

Fabien Gélinas, Vice President and General Counsel, e-Resolution, will discuss the company’s online arbitration model for domain name and other disputes. He will examine the arbitration process in the B to C area and draw some analogies and contrasts to online settlement of B to C disputes. The presentation will also address questions of the enforcement of an arbitration decision and the applicability of arbitration for B to C dispute resolution, based on eResolution’s experiences. (www.eresolution.com)
IV. ADR mechanisms under development

Presenters:

Duncan McDonald, American Institute for Contemporary German Studies (AICGS) will present the AICGS proposal to create a network of US-EU universities to act as mediators to deal with consumer bewilderment about dispute management, ADR providers, and statutory rights. Emphasis will be on tackling the variety of legal and other issues that must be dealt with to set up and implement an effective cross-border scheme.

Vincent Tilman, Researcher, Centre de Recherches Informatique et Droit (CRID) will describe ECODIR, a cross-border online ADR project currently under development. The project, subsidised by the European Union, aims to provide consumers with an online mediation/arbitration support system to settle disputes arising from the use of the Internet. The project is led by the CRID, University of Namur, in cooperation with a consortium of European and North American Universities, mediation centres and private partners. The presentation will highlight the objectives, methodology, and the development schedule of ECODIR and will address particularly the challenges involved in deploying such a system for a cross-border, multi-lingual environment.

Christopher Kuner, Of Counsel, Morrison & Foerster, LLC will provide an overview of future International Chamber of Commerce (ICC) policy on B to C ADR in electronic commerce. The presentation will be based on a position paper, under formulation by the ICC, on ADR in B to C transactions. The position paper is intended both to identify some of the salient policy principles that the ICC believes should govern this area, and to provide an outline of the concrete actions the ICC could take to become involved in it.

Suggested questions:

What are the experiences of users and consumers when using ADR mechanisms? Are there particular types of disputes that are not conducive to resolution through online ADR? Are there categories of disputes that would better be resolved through the use of a particular type of online ADR? Other questions may be based on annexes 1 and 2 (list of online ADR mechanisms and list of possible procedural and substantive elements that exist in ADR mechanisms).
DAY 2: REACHING EFFECTIVE ONLINE ADR AT A GLOBAL LEVEL

Building on the presentations from day 1, the discussion will explore the various challenges to be addressed to facilitate B to C ADR at both national and global levels, as well as incentives and disincentives for businesses, consumers, and governments to participate in and/or encourage the use of ADR. Session 5 will focus on the challenges to online dispute resolution, including identifying important elements for fair and effective online ADR mechanisms. Session 6 will focus on the role of stakeholders in promoting fair and effective ADR, ensuring compliance and enforcement, and educating all stakeholders.

Introductory Remarks by Day 2 Chair

Jytte Ølgaard, Chair, OECD Committee on Consumer Policy

Session 5: Challenges to online dispute resolution

Awareness of the potential legal and other barriers arising from resorting to courts in disputes resulting from cross-border online interactions is widely shared: which law applies, which authority has jurisdiction over the dispute, which forum is competent to hear the dispute, is the decision enforceable across borders? Another legitimate concern, though less legal in nature, is related to the cost of court proceedings, which may exceed the value of the goods or services in dispute, or the length of the procedure, which may be far slower than “cyber-time”.

This session will explore and discuss the variety of possible challenges to the effective use and implementation of online ADR, either socio-economic (including linguistic and cultural), legal (including last resort principle) and technological (including security). While discussing these challenges, participants may recognise the need for common ground among stakeholders on essential elements that should be in any fair and effective online ADR for B to C disputes, including 1) transparency, e.g. information on the ADR procedure, its cost, and other important features should be made readily available to all parties before entering into an ADR process; 2) accessibility; 3) free or low cost to the consumer; and 4) quick decisions.

I. Socio-economic issues related to online ADR

“Behind their screens there are people of all nationalities, all ethnic-cultural groups, social classes and professions, of all religions and political convictions, of all ages and life-styles, of both sexes who together, but also among themselves show a rich diversity of preferences and disfavours, expectations for the future and fears, likes and dislikes.” This quotation illustrates how challenging the global online environment is in its sociological dimension, in particular when it comes to B to C interactions. Like the legal and technical issues, sociological and economic factors must be explored to better understand how they can affect the use and implementation of online ADR.

This session will discuss some of the socio-economic challenges, including how cultural, linguistic and economic differences might affect the effectiveness of ADR systems; or similarly, how differences in information and expertise might affect the use and implementation of ADR, while considering that online means of communication (digitalised texts, sounds, stationary or moving images) affect methods of work, cultural patterns and life-styles.”
Moderator: Anna Fielder, Director, Consumers International

Panellists:

Giles Buckenham, Administrator, Directorate General for Health and Consumer Protection, European Commission

Scott Cooper, Manager of Technology Policy, Hewlett-Packard

Carmen Fernandez Neira, Chairman, Internet Working Group, European Advertising Standards Alliance (EASA)

William Marsh, Director, CEDR

Toh See Kiat, Partner, Tan Peng Chin and Partners

Presenters:

Nora Femenia, Professor, and Vice President, OnlineDisputes.org, will discuss how online dispute resolution techniques and the global management of customers’ complaints could be responsive to different social and cultural environments. She will focus on culturally different approaches to customer complaints, the impact of community pressure on conflict solving, and what would be the role of computer-assisted negotiation techniques in furthering public education on legitimate ways of solving online transaction problems.

Christopher Drahozal, Professor, University of Kansas School of Law will offer an economic perspective on various questions relating to the fairness of online ADR, including: why do parties use ADR in the first place? should ADR mechanisms replace access to the courts? how do the incentives of stakeholders and of the neutral affect the use and implementation of ADR? and how differences in resources and information between businesses and consumers may raise concerns about whether online ADR mechanisms will be fair.

Suggested questions:

How do linguistic and cultural differences affect the use and implementation of ADR? Should users and consumers be offered to interact in their own language during ADR? How do economic differences affect the use and implementation of ADR? Are there ways to level the imbalances in information and expertise among the parties? Should training of neutrals include education on socio-economic related issues?
II. Legal issues related to online ADR

Legal issues are related to making the ADR process fair and effective for both consumers and businesses. This session is expected to highlight those procedural and substantive elements considered as essential to ensure a fair and effective ADR process, while recognising that these elements may vary depending on the type of ADR and/or dispute.

During the discussion, participants may recognise the need for common ground on issues such as 1) whether providers of ADR for online B to C disputes should be independent; 2) whether ADR intermediaries should be neutral or impartial in their decision making, and have sufficient skills and training to fulfill the dispute resolution role in an appropriate manner; 3) whether consumers should be permitted to choose between ADR and traditional legal mechanisms. *i.e.* should recourse to ADR be voluntary or could it be mandatory; 4) whether parties should have representation or 5) whether the procedure should be adversarial.

Other issues to be discussed include whether current legal systems pose barriers for consumers to use ADR or prevent businesses from implementing outcomes, rendered under ADR, to which consumers have fully agreed. In addition to the more procedural questions, an important issue to be examined is what substantive principles might be applied to resolve an online cross-border dispute.20

The issue of whether the outcome of the ADR process should be binding or non-binding may also be discussed. While this is an important issue, participants will be reminded that the focus of the Conference is primarily on the more flexible and informal ADR systems.

**Moderator:** Mozelle Thompson, Commissioner, US Federal Trade Commission

**Panellists:**

Matthias Blume, Austrian Ministry of Justice

Eric Ducoulombier, Administrator, Directorate General for Internal Market, European Commission

Marco Gasparinetti, Data Protection Commissioners’ Office, Italy

Michael Geist, Professor, University of Ottawa Law School

James Murray, Director, Bureau Européen des Unions de Consommateurs

Ron Plesser, Partner, Piper Marbury Rudnick & Wolfe, and Coordinator, Electronic Commerce and Consumer Protection Group
Presenters:

Philippe Fouchard, Professor, University Paris II will discuss the fundamental legal elements that are necessary for online ADR to be fair and effective for users and consumers. He will focus on online ADR mechanisms where parties participate voluntarily and the agree upon the outcome at the conclusion of the process.

Christopher Kuner, Of Counsel, Morrison & Foerster, LLC will present an overview of the main conclusions of a study on legal obstacles to business-to-consumer ADR in electronic commerce in Europe. The study was commissioned last spring by the Global Business Dialogue in response to the uncertainty and confusion related to the legal framework for B to C ADR in Europe.

Suggested questions:

How might national or international laws and related public policy issues affect the use or implementation of ADR? (e.g. non-waivable rights, differences in substantive law, or procedural rules related to ADR).

How do the legal rules affect the availability of out-of-court dispute resolution?

III. Last Resort Principle and Juge d’appui (“support judge”)

This session will focus on the intersection of online ADR with the jurisdictional framework.

It is expected that business internal complaint handling systems and online ADR mechanisms will succeed in resolving most disputes that arise from B to C online interactions. However, in cases where the alternative mechanisms fail, recourse to court might be necessary. Furthermore, as used in arbitration, recourse to a judge (juge d’appui)² in the course of the ADR may be helpful to solve a difficulty (e.g. the service provider disappears during the procedure, or there is a serious violation of the principles of independence and impartiality) and to facilitate a successful and smooth process. The discussion will include an exploration of the applicability of traditional notions of jurisdiction (competent forum), related enforcement issues, and a review of existing solutions and proposals for new ones. It will also explore the practicality and possibility of adapting the concept of the juge d’appui to less formal online ADR processes.

Moderator: Catherine Kessedjian, Professor, University of Paris II, and former Deputy Secretary General, Hague Conference on Private International Law

Panellists:

Katharina Boele-Woelki, Professor, University of Utrecht

Giacinto Bisogni, National Expert, Legal Service of the European Commission

Asunción Caparrós, Manager, European Affairs, ABN Amro Bank

Roger Cochetti, Senior Vice President and Chief Policy Officer, Network Solutions

David Goddard, Barrister, New Zealand Law Commission

Pippa Lawson, Counsel, Public Interest Advocacy Centre
IV. Technological issues and trends affecting online ADR

Current developments in technological applications and practices as well as the growing interoperability of systems have an impact on the development of online ADR mechanisms. The continuous technical innovation in the Internet environment is therefore worth discussing in relation to online ADR. This session will highlight technologies already in use or under development with a view to how they can be used to facilitate online B to C dispute resolution. For example technologies used for secure electronic signature and authentication\(^2\), or encryption of content messages may help ensure confidentiality and integrity of the process and the information exchanged. Furthermore, interactive technologies like video-conferencing may bring the parties together, moving them from behind their computer screens to a virtual setting making the experience a face-to-face interaction. Similarly, automatic translation and voice recognition may help bridge some cultural differences.

During the discussion, participants may also examine the need for common ground on issues related to the security of online ADR systems and to the confidentiality and integrity of the process and the information exchanged.

**Moderator:** Wibo Koole, Head of Consumer Policy, Consumentenbond

**Panellists:**

Sarah Andrews, Policy Analyst, EPIC/Privacy International

Peter Lübkert, Information Technology and Networks, OECD

Marc Wilikens, Joint Research Centre, European Commission

**Presenters:**

Joseph Alhadeff, Vice President for Global Public Policy, Oracle, will present the policy-side of the technological issues and challenges related to ensuring effective online ADR for B to C dispute resolution.

Chris Lynn, Legal Associate, Microsoft Europe, Middle East and Africa will present the various advances in software technology that will make resolving basic consumer disputes in the B to C sector more effective.

**Suggested questions:**

*How will technological innovation assist to remedy these challenges? How can technological interoperability be ensured? Can technological innovation bridge cultural and other sociological differences between the parties?*
Session 6: The roles of stakeholders

Most stakeholders agree that online alternative dispute resolution (ADR) can be very helpful to both parties in electronic interactions or transactions, especially in cross-border disputes. They see incentives for fostering ADR, whether economic (e.g. reducing costs), legal (e.g. helping obviate the very perplexing issue of competent forum, because with online ADR, the forum will no longer be tied to a geographic location but rather it will be virtual,), or more sociological (e.g. improving confidence, and bridging cultural differences). Potential negative impacts have also been highlighted such as lack of consumer choice, disparity between the parties (e.g. lack of information, education, and resources) or possible lack of enforceability of decisions.

Based on previous discussions, this final session is expected to highlight common stakeholder views on a number of socio-economic, legal or technological elements that should be in any fair and effective online ADR for B to C disputes, and to focus on how best to foster their implementation through exploration of two main policy areas.

The session will therefore be divided in two discussions. The first will be devoted to the roles of stakeholders in relation to promoting essential elements for online ADR (regulation, self-regulation or integrated approach), and ensuring compliance (public and private sector trustmark programmes). The second discussion will focus on providing effective education about ADR.

This session is expected to highlight the need for complementary approaches among the stakeholders that effectively balance the interests of individuals and business, while exploiting particular stakeholder expertise where available.

Moderator: Arie J.M. van Bellen, Managing Director, Electronic Commerce Platform Nederland

Panellists:

Roger Cochetti, Senior Vice President and Chief Policy Officer, Network Solutions

Susan Grant, Director of National Fraud Information Center, National Consumer League

David Mair, Administrator, Directorate General for Health and Consumer Protection, European Commission

Rebecca Richards, Director of Policy and Compliance, TRUSTe

Yuko Yasunaga, Deputy Director, Commerce Policy Divisions, MITI Japan
I. Promoting fair and effective online ADR and ensuring compliance (e.g. trustmark programmes)

As discussed in session 1, a variety of stakeholders have developed principles for B to C ADR systems or expressed views on essential elements of such ADR systems. This session will further discuss the roles of stakeholders in relation to promoting fair and effective B to C online ADR. This will include discussing how the stakeholders should co-operate to identify essential elements for online ADR (e.g. who should sit at the table? should there be separate recommendations by different stakeholders, as is the case to date? where should guidance for ADR be identified – e.g. in regulation or codes of conduct). It will also include how the stakeholders can work together to ensure compliance with these elements.

Among other complementary measures to ADR, online trustmarks and seals programmes are worth exploring as they may have a positive impact on the issue of compliance, and encompass approaches that may be considered both by the private sector and governments. There is ongoing discussion among stakeholders on if and how trustmark/seal programmes could be designed to render fair and effective online ADR systems, how compliance with such programmes could be ensured, and how decisions rendered by ADR systems could be enforced under such programmes.

Presenters:

Naoshi Shima, Vice President, Business Development, NEC will provide background on how the GBDe successfully co-ordinated its recent recommendations on B to C ADR. As the principal organiser for the GBDe’s work in the Asia/Oceanian region, on behalf of NEC, Mr. Shima will begin with a closer look at the Asian experience with regards to resolving disputes that arise online among consumers and business.

Barbara Wellbery, Partner, Morrison & Foerster LLC, will explain the US self-regulatory approach as it relates to privacy and consumer protection, with emphasis on online ADR. She will also describe how self-regulation fits within the broader US framework for promoting consumer and business trust in e-commerce, which includes a complementary mix of industry mechanisms, government initiatives and law enforcement efforts.

Martin Bond, Assistant Director, Department of Trade and Industry, United Kingdom will present how government, traders, and consumer organisations in the UK came together to develop the TrustUK program. The presentation will include how the program was developed, how it works, and where ADR fits into the system.

Malcolm Crompton, Data Protection Commissioner, Australia, will focus on online seal programs. He will present the findings of a review of Online Privacy Programs conducted in September 2000 by his Office and the Office of the Information and Privacy Commissioner/Ontario. The project identified three key components for an effective online seal program, including sufficient privacy principles, sound dispute resolution method, and a robust compliance mechanism.

Suggested questions:

Is convergence of stakeholders in defining essential elements for promoting fair and effective online ADR desirable? Who should participate as stakeholders? What are the roles of stakeholders in developing trustmark programmes and codes of conduct, common complaint systems and ensuring enforcement? How can stakeholders cooperate best to develop such programmes and systems for cross-border transaction?
II. Educating business, consumers and government about online ADR

Cross-border ADR is common in the B to B context, but is new in the B to C context. While it is expected that online ADR will be effective in resolving B to C disputes in the online environment, it is important to recognise that users’ and consumers’ knowledge and understanding of ADR is minimal. Recognising the need for education, this session will focus on the roles of various stakeholders in educating businesses and consumers about online ADR. In particular, the discussion will include effective approaches to educating business about offering ADR and to educating consumers about the nature of and procedures for fair and effective ADR.

Presenters:

Duncan McDonald, American Institute of Contemporary German Studies, will explain how transparency through conspicuous online disclosures in plain language and multiple languages minimises consumer confusion and distrust, adverse media attention, and government scrutiny and enforcement.

Francis Aldhouse, Deputy Data Protection Commissioner, United Kingdom, will explain how the UK Data Protection Commissioner supports good customer care systems, ombudsman schemes, sectoral dispute resolution arrangements and other examples of ADR, and uses formal advertising and PR techniques to alert individuals to their legal rights and encourage them to pursue their own remedies and assert their own privacy.

Suggested questions:

What are the roles of stakeholders in educating business, consumers and government about online ADR? What can stakeholders do to ensure overall participation in ADR? What are the incentives and disincentives for the different stakeholders to promote online ADR?

Conference concludes

The conference will conclude with brief highlights of the conference discussions.
NOTES

1. Within the OECD, the conference is organised by the ICCP Working Party on Information Security and Privacy (WPISP) and the Committee for Consumer Policy (CCP), in co-operation with the OECD Business and Industry Advisory Committee (BIAC).

2. "ADR That Works" by Ernest G Tannis - the quote is taken from the ADR Primer of the American Bar Association (Appendix E).

3. In most situations, a party files a complaint with a third-party ADR provider who then notifies the other party or parties of the complaint. Then, an exchange or series of exchanges occur between the parties with the intervention of the third-party neutral as the parties attempt to settle the dispute. This neutral may be a human mediator/arbitrator or an automated system, as in the case of computer programs that settle insurance claim disputes. The parties may decide on the rules of procedure or the rules may be imposed by the ADR provider; the final outcome of the ADR process can be either an agreement reached by the parties themselves or a judgement imposed by the third-party; outcomes may be non-binding on both parties, binding only on one of the parties, or binding on both parties.

4. Assisted Negotiation (or conciliation) is an informal process whereby a neutral third-party guides the parties towards a compromise.

5. Arbitration is a process whereby the parties submit the facts of their dispute and their arguments (oral and/or written) to one or several independent decision-makers who decide the case on the basis of equity or law. Arbitration is legally binding and most often final.

6. See annex 1.


16. 123Settle.com, for example, allows parties at the outset either to sign an agreement to be bound by the automatically-generated outcome or to view their settlement figure first (if the case reaches settlement) and then determine whether or not to sign a binding agreement to fulfill the settlement. At least one other system under development, OnlineDisputes.org, does not require parties to be bound by the outcome; furthermore, it allows parties to settle more than cash-based disputes, such as consumer exchange of products.

17. EBay refers customers with disputes to SquareTrade via its website.


19. Albert Benshop, ibid.

20. For example the OECD Privacy Guidelines, the OECD Consumer Protection Guidelines, or any other international set of rules or guidelines.

21. The parties or the court of arbitration can refer to a juge d’appui where there are difficulties in the organisation, the implementation and the enforcement of the arbitration procedure. This particular judge does not have a competitive role, but is complementary to and co-operates in the arbitration procedure. The juge d’appui may be asked to intervene in the constitution of the court of arbitration (either ab initio or during the course of the arbitration procedure, if the tribunal is truncated and the remaining parties or arbitrators cannot reach agreement to rectify the situation). The juge d’appui may also be called upon, in particular, in cases of urgency, (although all national laws do not allow this role), in cases of difficulty in obtaining proof (more rarely), and to compel the enforcement of measures ordered by the court of arbitration. His exact role depends on the law applicable to the arbitration, which may be different to that applicable to the root of the dispute, and to that applicable to the arbitration procedure itself.

22. An Electronic signature signifies any action that expresses the intention to sign (agree on, accept), such as a name attached at the end of an e-mail, a click on “I agree” button on screen or the use of a certification authority’s e-signature. When an e-signature is certified by some method to assure the identity and/or authenticity of the signed document, it becomes electronic authentication. In other words, electronic authentication can be understood to encompass any method of verifying some piece of information in an electronic environment, whether it is the identity of the author of a text or sender of a message, the authority of a person to enter into a particular kind of transaction, the security attributes of a hardware or software device, or any one of countless other pieces of information that someone may want to be able to confirm in the electronic world.
### ANNEX 1

<table>
<thead>
<tr>
<th>Online ADR Provider</th>
<th>URL</th>
<th>Type(s) of Disputes Settled</th>
<th>B2B, B2C or C2C Disputes</th>
<th>ADR Method Used</th>
<th>Languages</th>
<th>Geographic Origin</th>
<th>Funding Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>123Settle</td>
<td><a href="http://www.123settle.com/">http://www.123settle.com/</a></td>
<td>all</td>
<td>B2B, B2C, C2C</td>
<td>automated negotiation; mediation; arbitration</td>
<td>English (Spanish to come)</td>
<td>USA</td>
<td>user fees</td>
</tr>
<tr>
<td>AllSettle</td>
<td><a href="http://www.allsettle.com/">http://www.allsettle.com/</a></td>
<td>insurance only</td>
<td>B2C</td>
<td>automated negotiation</td>
<td>English</td>
<td>USA</td>
<td>fees to insurance company</td>
</tr>
<tr>
<td>BBBOnline</td>
<td><a href="http://www.bbbonline.org">http://www.bbbonline.org</a></td>
<td>all consumer</td>
<td>B2C</td>
<td>conciliation, mediation, arbitration</td>
<td>English</td>
<td>USA/Canada</td>
<td>business membership fees</td>
</tr>
<tr>
<td>clickNsettle</td>
<td><a href="http://www.clicknsettle.com">http://www.clicknsettle.com</a></td>
<td>all financial</td>
<td>B2C</td>
<td>automated negotiation</td>
<td>English &amp; Spanish</td>
<td>USA</td>
<td>user fees</td>
</tr>
<tr>
<td>Cyberarbitration</td>
<td><a href="http://www.cyberarbitration.com">http://www.cyberarbitration.com</a></td>
<td>domain name; all other</td>
<td>B2C, B2B, C2C</td>
<td>arbitration</td>
<td>English</td>
<td>India</td>
<td></td>
</tr>
<tr>
<td>Cybercourt</td>
<td><a href="http://www.cybercourt.org">http://www.cybercourt.org</a></td>
<td>all online disputes</td>
<td>B2B, B2C, C2C</td>
<td>mediation</td>
<td>English and German</td>
<td>Germany</td>
<td>TBD</td>
</tr>
<tr>
<td>Cybersettle</td>
<td><a href="http://www.cybersettle.com">http://www.cybersettle.com</a></td>
<td>all financial</td>
<td>B2C</td>
<td>automated negotiation</td>
<td>English &amp; French</td>
<td>USA</td>
<td>user fees</td>
</tr>
<tr>
<td>FSM</td>
<td><a href="http://www.fsm.de/index.html">http://www.fsm.de/index.html</a></td>
<td>complaints against members of Association</td>
<td>B2C</td>
<td>arbitration</td>
<td>English, German &amp; French</td>
<td>Germany</td>
<td>member dues</td>
</tr>
<tr>
<td>iCourthouse</td>
<td><a href="http://www.i-courthouse.com">http://www.i-courthouse.com</a></td>
<td>all</td>
<td>B2C, B2B, C2C</td>
<td>non-binding arbitration</td>
<td>English (French and Spanish to come)</td>
<td>USA</td>
<td>user fees</td>
</tr>
<tr>
<td>Online ADR Provider</td>
<td>URL</td>
<td>Type(s) of Disputes Settled</td>
<td>B2B, B2C or C2C Disputes</td>
<td>ADR Method Used</td>
<td>Languages</td>
<td>Geographic Origin</td>
<td>Funding Source</td>
</tr>
<tr>
<td>-------------------------------------</td>
<td>---------------------------------</td>
<td>-----------------------------</td>
<td>--------------------------</td>
<td>----------------------------------------------</td>
<td>-------------------------------</td>
<td>-------------------</td>
<td>---------------------</td>
</tr>
<tr>
<td>iLevel</td>
<td><a href="http://www.iLevel.com">http://www.iLevel.com</a></td>
<td>all commercial</td>
<td>B2C</td>
<td>facilitated negotiation; consumer information</td>
<td>English</td>
<td>USA</td>
<td>membership fees for business</td>
</tr>
<tr>
<td>InternetNeutral</td>
<td><a href="http://www.internetneutral.com">http://www.internetneutral.com</a></td>
<td>all commercial online</td>
<td>B2B, B2C</td>
<td>mediation</td>
<td>English</td>
<td>USA</td>
<td>user fees</td>
</tr>
<tr>
<td>Internet Ombudsman (Austria)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Austria</td>
<td>Government/NGO/private sector</td>
</tr>
<tr>
<td>Internet Ombudsmanen (Sweden)</td>
<td><a href="http://www.internetombudsmanen.se/i">http://www.internetombudsmanen.se/i</a></td>
<td>all commercial online</td>
<td></td>
<td>mediation, arbitration</td>
<td>German and English</td>
<td>Sweden</td>
<td>Government</td>
</tr>
<tr>
<td>MARS (SuperSettle; Fair□ other)</td>
<td><a href="http://www.resolvemydispute.com">http://www.resolvemydispute.com</a></td>
<td>all (Fair&amp;Square - online only)</td>
<td>B2C, B2B, C2C</td>
<td>automated negotiation; mediation; arbitration</td>
<td>English (Spanish, French, Chinese to come)</td>
<td>USA</td>
<td>user fees</td>
</tr>
<tr>
<td>Mediate-Net</td>
<td><a href="http://www.mediate-net.org/">http://www.mediate-net.org/</a></td>
<td>family disputes</td>
<td></td>
<td>mediation</td>
<td>English</td>
<td>USA</td>
<td>free during trial</td>
</tr>
<tr>
<td>Online Ombuds Office</td>
<td><a href="http://www.ombuds.org">http://www.ombuds.org</a></td>
<td>all consumer</td>
<td>B2C</td>
<td>mediation, ombuds services</td>
<td>English</td>
<td>USA</td>
<td>public/private grants</td>
</tr>
<tr>
<td>SettlementNow</td>
<td><a href="http://settlementnow.com">http://settlementnow.com</a></td>
<td>insurance only</td>
<td>B2C</td>
<td>automated negotiation</td>
<td>English</td>
<td>USA</td>
<td>user fees</td>
</tr>
<tr>
<td>Online ADR Provider</td>
<td>URL</td>
<td>Type(s) of Disputes Settled</td>
<td>B2B, B2C or C2C Disputes</td>
<td>ADR Method Used</td>
<td>Languages</td>
<td>Geographic Origin</td>
<td>Funding Source</td>
</tr>
<tr>
<td>----------------------</td>
<td>------------------------------</td>
<td>-----------------------------</td>
<td>------------------------------</td>
<td>--------------------------------------</td>
<td>-----------</td>
<td>------------------</td>
<td>----------------------------------------</td>
</tr>
<tr>
<td>SquareTrade</td>
<td><a href="http://www.squaretrade.com">http://www.squaretrade.com</a></td>
<td>all online</td>
<td>B2C</td>
<td>facilitated negotiation, mediation</td>
<td>English</td>
<td>USA</td>
<td>business subscribers; user fees</td>
</tr>
<tr>
<td>The Virtual Magistrate</td>
<td><a href="http://vmag.org">http://vmag.org</a></td>
<td>all consumer online</td>
<td>B2C</td>
<td>non-binding arbitration</td>
<td>English</td>
<td>USA</td>
<td>funded by law school</td>
</tr>
<tr>
<td>TRUSTe</td>
<td><a href="http://www.truste.org">http://www.truste.org</a></td>
<td>online privacy disputes</td>
<td>B2C</td>
<td>conciliation/negotiation</td>
<td>English</td>
<td>USA</td>
<td>business subscriber fees</td>
</tr>
<tr>
<td>WebAssured</td>
<td><a href="http://www.webassured.com">http://www.webassured.com</a></td>
<td>all consumer online</td>
<td>B2C</td>
<td>mediation</td>
<td>English</td>
<td>USA</td>
<td>business membership fees</td>
</tr>
<tr>
<td>WEBdispute.com</td>
<td><a href="http://www.webdispute.com">http://www.webdispute.com</a></td>
<td>all online commercial</td>
<td>B2B, B2C</td>
<td>arbitration</td>
<td>English</td>
<td>USA</td>
<td>user fees</td>
</tr>
<tr>
<td>Which WebTrader</td>
<td><a href="http://www.which.net/webtrader/">http://www.which.net/webtrader/</a></td>
<td>all consumer online</td>
<td>B2C</td>
<td>ombuds service</td>
<td>Language of host country</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>UK, NL, BG, IT, FR, SP, PO</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
ANNEX 2

The following list of questions is based on a factual survey of existing ADR mechanisms and is meant to spur conversation and discussion among conference participants in thinking about the variety of procedural and substantive elements that might exist in ADR mechanisms.

1. GENERAL

1.1. To what parties is ADR offered?

- B2B
- B2C
- C2C
- G2C (Government to Consumer)

1.2. What type(s) of dispute is ADR offered for?

- Auctions
- B2C Contractual Disputes
- Copyright
- Domain Name Disputes
- Family Disputes
- Insurance
- Intellectual Property Disputes
- Other financial
- Personal Injury
- Other

1.3. What type(s) of ADR are offered?

- Automated negotiation
- Assisted negotiation (facilitation, conciliation)
Mediation
Med-arb or other combination of traditional ADRs
Arbitration
Non-governmental ombuds-type
Non-governmental tribunals
Other

1.4. What is the background of entity offering ADR?

Business organisation/industry group
Consumer organisation
International governmental organisation
National governmental organisation
Law Firm
Local governmental organisation
University
Association of former judges or lawyers (or other similar professional group)
Other

Were other types of organisations consulted when the ADR programme was being developed and implemented?

If so, which organisations (e.g. government, consumer group)?

What was the role of this organisation (e.g. funding, approval, referral, recommended practice)?

Has the ADR provider sought partnerships with any other organisation providing ADR?

Does the ADR provider represent that it complies with Guidelines governing the procedures of ADR issued by an organisation?

If so, which organisation?

1.5. Has the ADR programme been certified and/or been granted a trustmark/seal?

If yes, by whom?

What does the certification and/or trustmark seal granting process entail?

1.6. Cost of ADR to the Parties:

Is there a fee for the ADR service?
<table>
<thead>
<tr>
<th>What kind?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Free</td>
</tr>
<tr>
<td>Flat fee</td>
</tr>
<tr>
<td>Fee contingent on value of dispute</td>
</tr>
<tr>
<td>Fee split among parties</td>
</tr>
<tr>
<td>Other (e.g. fee calculated on value of claim)</td>
</tr>
</tbody>
</table>

1.7. What is the average length of a dispute?

1.8. Statistics:

- What is the number of disputes dealt with?
- If applicable, how does the number of cases dealt with compare to the overall number of transactions?
- What is the number/percentage of disputes successfully resolved?
- Where applicable, what is the number/percentage of outcomes appealed to a court or other body?
- Was the number/percentage of outcomes in which there were compliance problems reported?

1.9. When was the ADR programme established?

1.10. Socio-economics:

- What is the geographical location(s) of entity offering ADR?
- In which countries has the service been provided?
- In what language has the service been provided?
- Are there restrictions on the places or language in which the ADR service can be provided?
- Which language are the proceedings held in?
- Who chooses the languages to be used in the ADR proceedings and on what basis?
- Are cultural differences taken into account?

1.11. Has there been any survey of customer satisfaction with the programme service?

- If so, what are the results?
### 2. SUBSTANTIVE RULES STANDARDS OR GUIDELINES (INCLUDING VOLUNTARY SELF-REGULATORY CODES)

#### 2.1. On which basis is the ADR established?

<table>
<thead>
<tr>
<th>Basis</th>
</tr>
</thead>
<tbody>
<tr>
<td>General fairness</td>
</tr>
<tr>
<td>International rules, standards or guidelines</td>
</tr>
<tr>
<td>National rules, standards or guidelines</td>
</tr>
<tr>
<td>Other</td>
</tr>
</tbody>
</table>

### 3. RULES OF PROCEDURE

#### 3.1. Voluntary vs. mandatory ADR and Binding vs. non binding ADR outcomes:

<table>
<thead>
<tr>
<th>Question</th>
</tr>
</thead>
<tbody>
<tr>
<td>Do both parties voluntarily agree to ADR?</td>
</tr>
<tr>
<td>Is participation in the ADR programme required before a party can take a dispute to court?</td>
</tr>
<tr>
<td>Is there a pre-dispute binding ADR clause in the agreement that binds both parties to the outcome of the ADR?</td>
</tr>
<tr>
<td>Is there a pre-dispute binding ADR clause in the agreement that binds one party to the outcome of the ADR?</td>
</tr>
<tr>
<td>Are the parties permitted to enter into ADR that is binding on both parties after a dispute arises?</td>
</tr>
<tr>
<td>Are the parties permitted to enter into ADR that is binding on one party after a dispute arises?</td>
</tr>
</tbody>
</table>

#### 3.2. Content of the Rules of Procedure:

<table>
<thead>
<tr>
<th>Question</th>
</tr>
</thead>
<tbody>
<tr>
<td>Does the ADR only require fairness and good faith?</td>
</tr>
<tr>
<td>Does the ADR provide for parties agreeing to establish their own rules?</td>
</tr>
<tr>
<td>Does the ADR apply any established rules of procedure (e.g. UNCITRAL, ICC, ICANN/WIPO (UDRP) procedure)?</td>
</tr>
<tr>
<td>Does the ADR apply its own specific or supplemental rules of procedure in addition to any established rules?</td>
</tr>
</tbody>
</table>
4. PROCEEDINGS

4.1. Are the proceedings conducted:

<table>
<thead>
<tr>
<th>Totally online?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Both on and offline?</td>
</tr>
<tr>
<td>Totally offline?</td>
</tr>
<tr>
<td>- By Mail?</td>
</tr>
<tr>
<td>- Face-to-face?</td>
</tr>
</tbody>
</table>

4.2. Means of communication:

<table>
<thead>
<tr>
<th>E-mail</th>
</tr>
</thead>
<tbody>
<tr>
<td>Online forms</td>
</tr>
<tr>
<td>Tele/video conferencing</td>
</tr>
<tr>
<td>Telephone</td>
</tr>
<tr>
<td>In person</td>
</tr>
<tr>
<td>Other</td>
</tr>
</tbody>
</table>

4.3. Is translation/interpretation provided/available?

4.4. Are there time limits to the proceedings?

4.5. Can the parties be represented or assisted?

4.6. Is there a right/opportunity for a face-to-face hearing?

4.7. Adversarial procedure:

<table>
<thead>
<tr>
<th>Are parties required to provide details of their arguments to each other?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Are parties able to respond to each other's arguments?</td>
</tr>
</tbody>
</table>
### 4.8. Accessibility and Transparency:

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>What kinds of advertising/marketing does the ADR programme engage in?</td>
<td></td>
</tr>
<tr>
<td>How does the ADR programme make the parties aware of its existence?</td>
<td></td>
</tr>
<tr>
<td>At what point in a transaction is the availability of an ADR programme disclosed (e.g. home page, user agreement page)?</td>
<td></td>
</tr>
<tr>
<td>How is such a disclosure made?</td>
<td></td>
</tr>
<tr>
<td>What information about the ADR programme is provided?</td>
<td></td>
</tr>
</tbody>
</table>

### 5. NEUTRAL (S)

#### 5.1. Who chooses the neutral:

<table>
<thead>
<tr>
<th>Choice</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>The parties</td>
<td></td>
</tr>
<tr>
<td>The ADR provider</td>
<td></td>
</tr>
</tbody>
</table>

#### 5.2. Can the parties choose a three-person or other type of panel? If so, how?

<table>
<thead>
<tr>
<th>Method</th>
<th>Description</th>
</tr>
</thead>
</table>

#### 5.3. From where are the neutral(s) chosen?

<table>
<thead>
<tr>
<th>Source</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>List offered by the ADR provider?</td>
<td></td>
</tr>
<tr>
<td>List offered by another ADR entity, such as a professional association of ADR providers?</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
</tr>
</tbody>
</table>

#### 5.4. Can the parties challenge the appointment of an intermediary? If so, how?

<table>
<thead>
<tr>
<th>Method</th>
<th>Description</th>
</tr>
</thead>
</table>

#### 5.5. What experience is required of an intermediary?

<table>
<thead>
<tr>
<th>Experience Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>IT</td>
<td></td>
</tr>
<tr>
<td>Legal</td>
<td></td>
</tr>
<tr>
<td>Experience of ADR techniques</td>
<td></td>
</tr>
<tr>
<td>Expertise related to topic of dispute</td>
<td></td>
</tr>
<tr>
<td>Professional Organisation Certification</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
</tr>
</tbody>
</table>

#### 5.6. What is the role of the intermediary:

<table>
<thead>
<tr>
<th>Role</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assist the parties to reach an agreement</td>
<td></td>
</tr>
</tbody>
</table>

Evaluate the substantive merits of the case
Evaluate the procedural merits of the case
Determine the investigations to be made
Recommend interim orders or emergency relief
Recommend the outcome
Impose the outcome
   a) In writing
   b) With reasons

5.7. Is impartiality of a neutral required? If so, how is this ensured?

5.8. Does the neutral volunteer his/her services?

6. CONFIDENTIALITY

6.1. Are the neutral and ADR provider required to keep the following information confidential?

   The existence of proceedings
   Information exchanged during proceedings
   The outcome of proceedings

6.2. Are the parties required to keep the following information confidential?

   The existence of proceedings
   Information exchanged during proceedings
   The outcome of proceedings

6.3. How much information regarding individual decisions is made public, such as the factual circumstances of the case, the outcome only, etc.? How is the disclosure decided upon?

6.4. Are the parties, neutrals and ADR providers permitted to refer complaints/disputes/outcomes about fraudulent or deceptive ADR practices to law enforcement?
7. SECURITY

7.1. Are security measures taken to protect the confidentiality and integrity of personal information held by the ADR provider? If yes, how (e.g. password/encryption/authentication)?

7.2. Are security measures taken to protect the confidentiality and integrity of communications during the proceedings? If yes, how (e.g. password/encryption/authentication)?

8. OUTCOME OF ADR

8.1. Is the outcome notified to third parties?

8.2. If the parties do not voluntarily perform the decision rendered under the ADR programme, does the ADR programme have any mechanism to enforce the decision (e.g. posting a bond, using chargebacks, revoking a seal, etc.)?

8.3. If a party wishes to dispute an outcome:

Are the grounds for the dispute specified by the ADR scheme?

Is the applicable law prescribed in advance?

Is the applicable forum prescribed in advance?

9. DISPUTES WITH ADR PROVIDER

9.1. Does the ADR provider limit its legal liability?

9.2. If a party wishes to dispute that liability:

Is the applicable law prescribed in advance?

Is the applicable forum prescribed in advance?